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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Termination of the Waiver of the Nonmanufacturer Rule for Small Arms Ammunition Manufacturing

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The decision to terminate this waiver of the Nonmanufaturer Rule is based on evidence provided to the SBA that there are small businesses which manufacture items within this class of product. Terminating this waiver will require recipients of contracts set aside for small or 8(a) businesses to provide the product of domestic small business manufacturers or processors where this class of product is required. A notice to terminate a waiver the Nonmanufacturer Rule appeared in the **Federal Register** on July 9, 2003 (68 FR 40820). Comments from this notice were received from small business manufacturers. Our knowledge of the existence of small business manufacturers requires us to terminate the waiver of the Nonmanufacturer for Small Arms Ammunition Manufacturing, NAICS 332992, in accordance with 13 CFR 121.1204 (a)(7).

EFFECTIVE DATE: October 27, 2003.

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

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on a six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–27047 Filed 10–24–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN: 3245–AF07

Small Business Government Contracting Programs; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: This document corrects the **DATES** section of the final rule amending 13 CFR part 125, published on October 20, 2003, in 68 FR 60006, which amended regulations governing small business prime contracting assistance.

DATES: The effective date of the rule FR Doc. 03–26514 published on October 20, 2003 (68 FR 60006) is corrected to October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Administrator, Office of Policy and Research (202) 401–8105 or *dean.koppel@sba.gov*.

Linda G. Williams,

Associate Administrator, Office of Government Contracting.

[FR Doc. 03–26966 Filed 10–24–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15727; Airspace Docket No. 03–ACE–69]

Modification of Class E Airspace; Corning, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effect date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Corning, IA.

EFFECTIVE DATE: 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on August 21, 2003 (68 FR 50464). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule adjusted the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 25, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will be come effective on that date.

Issued in Kansas City, MO on October 8, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–27024 Filed 10–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15725; Airspace Docket No. 03–ACE–67]

Modification of Class E Airspace; Chariton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Chariton, IA.

EFFECTIVE DATE: 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on August 21, 2003 (68 FR 50466). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 25, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 7, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–27025 Filed 10–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15726; Airspace Docket No. 03–ACE–68]

Modification of Class E Airspace; Clarion, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Clarion, IA.

EFFECTIVE DATE: 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on August 21, 2003 (68 FR 50465). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 25, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 7, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–27026 Filed 10–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Parts 120, 123, 124 and 125

[Public Notice 4520]

RIN 1400–AB72

Amendment to the International Traffic In Arms Regulations: Mandatory Electronic Filing of Shipper's Export Declarations With U.S. Customs Using the Automated Export System (AES)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This amendment to the International Traffic in Arms Regulations (ITAR) implements the Congressional requirement of the Arms Export Control Act (AECA) for exporters of U.S. Munitions List (USML) articles to provide to the Department of State a report containing all shipment information, to include a description of the item, quantity, value, port of exit, end user and country of destination of the item; and, the Congressional mandate in Public Law l06–113 that amended Section 30l, of Title 13 of the U.S. Code authorizing the Secretary of Commerce to require the mandatory electronic filing of export information through the Automated Export System (AES) for items identified in the Commerce Control List (CCL) and the Department of State's U.S. Munitions List (USML) that require a Shipper's Export Declaration (SED). In implementing these mandates it was determined that for shipments requiring a SED the use of the AES system by the Department of State would be the least burdensome to the exporting community. Also, adoption of the AES system by the State Department will be economically beneficial to the USG and provide information on exports of defense articles using a U.S. Port in a more timely, consistent and accurate manner. It will also serve to improve the quality, timeliness and consistency of Congressionally mandated reports.

EFFECTIVE DATE: October 27, 2003.

Public Comment: Interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls Compliance, ATTN: Regulatory Change, ITAR Mandatory Electronic Filing of Export Information, 12th Floor, SA–1, Washington, DC 20522–0112.

FOR FURTHER INFORMATION CONTACT: David C. Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State, Telephone (202) 663–2700 or FAX (202) 261–8199. ATTN: Regulatory Change, ITAR

Mandatory Electronic Filing of Export Information.

SUPPLEMENTARY INFORMATION: The Automated Export Systems (AES) is the electronic equivalent of filing with the U.S. Bureau of Customs and Border Protection a paper Form No. 7525V, Shipper's Export Declaration (SED). This electronic filing of export information is mandatory for export of USML articles, unless a written exception is granted by the Department of State. Implementation of the electronic filing of the export information using the AES system for shipments of USML articles is mandatory on October 18, 2003. To ensure a seamless transition from paper to electronic reporting, the exporter, or an agent acting on the exporter's behalf, shall, until December 18, 2003, also file with the Bureau of Customs and Border Protection a paper copy of the AES document.

However, there are circumstances (*e.g.*, oral, visual, or electronic transmissions of technical data and defense services) when exports subject to the controls of the ITAR are made and the transfer is not monitored by the Bureau of Customs and Border Protection. The Department has determined that all technical data and defense services export information shall be provided directly to Directorate of Defense Trade Controls (DDTC), regardless of the type of ITAR authorization (*e.g.*, license, agreement, or exemption). A copy of the notification to DDTC shall be provided by the exporter, or an agent acting on the exporter's behalf, to the Bureau of Customs and Border Protection upon request for those shipments that are exported using a U.S. Port (*e.g.*, hand carried exports of technical data). DDTC is finalizing the system for direct electronic reporting of export data to DDTC. Such electronic reporting will be mandatory on January 18, 2004 for reporting exports against DSP–5 technical data licenses, Manufacturing License Agreements, and Technical Assistance Agreements. While AES becomes mandatory on October 18, 2003, the electronic reporting for licenses and agreements to DDTC is being delayed in order to ensure that AES is fully operational prior to implementation of the DDTC direct reporting requirement. Mandatory reporting on all exemptions is being further delayed, and will be implemented in a future **Federal Register** Notice amending Section 122.23. DDTC anticipates reporting will include the applicant's registration code, the USML category of the technical data or defense service, license and/or exemption number, and country of ultimate and, if applicable, intermediate destination. In the interim period, reporting of the export of technical data under a Form DSP–5 and defense services under an MLA/TAA will be as follows:

1. For reporting exports of technical data that are licensed on a Form DSP–5, the applicant must self validate the initial export on the original of the DSP–5 and return the license to DDTC. Exports of additional copies of the licensed technical data (*i.e.*, the transaction must be identical, to include the same technical data to the identical end use and end users) would be the subject of the exemption in Section 125.4.

2. The initial export of technical data and defense services using an agreement or a license shall be reported by letter to DDTC with the ATTN Line reading ''Initial Export Notification for Agreement (or License) [insert agreement/license number].''

Should an instance arise when the technical data authorized by a license or agreement is to be exported using a U.S. Port, the exporter shall file the export information in accordance with Section 123.22(b)(3)(iii) of this subchapter.

Although DDTC is delaying mandating reporting of all exports using an exemption, effective January 18, 2004 all paper filing of export information for USML shipments shall cease. Also, effective on the date of this publication, use of the Department of State's Direct Shipment Validation Program and the Department of Commerce, Bureau of the Census Option 4 SED filing alternative will be discontinued for all shipments of USML articles.

The Proliferation Prevention Enhancement Act of 1999, Public Law 106–113, Appendix G, and Section 38(i) of the Arms Export Control Act (AECA) mandate reporting from U.S. exporters of export shipment data. In particular, the law requires the Department of State to collect electronically all Shipper's Export Declaration (SED) data on exports of USML articles. The Department of Homeland Security, Bureau of Customs and Border Protection and the Department of Commerce, Bureau of Census have implemented a process for the electronic filing of the Form 7525V, Shipper's Export Declaration (SED), using a system known as the Automated Export System (AES). The AES shall serve as the Department of State's primary collection of data on exports of defense articles. To provide the required information, the AES has been enhanced to add additional information requirements, to include (a) DDTC registration number of the authorized exporter; (b) identification of Significant Military Equipment (SME) as defined in section 120.7 of the ITAR; (c) a certification that all parties in the transaction are eligible in accordance with the ITAR (*i.e.*, section 120.1, paragraphs (c) and (d); (d) identification of the USML Category (section 121.1 of the ITAR) of the item being shipped; (e) additional fields to report the DDTC quantity and unit of measure as described on the license or exemption; and (f) a field for identification of the ITAR exemption authorizing the export. Further changes to the AES are being considered, such as identification of the article being exported against the line item of the article authorized on the export license.

Also, the AES requires the use of external and internal transaction numbers to track the transaction. The External Transaction Number (XTN) is generated at the time of the AES filing by the DDTC registered applicant/exporter, or an agent acting on the filer's behalf. The Internal Transaction Number (ITN) is generated by the AES and returned to the filer electronically once the submitted information has been verified for accuracy and completeness and accepted by the AES. When an AES submission is rejected by the Bureau of Customs and Border Protection (*e.g.*, Customs is unable to validate the XTN in its system or the exporter does not receive an ITN), it will be considered as not having met the regulatory requirements of the ITAR and export may not be made. Future changes to the regulations may be required to expand the use of the ITN in the AES in order to make obvious that the SED was correctly filed through the AES, to include a requirement for the ITN on the bill of lading, air waybill, or other loading documents. Any additional AES requirements affecting export of USML articles will be the subject of a Department of State **Federal Register** Notice.

A new definition has been added to Part 120 of the ITAR. A new § 120.30 now defines the AES as the electronic filing of the export information. Part 120 is also amended in § 120.28, paragraph (b) to reflect the new name of the Department of Commerce component formerly known as the Bureau of Export Administration. The Bureau is now known as the Bureau of Industry and Security (BIS). Also, while not the subject of an amendment in this publication, exporters are advised that any reference in the ITAR that currently reads ''U.S. Customs'', refers to the activities of the Bureau of Customs and

Border Protection and the Bureau of Immigration and Customs Enforcement, both of which are now part of the Department of Homeland Security.

In addition, Part 123 is amended in § 123.4 to clarify the procedure for electronic filing of export information and the accompanying documentation. Also, in Part 123, the title of § 123.22 is amended to better reflect the requirements and now reads, ''Filing, retention, and return of export licenses and filing of export information.'' Section 123.22 also has been reformatted to address the specific requirements of the new procedures, to include in paragraph (a) filing and retention of licenses authorized by the DDTC; paragraph (b) filing and reporting of export information; and, paragraph (c) return of licenses.

From time-to-time, exports are required of licensed hardware when the applicant is unable to provide the export information in the mandated timelines. Section 123.22, paragraph (b)(2) provides that the Bureau of Customs and Border Protection may permit the license holder, or an agent acting on the filer's behalf, to electronically file urgent shipments in a shorter time period, provided certain conditions are met.

While all exports of hardware, regardless of the type of approval (*e.g.*, license, agreement, or exemption) controlled by the ITAR will require filing of the export information using AES, exports of technical data and defense services made using a license, agreement or exemption shall be electronically reported directly to DDTC. Section 123.22 has been amended accordingly. Reporting to DDTC of the export data electronically for licensed technical data (DSP–5) and defense services (MLA and TAA) will be mandatory January 18, 2004 to require initial reporting and reporting in any instance where the exporter is using a U.S. port. This delay, and the further delay related to reporting exports using exemptions, should permit sufficient time for implementation of the AES. Guidelines for use of the DDTC export data system will be published on the DDTC Web site (*http://www.pmdtc.org*).

Section 123.24 is also amended to require, for shipments of U.S. Munitions List hardware by the U.S. Postal Service, the electronic filing of export information using the AES and the filing of the license with the Bureau of Customs and Border Protection at a U.S. Port. Shipments of technical data in furtherance of a license or agreement by mail shall be reported directly to DDTC.

Section 124.3(a) has been amended to eliminate the requirement that the U.S. party to a manufacturing license or technical agreement certify on an SED that the export of unclassified technical data being exported does not exceed the scope of the agreement and any limitations imposed pursuant to this part. This requirement is no longer needed because unclassified technical data exports will no longer be reported using an SED.

Section 125.6 is amended to change the requirement that an exporter, claiming an exemption for the export of technical data under the provisions of sections 125.4 and 125.5, certify on the SED that the proposed export is covered by one of those sections. Section 125.6 will now require that this certification be made by marking the package or letter containing the technical data. The exporter must retain this certification for a period of 5 years. For exports of technical data that are oral, visual or electronic, the certification must still be completed and retained for 5 years.

Finally, section 125.8 is being removed and reserved for future use.

Regulatory Analysis and Notices: This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It is not a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effect on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13123. The reporting or record-keeping actions required from the public under the rule require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved all such actions required under this rule, which are done under four information collections; the Department of State is responsible for three (OMB control numbers 1405–0003, 1405–0093, and 1405–0148), and the Department of Commerce is responsible for one (OMB control number 0607–0152).

List of Subjects

22 CFR 120

Arms and munitions, Classified information, Exports.

22 CFR 123

Arms and munitions, Exports.

22 CFR 124

Arms and munitions, Exports, Technical assistance.

22 CFR 125

Arms and Munitions, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Parts 120, 123, 124 and 125 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, and 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

■ 2. § 120.28 is amended by revising paragraphs (b) introductory text and (b)(1) to read as follows:

§ 120.28 Listing of forms referred to in this subchapter.

* * * * *

(b) Department of Commerce, Bureau of Industry and Security:

(1) International Import Certificate (Form BIS–645P/ATF–4522/DSP–53).

* * * * *

■ 3. § 120 is amended by adding § 120.30 to read as follows:

§ 120.30. The Automated Export System (AES).

The Automated Export System (AES) is the Department of Commerce, Bureau of Census, electronic filing of export information. The AES shall serve as the primary system for collection of export data for the Department of State. In accordance with this subchapter U.S. exporters are required to report export information using AES for all hardware exports. Exports of technical data and defense services shall be reported directly to the Directorate of Defense Trade Controls (DDTC). Also, requests for special reporting may be made by DDTC on a case-by-case basis, (*e.g.*, compliance, enforcement, congressional mandates).

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 4. The authority citation for part 123 continues to reads as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, and 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

■ 5. § 123.4 is amended by revising paragraph (d)(2) to read as follows:

§ 123.4 Temporary import license exemptions.

* * * * *

(d) * * *

(1) * * *

(2) At the time of export, in accordance with the Bureau of Customs and Border Protection procedures, the Directorate of Defense Trade Controls (DDTC) registered and eligible exporter, or an agent acting on the filer's behalf, must electronically file the export information using the Automated Export System (AES), and identify 22 CFR 123.4 as the authority for the export and provide, as requested by the Bureau of Customs and Border Protection, the entry document number or a copy of the Bureau of Customs and Border Protection document under which the article was imported.

■ 6. § 123.5(c) is revised to read as follows:

§ 123.5 Temporary export licenses.

* * * * *

(c) Any temporary export license for hardware that is used, regardless of whether the hardware was exported directly to the foreign destination or returned directly from the foreign destination, must be endorsed by the Bureau of Customs and Border Protection in accordance with the procedures in § 123.22 of this subchapter.

■ 7. § 123.22 is revised to read as follows:

§ 123.22 Filing, retention, and return of export licenses and filing of export information.

(a) Any export, as defined in this subchapter, of a defense article controlled by this subchapter, to include defense articles transiting the United States, requires the electronic reporting of export information. The reporting of the export information shall be to the Bureau of Customs and Border Protection using the Automated Export System (AES) or directly to the Directorate of Defense Trade Controls (DDTC). Any license or other approval authorizing the permanent export of hardware must be filed at a U.S. Port before any export. Licenses or other approvals for the permanent export of technical data and defense services shall be retained by the applicant who will send the export information directly to DDTC. Temporary export or temporary import licenses for such items need not be filed with the Bureau of Customs and Border Protection, but must be presented to the Bureau of Customs and Border Protection for decrementing of the shipment prior to departure and at the time of entry. The Bureau of Customs and Border Protection will only decrement a shipment after the export information has been filed correctly using the AES. Before the export of any hardware using an exemption in this subchapter, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically provide export information using the AES (see paragraph (b) of this section). In addition to electronically providing the export information to the Bureau of Customs and Border Protection before export, all the mandatory documentation must be presented to the port authorities (*e.g.*, attachments, certifications, proof of AES filing; such as the External Transaction Number (XTN) or Internal Transaction Number (ITN)). Export authorizations shall be filed, retained, decremented or returned to DDTC as follows:

(1) Filing of licenses and documentation for the permanent export of hardware. For any permanent export of hardware using a license (*e.g.*, DSP–5, DSP–94) or an exemption in this subchapter, the exporter must, prior to an AES filing, deposit the license and provide any required documentation for the license or the exemption with the Bureau of Customs and Border Protection, unless otherwise directed in this subchapter (*e.g.*, § 125.9). If necessary, an export may be made through a port other than the one designated on the license if the exporter complies with the procedures established by the Bureau of Customs and Border Protection.

(2) Presentation and retention by the applicant of temporary licenses and related documentation for the export of unclassified defense articles. Licenses for the temporary export or temporary import of unclassified defense articles need not be filed with the Bureau of Customs and Border Protection, but must be retained by the applicant and presented to the Bureau of Customs and Border Protection at the time of temporary import and temporary export. When a defense article is temporarily exported from the United States and moved from one destination authorized on a license to another destination authorized on the same or another temporary license, the applicant, or an agent acting on the applicant's behalf, must ensure that the Bureau of Customs and Border Protection decrements both temporary licenses to show the exit and entry of the hardware.

(b) Filing and reporting of export information. (1) Filing of export information with the Bureau of Customs and Border Protection. Before exporting any hardware controlled by this subchapter, using a license or exemption, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically file the export information with the Bureau of Customs and Border Protection using the Automated Export System (AES) in accordance with the following timelines:

(i) Air or truck shipments. The export information must be electronically filed at least 8 hours prior to departure.

(ii) Sea or rail Shipments. The export information must be electronically filed at least 24 hours prior to departure.

(2) Emergency shipments of hardware that cannot meet the pre-departure filing requirements. Bureau of Customs and Boarder Protection may permit an emergency export of hardware by truck (*e.g.*, departures to Mexico or Canada) or air, by a U.S. registered person, when the exporter is unable to comply with the SED filing timeline in paragraph (b)(1)(i) of this section. The applicant, or an agent acting on the applicant's behalf, in addition to providing the export information electronically using the AES, must provide documentation required by the Bureau of Customs and Border Protection and this subchapter. The documentation provided to the Bureau of Customs and Border Protection at the port of exit must include the External Transaction Number (XTN) or Internal Transaction Number (ITN) for the shipment and a copy of a notification to DDTC stating that the shipment is urgent and why. The original of the notification must be immediately provided to DDTC. The AES filing of the export information when the export is by air must be at least two hours prior to any departure from the United States; and, when a truck shipment, at the time when the exporter provides the articles to the carrier or at least one hour prior to departure from the United States, when the permanent export of the hardware has been authorized for export:

(i) In accordance with § 126.4 of this subchapter, or

(ii) On a valid license (*i.e.*, DSP–5, DSP–94) and the ultimate recipient and ultimate end user identified on the license is a foreign government.

(3) Reporting of export information on technical data and defense service. When an export is being made using a DDTC authorization (*e.g.*, technical data license, agreement or a technical data

exemption provided in this subchapter), the DDTC registered exporter will retain the license or other approval and provide the export information electronically to DDTC as follows:

(i) Technical data license. Prior to the permanent export of technical data licensed using a Form DSP–5, the applicant shall electronically provide export information using the system for direct electronic reporting to DDTC of export information and self validate the original of the license. When the initial export of all the technical data authorized on the license has been made, the license must be returned to DDTC. Exports of copies of the licensed technical data should be made in accordance with existing exemptions in this subchapter. Should an exemption not apply, the applicant may request a new license.

(ii) Manufacturing License and Technical Assistance Agreements. Prior to the initial export of any technical data and defense services authorized in an agreement the U.S. agreement holder must electronically inform DDTC that exports have begun. In accordance with this subchapter, all subsequent exports of technical data and services are not required to be filed electronically with DDTC except when the export is done using a U.S. Port. Records of all subsequent exports of technical data shall be maintained by the exporter in accordance with this subchapter and shall be made immediately available to DDTC upon request. Exports of technical data in furtherance of an agreement using a U.S. Port shall be made in accordance with § 125.4 of this subchapter and made in accordance with the procedures in paragraph (b)(3)(iii) of this section.

(iii) Technical Data and Defense Service Exemptions. In any instance when technical data is exported using an exemption in this subchapter (*e.g.*, §§ 125.4(b)(2), 125.4(b)(4), 126.5) from a U.S. port, the exporter is not required to report using AES, but must, effective January 18, 2004, provide the export data electronically to DDTC. A copy of the electronic notification to DDTC must accompany the technical data shipment and be made available to the Bureau of Customs and Border Protection upon request.

Note to paragraph (b)(3)(iii): Future changes to the electronic reporting procedure will be amended by publication of a rule in the **Federal Register**. Exporters are reminded to continue maintaining records of all export transactions, including exemption shipments, in accordance with this subchapter.

(c) Return of Licenses. All licenses issued by the Directorate of Defense Trade Controls (DDTC) must be returned to the DDTC in accordance with the following: (1) License filed with the Bureau of Customs and Border Protection). The Bureau of Customs and Border Protection must return to the DDTC any license when the total value or quantity authorized has been shipped or when the date of expiration is reached, whichever occurs first.

(2) Licenses not filed with the Bureau of Customs and Border Protection. Any license that is not filed with the Bureau of Customs and Border Protection (*e.g.*, oral or visual technical data releases or temporary import and export licenses retained in accordance with paragraph (a)(2) of this section), must be returned by the applicant to the DDTC no later than 60 days after the license has been expended (*e.g.*, total value or quantity authorized has been shipped) or the date of expiration, whichever occurs first.

■ 8. § 123.24 is revised to read as follows:

§ 123.24 Shipments by U.S. Postal Service.

(a) The export of any defense hardware using a license or exemption in this subchapter by the U.S. Postal Service must be filed with the Bureau of Customs and Border Protection using the Automated Export System (AES) and the license must be filed with the Bureau of Customs and Border Protection before any hardware is actually sent abroad by mail. The exporter must certify the defense hardware being exported in accordance with this subchapter by clearly marking on the package ''This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number) and the export has been electronically filed with the Bureau of Customs and Border Protection using the Automated Export System (AES).''

(b) The export of any technical data using a license in this subchapter by the U.S. Postal Service must be notified electronically directly to the Directorate of Defense Trade Controls (DDTC). The exporter, using either a license or exemption, must certify, by clearly marking on the package, ''This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number).'' For those exports using a license, the exporter must also state ''The export has been electronically notified directly to DDTC.'' The license must be returned to DDTC upon completion of the use of the license (*see* § 123.22(c)).

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

■ 9. The authority citation for part 124 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261.

■ 10. § 124.3 is amended by revising paragraph (a) to read as follows:

§ 124.3 Exports of technical data in furtherance of an agreement.

(a) Unclassified technical data. The Bureau of Customs and Border Protection or U.S. Postal authorities shall permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license or technical assistance agreement which has been approved in writing by the Directorate of Defense Trade Controls (DDTC) and the technical data does not exceed the scope or limitations of the relevant agreement. The approval of the DDTC must be obtained for the export of any unclassified technical data that may exceed the terms of the agreement.

* * * * *

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

■ 11. The authority citation for part 125 continues to read as follows:

Authority: Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2668.

■ 12. § 125.6 is revised to read as follows:

§ 125.6 Certification requirements for exemptions.

(a) To claim an exemption for the export of technical data under the provisions of this subchapter (*e.g.*, §§ 125.4 and 125.5), the exporter must certify that the proposed export is covered by a relevant section of this subchapter, to include the paragraph and applicable subparagraph. Certifications consist of clearly marking the package or letter containing the technical data ''22 CFR [insert ITAR exemption] applicable.'' This certification must be made in written form and retained in the exporter's files for a period of 5 years (see § 123.22 of this subchapter).

(b) For exports that are oral, visual, or electronic the exporter must also complete a written certification as indicated in paragraph (a) of this section and retain it for a period of 5 years.

§ 125.8 [Removed and Reserved]

■ 13. § 125.8 is removed and reserved.

Dated: October 15, 2003.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 03–27039 Filed 10–24–03; 8:45 am]

BILLING CODE 4710–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD146–3103; FRL–7578–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Modifications to the Attainment Plans for the Baltimore Area and Cecil County Portion of the Philadelphia Area To Revise the Mobile Budgets Using MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions to revise the mobile budgets in the one-hour ozone attainment demonstration plans for the Baltimore nonattainment area (the Baltimore area) and the Cecil County portion of the Philadelphia-Wilmington-Trenton nonattainment area (the Philadelphia area) . These revisions were submitted by the Maryland Department of the Environment on September 2, 2003. The intended effect of this action is to approve these SIP revisions as meeting the requirements of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on November 26, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *Kotsch.Martin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2003 (68 FR 40861), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of revised mobile emission inventories and 2005 motor vehicle emissions budgets which have been developed using MOBILE6, an updated model for calculating mobile emissions of ozone precursors. These inventories and associated motor vehicle emissions budgets are part of the one-hour ozone attainment plans approved for the Metropolitan Baltimore nonattainment area (the Baltimore area) and the Cecil County portion of the Philadelphia-Wilmington-Trenton nonattainment area (the Philadelphia area). The intended effect of this action is to approve SIP revisions that will better enable the State of Maryland to continue to plan for attainment of the one-hour national ambient air quality standard (NAAQS) for ozone in the Baltimore area and the Cecil County portion of the Philadelphia area. This action is being taken under the Clean Air Act.

These SIP revisions were proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its SIP. The state's proposed SIP revisions were submitted to EPA on May 28, 2003 by the Maryland Department of the Environment (MDE). On July 9, 2003 (68 FR 40861), EPA proposed approval of Maryland's May 28, 2003 submittal. No comments were received during the public comment period on EPA's July 9, 2004 proposal. The MDE formally submitted the final SIP revision on September 2, 2003. That final submittal had no substantial changes from the proposed version submitted on May 28, 2003. A detailed description of Maryland's submittal and EPA's rationale for its proposed approval were presented in the July 9, 2003 notice of proposed rulemaking and will not be restated in its entirety here.

II. Summary of SIP Revisions

Maryland's September 2, 2003 SIP revisions contain revised 1990 and 2005 motor vehicle inventories and emissions budgets calculated using the MOBILE6 motor vehicle emissions model. Consistent with EPA's ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity'' and ''Clarification of Policy Guidance for MOBILE6 in Mid-course Review Areas'', regarding the use of MOBILE6 in SIP development, the MDE's submittal included relative reduction comparisons to show that the one-hour ozone attainment demonstration plans for both the Baltimore and Philadelphia areas continue to demonstrate attainment using revised MOBILE6 mobile vehicle emissions. The MDE's methodology for the relative reduction comparison consisted of comparing the new MOBILE6 vehicle emissions with those previously approved using MOBILE5 for the Baltimore and the Philadelphia areas' attainment plans (see October 30, 2001,66 FR 54687) to determine if attainment will still be predicted by the established attainment dates. Specifically, the State calculated the relative reductions (expressed as percent reductions) in ozone precursors between the 1990 base year and attainment year inventories, both MOBILE5 based. These percent reductions were then compared to the percent reductions between the revised MOBILE6-based 1990 base year and attainment year inventories. These relative reduction comparisons show that the one-hour ozone attainment demonstration plans for both the Baltimore area and the Philadelphia area continue to demonstrate attainment using revised MOBILE6 mobile vehicle emissions.

III. Final Action

EPA is taking final action to approve Maryland's September 2, 2003 SIP revisions. These revisions amend the1990 and 2005 motor vehicle emissions inventories and 2005 motor vehicle emissions budgets of the attainment demonstration plans for the Baltimore area and the Cecil County portion of the Philadelphia area using MOBILE6. In accordance with the parallel processing procedures, EPA has evaluated Maryland's final SIP revisions submitted on September 2, 2003 and finds that no substantial changes were made from the proposed SIP revisions submitted on May 28, 2003. Maryland has demonstrated that the revised one-hour attainment demonstration plans for the Baltimore and the Philadelphia areas continue to demonstrate attainment with the revised MOBILE6-based inventories and budgets. The revised mobile inventories and emissions budgets being approved for the two nonattainment areas are shown below in Tables 1 and 2 respectively.

TABLE 1.—MARYLAND'S REVISED MOTOR VEHICLE EMISSIONS INVENTORIES

Nonattainment area	1990		2005	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Baltimore	165.14	228.21	55.3	146.9
Cecil County	8.6	17.3	3.0	11.3

TABLE 2.—MARYLAND MOTOR VEHICLE EMISSIONS BUDGETS

Nonattainment area	2005 Attainment	
	VOC (tpd)	NO_X (tpd)
Baltimore	55.3	146.9
Cecil County	3.0	11.3

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 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 to approve SIP revisions to the one-hour ozone attainment demonstration plans for the Baltimore area and the Cecil County portion of the Philadelphia area which revise the 1990 and 2005 motor vehicle emissions inventories and 2005 motor vehicle emissions budgets using MOBILE6 may not be challenged later in proceedings to enforce their requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 16, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. Section 52.1076 is amended by revising paragraphs (h), (i), (k), and (l), and adding paragraph (m) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(h) EPA approves the attainment demonstration for the Philadelphia area submitted as a revision to the State Implementation Plan by the Maryland Department of the Environment on April 29, 1998, August 18, 1998,

December 21, 1999, December 28, 2000, August 31, 2001, and September 2, 2003 including its RACM analysis and determination. EPA is also approving the revised enforceable commitments made to the attainment plan for the Baltimore severe ozone nonattainment area which were submitted on December 28, 2000. The enforceable commitments are to submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory; and to perform a mid-course review by December 31, 2003.

(i) EPA approves the following mobile budgets of Maryland's attainment plan for the Philadelphia area:

TRANSPORTATION CONFORMITY BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)
Attainment Demonstration	2005	3.0	11.3

(1) [Reserved]

(2) Similarly, EPA is approving the 2005 attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to submit new budgets as a SIP revision to the attainment plan consistent with any new measures submitted to fill any shortfall, if the new additional control measures affect on-road motor vehicle emissions.

* * * * *

(k) EPA approves the attainment demonstration for the Baltimore area submitted as a revision to the State Implementation Plan by the Maryland Department of the Environment on April 29, 1998, August 18, 1998, December 21, 1999, December 28, 2000, August 20, 2001, and September 2, 2003 including its RACM analysis and determination. EPA is also approving the revised enforceable commitments made to the attainment plan for the Baltimore severe ozone nonattainment area which were submitted on December 28, 2000. The enforceable commitments are to submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory; and to perform a mid-course review by December 31, 2003.

(l) EPA approves the following mobile budgets of the Baltimore area attainment plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE BALTIMORE AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)
Attainment Demonstration	2005	55.0	146.9

(1) [Reserved]

(2) Similarly, EPA is approving the 2005 attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to submit new budgets as a SIP revision to the attainment plan consistent with any new measures submitted to fill any shortfall, if the new additional control measures affect on-road motor vehicle emissions.

(m) EPA approves the State of Maryland's revised 1990 and the 2005 VOC and NO_X highway mobile emissions inventories and the 2005 motor vehicle emissions budgets for the one-hour ozone attainment plans for the Baltimore severe ozone nonattainment area and the Cecil County portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. These revisions were submitted by the Maryland Department of the Environment on September 2, 2003. Submission of these revised MOBILE6-based motor vehicle emissions inventories was a requirement of EPA's approval of the attainment demonstration under paragraphs (h) and (k) of this section.

[FR Doc. 03–26920 Filed 10–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN79–2; FRL–7578–6]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, the EPA is withdrawing the direct final rule approving a site-specific revision to the Minnesota sulfur dioxide (SO_2) Implementation Plan (SIP) for Xcel Energy (formerly known as Northern States Power Company) Inver Hills Generating Plant located in the City of Inver Grove Heights, Dakota County, Minnesota. In the direct final rule published on September 2, 2003 (68 FR 52110), EPA stated that if EPA receives adverse comment by October 2, 2003, the SO_2 rule would be withdrawn and not take effect. On September 2, 2003, EPA subsequently received one comment. We believe this comment is adverse and therefore, we are withdrawing the direct final rule. EPA will address the comment received in a subsequent final action based on the proposed action published on September 2,2003.

DATES: The direct final rule published at 68 FR 52110 on September 2, 2003 is withdrawn as of October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Christos Pantos, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 353–8328. E-mail address: *panos.christos@epa.gov.*

List of Subjects in 40 CFR Part 52

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

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

Dated: October 16, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

■ Accordingly, the amendment of 40 CFR 52.1220(c) as published at 68 FR 52113 (September 2, 2003) is withdrawn as of October 27, 2003.

[FR Doc. 03–26921 Filed 10–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN73–2; FRL–7578–5]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, the EPA is withdrawing the direct final rule approving a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Lafarge Corporation's (Lafarge) facility located on Red Rock Road in Saint Paul, Ramsey County, Minnesota. In the direct final rule published on September 2, 2003 (68 FR 52106), EPA stated that if EPA receives adverse comment by October 2, 2003, the PM rule would be withdrawn and not take effect. On September 2, 2003, EPA subsequently received one comment. We believe this comment is adverse and, therefore, we are withdrawing the direct final rule. EPA will address the comment received in a subsequent final action based on the proposed action published on September 2, 2003.

DATES: The direct final rule published at 68 FR 52106 on September 2, 2003, is withdrawn as of October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Christos Pantos, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 353–8328. E-mail address: *panos.christos@epa.gov.*

List of Subjects in 40 CFR Part 52

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

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

Dated: October 16, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

■ Accordingly, the addition of 40 CFR 52.1220(c)(64) is withdrawn as of October 27, 2003.

[FR Doc. 03–26922 Filed 10–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[ID–02–003; FRL –7568–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Ada County/Boise, ID Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is taking final action to rescind its earlier finding that the PM_{10} standards promulgated on July 1, 1987 and the accompanying nonattainment designation and classification are no longer applicable in the Ada County/Boise, Idaho area, and simultaneously, approve a PM_{10} State Implementation Plan maintenance plan for the Ada County/Boise Idaho area and to redesignate the area from nonattainment to attainment. PM_{10} air pollution is suspended particulate matter with a diameter less than or equal to a nominal ten micrometers.

EFFECTIVE DATE: November 26, 2003.

ADDRESSES: Copies of the State's request and other supporting information used in developing this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho, Department of Environmental Quality (IDEQ), 1410 North Hilton, Boise, Idaho 83706–1255. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101 (206) 553–6706.

SUPPLEMENTARY INFORMATION:

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I. What Is the Purpose of This Rulemaking?
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I. What Is the Purpose of This Rulemaking?

Under the authority of the federal Clean Air Act (Clean Air Act or the Act) EPA is finalizing certain actions related to the PM_{10} designation and classification of the Ada County/Boise, Idaho area.[1] First, EPA is rescinding the March 12, 1999 finding (64 FR 12257) that the PM_{10} standards promulgated on July 1, 1987 (52 FR 24634) and the accompanying designation and classification for PM_{10} no longer apply in the Ada County/Boise, Idaho area. The intended effect of this action is to restore the applicability of the current PM_{10} standards in the Ada County/Boise, Idaho area as well as the nonattainment designation and moderate classification associated with those standards. Simultaneously, EPA is taking final action to approve the PM_{10} maintenance plan for the Ada County/Boise, Idaho area as a State Implementation Plan (SIP) revision and to redesignate the area to ''attainment'' for PM_{10}.

The action to redesignate Ada County/Boise, Idaho to attainment is based on valid monitoring data and projections of ambient air quality made in the demonstration that accompanies the maintenance plan. EPA believes the area will continue to meet the National Ambient Air Quality Standards (NAAQS or standards) for PM_{10} for at least 10 years beyond this redesignation, as required by the Act. A detailed description of our proposed action to rescind the March 12, 1999 finding and to approve the Ada County/Boise, Idaho maintenance plan and redesignation request was published in a proposed rulemaking in the **Federal Register** on July 30, 2003 (68 FR 44715).

II. What Comments Did EPA Receive on the Proposed Action?

EPA received the following comments from six commenters on the July 30, 2003 proposal for the Ada County/Boise, Idaho area. All comments either were in support of the proposal, requested further explanation on certain aspects of the proposal, or were outside the scope of the proposal.

[1] Although the State's maintenance plan and redesignation request refers to ''Northern Ada County,'' we are using the term ''Ada County/Boise, Idaho'' or ''Ada County/Boise, Idaho area'' for consistency with 40 CFR 81.313.

Comment: The air in Canyon County is not polluted because of vehicle emissions. An inspection and maintenance program is not needed in Canyon County.

Response: EPA is approving a maintenance plan for Ada County, not Canyon County. However, to the extent that the State believes that control measures outside the Ada County/Boise, Idaho area support the maintenance plan, EPA is approving, at the State's request, those measures as part of the maintenance plan as well. The federal Clean Air Act does not specify the particular control measures that must be used to demonstrate maintenance of the standards. Under the Act, state and local governments have the primary responsibility to determine which pollution sources to control, figure out how controls will be implemented, and demonstrate the controls result in attainment and maintenance of the NAAQS. In this case, the State has made that demonstration. EPA's role is to ensure that whatever measures are selected produce the emissions reductions needed to meet the standards. Our action here merely approves the maintenance plan and its associated control measures already adopted by the State and imposes no additional requirements.

Comment: Canyon County and Ada County are not one airshed. Canyon County should not be included in the monitoring network for the Ada County area. Canyon County should be its own separate area and treated separately.

Response: For the purpose of air quality management, the boundary of an air shed is determined based on, among other things, the meterological and topographical parameters, pollution source and impact area, and land use characteristics. Often the airshed boundary does not follow political jurisdiction boundaries such as a county line or city line. Based on the air quality studies and data available to EPA, including the modeling reconciliation in Appendix D of the maintenance plan, it is evident that pollution production and transport in the Treasure Valley area encompass geographical boundaries larger than any specific county border. As both Ada and Canyon County are experiencing rapid growth and expansion, it is logical that the airshed management efforts focus on the larger area. The State selects the monitor locations (including in Ada County and Canyon County) that make up its monitoring network. EPA has approved the State's network as meeting the criteria in 40 CFR 58 appendix D.

Comment: The Middleton monitors do not reflect Canyon County air quality and should be repositioned. DEQ should not use the Middleton monitors to define Canyon County's ozone reading.

Response: The Middleton monitors measure ozone and $PM_{2.5}$. This action relates to PM_{10}. We will forward the comments related to ozone and $PM_{2.5}$ to appropriate representatives at IDEQ.

Comment: EPA should emphasize that this action has nothing to do with Canyon County and asks that we refute the statement in the settlement agreement that IDEQ intends to develop an air quality plan for Treasure Valley.

Response: While EPA agrees that IDEQ's efforts to develop an air quality plan for the Treasure Valley are independent of our action on the maintenance plan, EPA has no basis for refuting IDEQ's intentions to develop an air quality plan for the Treasure Valley. It is entirely appropriate for—in fact EPA encourages—the State to take any preventive steps needed to ensure air quality standards are met in the Treasure Valley and all of Idaho.

Comment: The basis for reinstating the PM_{10} NAAQS is no longer valid due to a decision favorable to EPA in the *American Trucking Association, et al.* v. *EPA et al.*, and consolidated cases.

Response: As explained in the proposal, the basis for revoking the 1987 PM_{10} standards in the Ada County/Boise, Idaho nonattainment area was eliminated when the U.S. Court of Appeals for the District of Columbia vacated the revised 1997 PM_{10} standards. Since we revoked the 1987 standards and the court vacated the 1997 standards, there are no federal PM_{10} standards currently applicable in the Ada County/Boise, Idaho area. Therefore, we are rescinding the finding that the 1987 PM_{10} standards are no longer applicable in Ada County/Boise, Idaho and reinstating the 1987 PM_{10} standards. The decision in *American Trucking Association* referred to by the commenter addressed the $PM_{2.5}$ standards and not the 1987 or 1997 PM_{10} standards.

Comment: Control measures are not needed in Canyon County because Ada County has attained the PM_{10} NAAQS since 1999.

Response: In order for EPA to redesignate the Ada County/Boise, Idaho area, the State must not only show that the area is currently attaining the PM_{10} NAAQS, but that it will continue to attain the PM_{10} NAAQS 10 years into the future. In making its demonstration, the State must consider anticipated changes to the area over the next 10 years, including the impacts of surrounding areas. EPA has reviewed the State's 10 year demonstration and finds that the demonstration meets the review criteria derived from the Act, general preamble (57 FR 13498), and further interpreted by a policy and guidance memorandum from John Calcagni, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment* (Calcagni Memorandum). (See also Section III of the Technical Support Document). Based on this review, EPA has no basis for disapproving any control measures in the maintenance plan submitted by the State. The federal Clean Air Act does not specify the particular control measures that the State must use to demonstrate maintenance of the standards. Under the Act, state and local governments have the primary responsibility to determine which pollution sources to control and how those controls will be implemented. EPA's role is to ensure that whatever measures are selected produce the emission reductions needed to meet the standards. In this case, the State has made that demonstration. Our action here merely approves the maintenance plan and its associated control measures already adopted by the state and imposes no additional requirements.

Comment: The commenter requests that all references to Canyon County be omitted in the approval of the Ada County SIP.

Response: As discussed above, the Ada County/Boise, Idaho maintenance plan meets EPA's review criteria. EPA has no basis for omitting references to Canyon County.

Comment: Canyon County and Ada County should not be combined because of geological, geographical, population, and economic activity differences. The plan is only about Ada County, not Canyon County, and the counties should not be combined because they differ in various ways.

Response: EPA agrees that there are differences between Canyon County and Ada County. EPA believes IDEQ has appropriately accounted for those differences in its emissions inventory and modeling demonstration, as indicated in our evaluation of those elements in the Technical Support Document.

Comment: The commenter questions whether The Amalgamated Sugar Company contributes to the Ada County PM_{10} levels since Canyon County has not exceeded the standards.

Response: The Amalgamated Sugar Company, although located in Canyon County, is along the Ada County's upwind flow which sometimes impacts a portion of the Ada County PM_{10} nonattainment area. It is appropriate to include in the maintenance demonstration a source that is located in

an attainment area but impacts or interferes with the air quality of the nonattainment or maintenance area at issue in the SIP or maintenance plan.

Comment: Contingency measures should not apply to Canyon County.

Response: The federal Clean Air Act requires contingency provisions to be an element of a maintenance plan but does not specify which ones to include or where or how they should be applied. Under the federal Clean Air Act, state and local governments have the primary responsibility of determining the location, scope, and timing of particular contingency measures. It is EPA's role is to ensure that whatever measures are selected would promptly correct any violation of the NAAQS that occurs after redesignation of the area. The contingency measures in the plan meet this requirement. Our action here merely approves these contingencies as part of the maintenance plan and imposes no additional requirements.

Comment: The commenter asks about the meaning of the correction made to the PM_{10} maintenance plan.

Response: EPA assumes the commenter is referring to a revision IDEQ submitted to EPA on July 21, 2003. The revision corrected an error found in the fugitive road dust emissions for future years. While this correction changed the value of future fugitive road dust emissions, it did not change the method for determining fugitive road dust emissions in the submitted maintenance plan. IDEQ reran the model to incorporate the correction and submitted an addendum reflecting the results of the new modeling run.

Comment: The commenter inquires who has authority to withhold Federal Funds.

Response: EPA assumes the commenter is referring to section 176(c)(2) of the Clean Air Act, which prohibits a Federal agency from approving, accepting or funding any transportation plan, program or project in certain circumstances. Under this provision, the Federal Government, not a State or local agency, has the ability to withhold Federal transportation funds.

Comment: The commenter inquires about the criteria EPA uses to approve a submission from COMPASS and IDEQ.

Response: EPA assumes the commenter means a SIP submission. SIP submissions are submitted by the Governor of Idaho or his designee. As discussed in the proposal on July 30, 2003 (68 FR 44715), the State's submission must meet the requirements of the Clean Air Act. The review criteria is derived from the Act, general preamble, and further interpreted by a policy and guidance memorandum from John Calcagni, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment* (Calcagni Memorandum). (See also Section III of the Technical Support Document).

Comment: The monitors in Canyon County show different levels of pollutants than in Ada County and, therefore, approvability of the plan is questionable.

Response: Air quality monitors in an airshed do not record same levels at the same time because windflows or pollution sources impacting two monitors are not same. Unless there is a region or area-wide pollution source that is causing the problem, one expects to see different levels at different monitors.

Comment: More monitors are needed and monitors should be at locations indicating the most air quality problems.

Response: As mentioned above, the State selects the monitors that make up the State monitoring network. EPA has approved the State's network as meeting the criteria in 40 CFR 58 appendix D. EPA, however, will forward this comment to monitoring representatives at IDEQ.

Comment: Dairy operations should have more restrictions.

Response: The State of Idaho has the primary responsibility to determine which sources to control to meet the NAAQS. Our action here merely approves the maintenance plan as meeting Federal requirements and imposes no additional requirements. In this instance, IDEQ has devised an approach that meets and maintains attainment needs by controlling the sources that they have chosen.

Comment: The CMAQ model should be used to compare results with Environ's CAMX model.

Response: CMAQ is a more sophisticated and advanced air quality model. The input parameters (chemistry and meteorology) to run the CMAQ model are not yet fully developed for the Ada County/Boise, Idaho area. IDEQ, EPA, and several other partners are currently working together to develop a CMAQ modeling system for the northwest including the Boise area for use in future applications.

Comment: The objective should be to model the meteorology and the air quality of the valley in real time.

Response: EPA agrees that a real time modeling system would be valuable for the air quality management. EPA Region 10, states, and several other partners have been collaboratively working to develop a real time air quality simulation system for the northwest including the Boise area. However, for the purpose of an attainment or maintenance demonstration, it is generally adequate to simulate typical historical worst case pollution episodes.

Comment: Air quality impacts from industry are overstated because the potential to emit is used rather than actual emissions. Micron PC.com's projected emissions are over-estimated and requests that IDEQ correct them.

Response: IDEQ appropriately determined industrial emissions based on a source's potential to emit because there are no permanent, enforceable measures to prevent the higher potential emission levels from occurring. If a facility's projected emissions are higher than its potential to emit, the use of those emissions in the State's demonstration would indicate over-control and would have no effect on the approvability of the maintenance plan. We will, however, forward this correction request to IDEQ.

Comment: The commenter emphasizes the importance of enforcing and monitoring facility compliance with the operating permits that the state relied on to demonstrate attainment. The commenter also encourages active enforcement of local laws, permits, regulations and ordinances, specifically the municipal solid waste ban because in order to take credit for reductions from these new laws, they must be successfully implemented. Additionally, the commenter also requests that EPA require IDEQ to certify that all inspections are completed and facilities are in compliance.

Response: EPA agrees that the enforcement of operating permits, laws, regulations, and ordinances is an important component of the State's air quality control program. As discussed in the Technical Support Document, the SIP and its control measures meet the requirements for permanent and enforceable measures. EPA further believes that the state has adequately shown that it has the appropriate personnel, funding and authority to enforce and ensure compliance of its permits, laws, regulations and ordinances. Since we are taking final action on a proposal to approve the States's maintenance plan and request to redesignate the Ada County/Boise, Idaho as an attainment area and since the State's submission meets all the requirements for approval, it is not appropriate in this action to impose additional requirements as requested by the commenter.

Comment: The maintenance plan should be changed if permit conditions that were relied on to demonstrate compliance are changed.

Response: EPA agrees with the commenter. Because emission rates must reflect permanent, enforceable measures, any changes to the permit conditions relied on to demonstrate compliance with the PM_{10} NAAQS are not federally enforceable until the State submits and EPA approves the revised conditions.

III. Final Action

The Environmental Protection Agency rescinds its earlier finding that the PM_{10} standards promulgated on July 1, 1987 and the accompanying nonattainment designation and classification are no longer applicable in the Ada County/Boise, Idaho area, and simultaneously, approves a PM_{10} SIP maintenance plan for the Ada County/Boise Idaho area and to redesignate the area from nonattainment to attainment.

IV. 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 December 26, 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

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 29, 2003.

L. John Iani,

Regional Administrator, Region 10.

■ 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 N—Idaho

■ 2. Section 52.670 is amended by adding paragraph (c)(38) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(38) The Idaho Department of Environmental Quality (Idaho DEQ, the State, or Idaho) submitted a PM_{10} maintenance plan and redesignation request for the Ada County/Boise, Idaho area on September 27, 2002, and provided supplemental information on July 10, 2003 and July 21, 2003.

(i) Incorporation by reference.

(A) The following terms and conditions limiting particulate matter emissions in the following permits:

(*1*) State of Idaho Air Pollution Operating Permit for LP Wood Polymers, Inc. Permit No. 001–00115, issued July 12, 2002, the following conditions: 1.1, 1.3, 3.1, and the Appendix.

(*2*) State of Idaho Air Pollution Operating Permit for Consolidated Concrete Company, Permit No. 001–00046, issued December 03, 2001, the following conditions: 1.1, 1.3, 2.3, 3.1, 3.2, and the Appendix.

(*3*) State of Idaho Air Pollution Operating Permit for Crookham Company, Permit No. 027–00020, issued January 18, 2002, the following conditions: 1.1, 1.3, 2.1, 2.3, 3.1, 3.1.1, 3.1.2, 3.2, and the Appendix.

(*4*) State of Idaho Air Pollution Operating Permit for Double D Service Center, Permit No. 001–00168, issued February 4, 2002, the following conditions: 1.1, 1.3, 3.1, 3.2.1, 3.2.2, 3.2.3, and the Appendix.

(*5*) State of Idaho Air Pollution Operating Permit for Plum Creek Northwest Lumber, Inc., Permit No. 001–00091, issued July 12, 2002, the following conditions: 1.1, 1.3, 2.1.2, 3.1, and the Appendix.

(*6*) State of Idaho Air Pollution Operating Permit for C. Wright Construction, Inc., Permit No. T2–000033, issued July 08, 2003, the following conditions: 2 (heading only), 2.5, (2.12, Table 2.2 as it applies to PM_{10}), 2.14, 3 (heading only), 3.3, Table 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.10, 4 (heading only), 4.2, 4.3, 4.4, 4.7, 5, and Table 5.1.

(*7*) State of Idaho Air Pollution Operating Permit for Nelson Construction Co., Permit No. T2–020029, issued July 21, 2003, the following conditions: 2 (heading only), 2.12, 2.14, 3 (heading only, 3.3, 3.4, 3.6, 3.7, 3.9, 3.10, 3.11, 3.12, 4 (heading only), 4.3, 4.4, 4.5, 4.6, 5, and Table 5.1.

(*8*) State of Idaho Air Pollution Operating Permit for Mike's Sand and Gravel, Permit No. 001–00184, issued July 12, 2002, the following conditions: 1.1, 1.3, 2.2.1, 3.1, and the Appendix.

(*9*) State of Idaho Air Pollution Operating Permit for Idaho Concrete Co., Permit No. T2–020031, issued July 8, 2003, the following conditions: 2 (heading only), 2.5, 2.13, 3 (heading only), 3.3, 3.4, 3.6, 3.7, 3.8, 4 (heading only), and Table 4.1.

(*10*) State of Idaho Air Pollution Operating Permit for Idaho Concrete Co., Permit No T2–020032, issued July 8, 2003, the following conditions: 2 (heading only), 2.5, 2.13, 3 (heading only), 3.3, 3.4, 3.6, 3.7, 3.8, 4 (heading only), and Table 4.1.

(*11*) State of Idaho Air Pollution Operating Permit for Idaho Concrete Co., Permit No. T2–020033, issued July 8, 2003, the following conditions: 2 (heading only), 2.5, 2.13, 3 (heading only), 3.3, 3.4, 3.6, 3.7, 3.8, 4 (heading only), and Table 4.1.

(*12*) State of Idaho Air Pollution Operating Permit for The Amalgamated Sugar Company LLC, Permit No. 027–00010, issued September 30, 2002, the following conditions: 2 (heading only), (2.7, Table 2.2 as it applies to PM_{10},) 2.10, 2.10.1, 2.10.2, 2.11, 2.11.1, 2.11.2, 2.11.3, 2.11.4, 2.11.5, 2.12, 2.12.1, 2.12.2, 2.12.3, 2.13, 2.13.1, 2.13.2, 2.13.3, 2.14, 2.14.1, 2.14.2, 2.16, 3 (heading only), (3.3, Table 3.2 as it applies to PM_{10}), 3.5, 3.7, 3.8, 3.8.1, 3.8.2, 3.8.3, 3.8.4, 3.8.5, 3.8.6, 3.8.7, 3.8.8, 3.9, 4 (heading only), (4.3, Table 4.1 as it applies to PM_{10}), 4.5, 4.6, 4.7, 5 (heading only), (5.3, Table 5.3 as it applies to PM_{10}), 5.5, 5.9, 5.9.1, 5.9.2, 5.9.3, 5.9.4, 5.9.5, 5.9.6, 5.9.7, 5.9.8, 5.9.9, 5.10, 5.11, 6 (heading only), 6.3, Table 6.1, 6.5, 6.6, 6.7, 6.7.1, 6.7.2, 6.8, 7 (heading only), (7.3, Table 7.1 as it applies to PM_{10}), 7.5, 7.7, 7.7.1, 7.7.2, 7.8, 8 (heading only), 8.3, Table 8.1, 8.5, 8.7, 8.7.1, 8.7.2, 8.8, 9 (heading only), 9.3, Table 9.1, 9.5, 9.7, 9.7.1, 9.7.2, 9.8, 10 (heading only), 10.3, Table 10.1, 10.6, 10.8, 10.8.1, 10.8.2, 10.9, 11 (heading only), 11.3, Table 11.2, 11.6, 11.8, 11.8.1, 11.8.2, 11.9, 12 (heading only), 12.3, Table 12.1, 12.5, 12.7, 12.7.1, 12.7.2, 12.8, 13 (heading only), 13.1, Table 13.1 (except as it applies to condition 13.3), (13.2, Table 13.2 as it applies to PM_{10}), 13.2.1, 13.4, 13.4.1, 13.4.2, 13.4.3, 13.5, 13.5.2, 13.5.3, 13.6, 13.6.1, 13.6.2, 13.7, 13.7.1, 13.7.2, 13.8, 13.8.1, 13.8.2, 13.8.3, 13.10, and 13.11.

■ 3. Section 52.672 is amended by revising paragraph (e) to read as follows:

§ 52.672 Approval of plans.

* * * * *

(e) Particulate Matter. (1) EPA approves as a revision to the Idaho State Implementation Plan, the Northern Ada County PM_{10} SIP Maintenance Plan, adopted by the State on September 26, 2002.

(2) [Reserved.]

* * * * *

§ 52.676 [Removed and Reserved]

■ 4. Remove and reserve § 52.676.

PART 81—[AMENDED]

■ 1. The authority citation for Part 81 continues to read as follows:

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

■ 2. In § 81.313, the table entitled ''Idaho PM–10'', the entry for ''Ada County: Boise'' is revised to read as follows:

§ 81.313 Idaho.

* * * * *

IDAHO—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Ada County: Boise—Northern Boundary—Beginning at a point in the center of the channel of the Boise River, where the line between sections 15 and 16 in Township 3 north (T3N), range 4 east (R4E), crosses said Boise river; thence, west down the center of the channel of the Boise River to a point opposite the mouth of More's Creek; thence, in a straight line north 44 degrees and 38 minutes west until the said line intersects the north line T5N (12 Ter. Ses. 67); thence west to the northwest corner T5N, R1W Western Boundary—Thence, south to the northwest corner of T3N, R1W; thence east to the northwest corner of section 4 of T3N, R1W; thence south to the southeast corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence, south to the southwest corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence south to the southwest corner of T1N, R1W Southern Boundary—Thence, east to the southwest corner of section 33 of T1N, R4E Eastern Boundary—Thence, north along the north and south center line of Townships T1N, R4E, T2N, R4E, and T3N, R4E, Boise Meridian to the beginning point in the center of the channel of the Boise River.	12/26/2003	Attainment		
* * *	*	*	*	*

* * * * *

[FR Doc. 03–26919 Filed 10–24–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket # OR–02–003a; FRL–7572–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Oregon; Grants Pass PM–10 Nonattainment Area Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 4, 2002, the State of Oregon submitted a PM–10 maintenance plan for Grants Pass to EPA for approval and concurrently requested that EPA redesignate the Grants Pass nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than ten micrometers (PM–10). In this action, EPA is approving the maintenance plan and redesignating the Grants Pass PM–10 nonattainment area to attainment.

DATES: This direct final rule will be effective December 26, 2003, unless EPA receives adverse comments by November 26, 2003. If relevant adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Electronic comments should be sent either to *r10.aircom@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 the **SUPPLEMENTARY INFORMATION** section, Part VII, General Information. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle WA.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, State and Tribal Programs Unit, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. Telephone number: (206) 553–0782, or e-mail address at *body.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Please note that if EPA receives relevant 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 a relevant adverse comment.

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I. What Is the Purpose of This Action?

EPA is approving the Grants Pass PM–10 Maintenance Plan and redesignating the Grants Pass PM–10 nonattainment area to attainment. Grants Pass is a city in southern Oregon with a population of approximately 36,000. In the late 1980's Grants Pass recorded PM–10 concentrations significantly above the level of the 24-hour PM–10 standard.

II. Why Was Grants Pass Designated Nonattainment?

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), the Grants Pass, Oregon, area was designated nonattainment for PM–10 by operation of law because the area had been designated a Group I planning area before November 15, 1990. Group I planning areas were identified on August 7, 1987. See 52 FR 29383. On October 31, 1990, EPA clarified the description of certain Group I planning areas, including the Grants Pass area. See 55 FR 45799. These areas were called ''initial PM–10 nonattainment areas.'' On March 15, 1991, EPA announced these areas and classified them as moderate PM–10 nonattainment areas. See 56 FR 11101.

III. How Can a Nonattainment Area Be Redesignated to Attainment?

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA, and the General Preamble to Title I (57 FR 13498) provide the criteria for redesignation. These criteria are further clarified in a policy and guidance memorandum from John Calcagni, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment.* The criteria for redesignation are:

(1) The Administrator determines that the area has attained the relevant national ambient air quality standard;

(2) The Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the Act;

(3) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions;

(4) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and

(5) The State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements

must be fully approved. The following is a summary of EPA's analysis and conclusion regarding the maintenance plan of Grants Pass and the State's redesignation request. Additional detail regarding EPA's review and analysis may be found in the technical support document which is located in the public docket for this action.

IV. Did the State Follow Appropriate Administrative Procedures Before Submitting All the Relevant Material to EPA?

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing. The State then submits the SIP revision to EPA.

The Oregon Department of Environmental Quality (ODEQ), which has regulatory authority for sources of air pollution in the Grants Pass PM–10 nonattainment area, developed the PM–10 maintenance plan. On May 20, 2002, ODEQ notified the public of the public hearing on the plan in the following newspapers: *Herald and News*, Klamath Falls, Oregon, *Daily Journal of Commerce*, Multnomah County, Oregon, *Grants Pass Daily Courier*, Grants Pass, Oregon, and in the *Oregonian*, Portland, Oregon. On July 15, 2002, ODEQ held the public hearing at the Josephine Co. Courthouse, Grants Pass, Oregon. On October 4, 2002, the State of Oregon adopted *A Plan for Maintaining the National Ambient Air Quality Standards for Particulate Matter (PM–10) In Grants Pass Urban Growth Boundary Section 4.56 of the State Implementation Plan.*

The State meets the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

V. Evaluation of the Redesignation Request and Maintenance Plan

A. The Area Must Have Attained the PM–10 NAAQS

Section 107(d)(3)(E)(i) of the CAA requires that the Administrator determine that the area has attained the applicable NAAQS. The primary 24-hour NAAQS for Particulate Matter with an aerodynamic diameter equal to or less than 10 micrometers (PM–10) is 150 micrograms per cubic meter (ug/m3) for a 24-hour period (midnight to midnight), not to be exceeded more than once per year averaged over three calendar years. The annual NAAQS for PM–10 is 50 ug/m3 annual arithmetic average, averaged over three calendar years. PM–10 in the ambient air is measured by a reference method based on 40 CFR part 50, appendix J. EPA considers an area as attaining the PM–10 NAAQS when all of the PM–10 monitors in the area have an exceedance rate of 1.0 or less averaged over three calendar years. (See 40 CFR 50.6 and 40 CFR part 50, appendix J.) In addition, the area must continue to show attainment through the date that EPA promulgates redesignation to attainment.

Oregon's redesignation request for the Grants Pass PM–10 area is based on valid ambient air quality data for calendar years 1987 through 2000. EPA reviewed this data as well as data for calendar years 2001 and 2002. There have been no exceedances of the PM–10 standard since 1988. These data were collected and analyzed as required by EPA (see 40 CFR 50.6 and 40 CFR part 50, appendix J). These data have met minimum quality assurance requirements and have been certified by the State as being valid. EPA analyzed all available PM–10 data collected from 1988 through 2002 and determined that the Grants Pass area has not violated the PM–10 standard since 1990. Because of the form of the standard, it requires three years of data to show no violation of the standard. For Grants Pass, 1988, 1989, and 1990, had an expected exceedance rate of less than 1.0.

B. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 107(d)(3)(E)(v) of the CAA requires that an area must meet all applicable requirements under section 110 and Part D of the CAA. EPA interprets this to mean the State must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. Below is a summary of how Oregon meets these requirements.

C. Clean Air Act (CAA) Section 110 Requirements

On January 25, 1972, Oregon submitted the SIP to EPA. EPA approved the SIP on May 31, 1972. See 37 FR 10888. For purposes of redesignation, the Oregon SIP, including the Grants Pass PM–10 SIP, were reviewed to ensure that the SIP satisfies the CAA requirements of section 110(a)(2). See 40 CFR 52.1970 for a complete listing of subsequent Oregon SIP submittals and EPA approvals.

D. Part D Requirements

Part D provides general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM–10 nonattainment areas must meet the applicable general provisions of subpart 1 (section 172) as well as the specific PM–10 provisions in subpart 4, ''Additional Provisions for Particulate Matter Nonattainment Areas.''

E. Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of actual emissions from all sources in the Grants Pass PM–10 nonattainment area.

Oregon included in the proposed Grants Pass maintenance plan an emission inventory for calendar year 1996. This year corresponds to the year used in calculating the design value (discussed below) which is at a level well below the standard. This inventory thus represents emissions that are at a level to protect the standard. The inventory is comprehensive, accurate and current and meets the requirements of section 172(c)(3) of the CAA.

F. Section 172(c)(5)—New Source Review (NSR)

The Clean Air Act Amendments of 1990 contained revisions to the new source review (NSR) program requirements for the construction and operation of new and modified major stationary sources located in nonattainment areas. The Act requires states to amend their SIPs to reflect these revisions, but does not require submittal of this element along with the other SIP elements. The Act established June 30, 1992 as the submittal date for the revised NSR programs. See section 189(a) of the Act. The General Preamble calls for states to implement their existing NSR programs during the interval preceding our formal approval of their revised NSR programs.

In Grants Pass, the requirements of the Part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program and the maintenance area NSR program upon the effective date of redesignation. The Oregon Department of Environmental Quality rules for new source review that meet both attainment and nonattainment area requirements (provisions of OAR Chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225, and 268), that were in effect on October 8, 2002, were approved on January 22, 2003, (68 FR 2953) as meeting the requirements of Title I, Parts C and D of the Clean Air Act.

Portions of Divisions 222, 224, and 225 were revised as part of the Grants Pass PM–10 Maintenance Plan and the Klamath Falls Maintenance Plan

development effort. These rule revisions were approved by EPA on January 22, 2003 (68 FR 2953).

Section 0030 and 0040 of Division 204, effective October 8, 2002, are approved in this action. These sections are revised to remove Grants Pass from the PM–10 Nonattainment Area list and add it to the PM–10 Maintenance Area list.

G. Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accord with 40 CFR part 58 to verify attainment status of the area.

The State of Oregon has operated a PM–10 monitor in the Grants Pass area between 1987 and 1999 at the 11th and K Street site. A replacement site was established in 1999 at the sewage treatment plant and continues to operate. In the proposed Grants Pass maintenance plan, the State of Oregon commits to continued operation of the PM–10 monitoring station.

H. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

States containing initial moderate PM–10 nonattainment areas were required to submit, by November 15, 1991, a nonattainment area plan that implemented reasonably available control measures (RACM) by December 10, 1993, and demonstrate whether it was practicable to attain the PM–10 NAAQS by December 31, 1994. In order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. Oregon's CAA Part D initial PM–10 plan for the Grants Pass PM–10 nonattainment area was submitted on November 15, 1991. EPA approved the Grants Pass PM–10 attainment plan on December 17, 1993. See 58 FR 65934. Thus, the area has a fully approved nonattainment area SIP.

I. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emission Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The PM–10 emission reductions for the Grants Pass area were achieved through a number of permanent and enforceable control measures including a mandatory woodstove certification program for all new stove sales, a mandatory woodstove and open burning ordinance, a ban on the sale and installation of uncertified woodstoves, emission limits for veneer dryers and wood fired boilers, and major source NSR. EPA approved these control measures as part of the Part D SIP submittal on December 17, 1993. These control measures will continue into the maintenance period for the Grants Pass area.

The State has demonstrated that the air quality improvements in the Grants Pass area are the result of permanent enforceable emission reductions and are not the result of either economic trends or meteorology. EPA concludes that the modeling demonstration shows the area will meet the NAAQS even under the worst case meteorological conditions.

J. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA. As described below, Oregon has complied with the core requirements necessary for an approved maintenance plan. Accordingly, today's action approves the maintenance plan for Grants Pass, Oregon.

K. Emissions Inventory—Attainment Year

The plan must contain an attainment year emissions inventory to identify the level of emissions in the area which is sufficient to attain the PM–10 NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The Grants Pass maintenance plan contains an accurate, current, and comprehensive emission inventory for calendar year 1996. This year is consistent with the design value which was calculated for 1996.

L. Demonstration of Maintenance

EPA policy contained in the September 4, 1992, Calcagni memo, requires that the maintenance plan contain the same level of air quality modeling to demonstrate maintenance that was used in the original attainment plan to demonstrate attainment. The Grants Pass attainment plan approved by EPA on December 17, 1993, contained simple proportional modeling. This approach was acceptable because Grants Pass is a simple air shed and residential wood combustion is a primary source of emissions contributing to the measured violations. EPA agreed with Oregon that simple proportional modeling of emissions from 1996 to the maintenance year of 2015 and the use of the 1996 design value would be an adequate approach for the maintenance demonstration. Oregon projected emissions for the Grants Pass area to 2015 using appropriate growth factors for population and industrial growth. The increase in emissions from 1996 to 2015 was used to predict both worst case 24-hour PM–10 and annual PM–10 concentrations.

The 24-hour 1996 design value is 78 $\mu g/m^3$. The 1996 annual design value is 20 $\mu g/m^3$. Using the 1996 emission inventory and the emissions growth projections to 2015 of approximately 15%, maintenance year PM–10 concentrations can be calculated. This emission growth is due to population growth and at the same time offset by reduction in woodstove emission due to the turnover of uncertified stoves. The projected PM–10 levels will be 89 $\mu g/m^3$ worst case 24-hour concentration and 21.4 $\mu g/m^3$ annual average concentration in 2015. The 24-hour and annual standards will be maintained.

M. Monitoring Network and Verification of Continued Attainment

Continued ambient monitoring of an area is required over the maintenance period. Section 4.55.4.3 of the Grants Pass maintenance plan provides for adequate ambient monitoring to be continued in the area for the maintenance period.

N. Contingency Plan

Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to correct any violation of the NAAQS that occurs after redesignation. At a minimum, the contingency provisions must include a commitment that the State implement all measures contained in the nonattainment SIP prior to redesignation.

The Grants Pass maintenance plan continues implementation of the control measures contained in the nonattainment area SIP, with the exception of the nonattainment area

major new source review. Major new source review will continue through the PSD program. Thus, the State has met the minimum requirement.

In addition to the minimum requirements, the Grants Pass maintenance plan contains a contingency plan that consists of two phases. Phase I is triggered if any PM–10 concentration equals or exceeds 120 $\mu g/m^3$, 24-hour average. Phase I would require a review of the conditions that caused the high concentrations and recommendations of strategies to address them. Phase 2 of the contingency plan is triggered upon recording a violation of the 24-hour PM–10 standard. Phase 2 of the contingency plan would require the implementation of strategies identified in Phase I as well as nonattainment permitting requirements for all new or modified major sources.

O. Transportation Conformity

Section 176(c)(2)(A) of the CAA requires regional transportation plans to be consistent with the motor vehicle emissions budget (MVEB) contained in the applicable air quality plans for the Grants Pass area. Unless EPA receives adverse comments on the MVEB for Grants Pass, the motor vehicle emissions budget is deemed adequate to maintain the PM–10 standards through the maintenance year of 2015. The Oregon Department of Transportation, and the U.S. Department of Transportation are required to use the MVEB in this maintenance plan for future transportation conformity determinations.

The MVEB to protect the 24-hour National Ambient Air Quality Standards for PM–10 is proposed for approval for Grants Pass as follows:

GRANTS PASS PM_{10} MOTOR VEHICLE EMISSIONS BUDGET (POUNDS PER WINTER DAY)

Year	2000	2005	2010	2015
MVEB	5664	6048	6431	6813

Note that MVEB for intervening years must be interpolated. The TSD summarizes how the MVEBs meets the adequacy criteria contained in the transportation conformity rule (40 CFR 93.118(e)(4)).

VI. Final Action

EPA is approving the Grants Pass PM–10 maintenance plan and redesignating the Grants Pass, Oregon PM10 nonattainment area to attainment.

VII. 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, under Docket number OR–02–003. The official public file consists of the documents specifically referenced in this action, and other information related to this action. The official public rulemaking file is available for public viewing at the Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. EPA's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal Holidays.

2. Copies of the State submission and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204–1390.

3. 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 on 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 OR–02–003'' 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.

a. *E-mail.* You may send comments by electronic mail (e-mail) to *r10.aircom@epa.gov,* please including the text ''Public comment on proposed rulemaking OR–02–003'' 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.* You may use Regulations.gov as an alternative method to submit 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.

c. *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: Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Please include the text ''Public comment on proposed rulemaking OR–02–003'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. 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 a.m. to 4:30 p.m. excluding Federal holidays.

C. How Should I Submit CBI to the EPA?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA to be 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). EPA will not disclose information so marked 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.

VIII. 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 6, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 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

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 2, 2003.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are 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 MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraph (c)(141) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(141) On November 4, 2002, the Oregon Department of Environmental Quality requested the redesignation of Grants Pass to attainment for PM–10. The State's maintenance plan and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Oregon Administrative Rules 340–204–0030 (except Notes) and 340–204–0040 (except Notes), as effective October 8, 2002.

■ 3. Section 52.1973(e)(2) is revised to read as follows:

§ 52.1973 Approval of plans.

* * * * *

(e) * * *

(2) EPA approves as a revision to the Oregon State Implementation Plan, the Grants Pass PM–10 maintenance plan submitted to EPA on November 4, 2002.

* * * * *

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.338, the table entitled ''Oregon PM–10'' the entry for ''Grants Pass (the Urban Growth Boundary area)'' is revised to read as follows:

§ 81.388 Oregon.

* * * * *

OREGON—PM–10

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Grants Pass (the Urban Growth Boundary area)	12/26/2003	Attainment		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 03–26917 Filed 10–24–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7768]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP) and suspended from the NFIP. These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed under the column headed Effective Date of Eligibility.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: (800) 927–4661.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. For a complete list of those communities that participate in the NFIP see *http://www.fema.gov/fema/csb.shtm.*

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 202 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4016(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Administrator finds that delayed effective dates would be contrary to the public interest and that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional burden, but lists those

communities eligible for the sale of flood insurance.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
Newly Eligible Communities: Emergency Program			
Kansas: Wilsey, City of, Morris County	205210	February 13, 2003.	
Oklahoma:			
Perkins, City of, Payne County	400431	.....do	April 9, 1976 FHBM.
Mannford, Town of, Creek County	400399	March 20, 2003	November 12, 1976 FHBM.
Arkansas: Madison County, unincorporated areas	050449	April 2, 2003	June 14, 1977 FHBM.
Kansas: Burlingame, City of, Osage County	200249	April 14, 2003	December 24, 1976 FHBM.
Alabama: Pike Road, Town of, Montgomery County	010433	May 29, 2003.	
North Carolina: Claremont, City of, Catawba County	370557	.....do.	
Indiana: Clay County, unincorporated areas	180408	June 6, 2003	November 25, 1977 FHBM.
Tennessee:			
Mosheim, Town of, Greene County	470310	June 19, 2003	September 3, 1976 FHBM.
Spencer, City of, Van Buren County	470239	.....do	February 7, 1975 FHBM.
North Carolina: Falkland, Town of, Pitt County	370666	June 20, 2003.	
Missouri:			
Pineville, City of, McDonald County	290535	June 28, 2003	April 18, 1975 FHBM.
Sheridan, City of, Worth County	290523	June 30, 2003.	
Illinois:			
Bismarck, Village of, Vermillion County	171079	July 3, 2003.	
Edinburg, Village of, Christian County	175422	.....do.	
Freeman Spur, Village of, Franklin County	170953	.....do	October 20, 1978 FHBM.
Alabama: DeKalb County, unincorporated areas	010320	July 17, 2003	April 28, 1978 FHBM.
South Dakota: Hermosa, Town of, Custer County	460230	July 24, 2003	January 21, 1977 FHBM.
Newly Eligible Communities: Regular Program			
Ohio: Adams County, unincorporated areas	390001	February 3, 2003	November 21, 2001.
Kansas: Hamilton County, unincorporated areas	200123	February 13, 2003	January 2, 2003.
Texas: Buffalo Springs, Village of, Lubbock County	481688	.....do	September 18, 2002.
Illinois: Saybrook, Village of, McLean County	171074	February 24, 2003	February 9, 2001.
Maine: Newcastle, Town of, Lincoln County	230218	April 1, 2003	April 1, 2003.
Missouri: Webster County, unincorporated areas	290848	April 14, 2003	July 17, 2002.
Delaware: Georgetown, Town of, Sussex County	100062	May 5, 2003	May 5, 2003.
Iowa: Monona County, unincorporated areas	190893	May 19, 2003	May 2, 2002.
Alabama: Cardiff, Town of, Jefferson County	010119	May 23, 2003	January 20, 1999.
North Carolina: Locust, City of, Stanly County	370508	May 29, 2003	September 21, 2000.
Oklahoma: Le Flore County, unincorporated areas	400484	June 1, 2003	June 1, 2003.
Alaska: Homer, City of, Kenai Peninsula Borough	020107	June 2, 2003	June 16, 1999.
Nebraska:			
Burwell, City of, Garfield County	310354	.....do	April 2, 2001.
Bushnell, Village of, Kimball County	310255	.....do	Do.
Greeley, Village of, Greeley County	310373	.....do	Do.
Table Rock, Village of, Pawnee County	310172	.....do	Do.
New Hampshire: Northwood, Town of, Rockingham County.	330855	June 4, 2003	January 2, 1987.
Nevada: Fernley, City of, Lyon County	320038	.....do.	
Alabama: Center Point, City of, Jefferson County	010445	June 5, 2003.	
Georgia: Reynolds, City of, Taylor County	130527	June 19, 2003	September 20, 1996.
Iowa:			
Marshall County, unincorporated areas	190890	.....do	January 2, 2003.
Swisher, City of, Johnson County	190810	June 30, 2003	August 20, 2002.
Tennessee: Munford, City of, Tipton County [2]	470422	.....do.	
South Carolina: Fairfax, Town of, Allendale County	450010	July 1, 2003	July 1, 2003.
Arkansas: Mount Vernon, City of, Faulkner County	050570	July 3, 2003	February 5, 2003.
Louisiana: Campti, Town of, Natchitoches Parish	220401	.....do	NSFHA.
Minnesota: Grant, City of, Washington County [3]	270780	.....do.	
Texas: Cockrell Hill, City of, Dallas County	480169	.....do	February 5, 2003.

State/location	Community No.	Effective date of eligibility	Current effective map date
Missouri: Irondale, Town of, Washington County	290446	July 15, 2003	April 2, 2001.
Alabama:			
Level Plains, Town of, Dale County	010416	July 17, 2003	August 3, 1989.
Rehobeth, Town of, Houston County	010392	.....do	November 21, 2002.
Florida: Miami Lakes, Town of, Miami Dade County [4]	120686	.....do.	
Arkansas: Highfill, Town of, Benton County	050581	July 22, 2003	NSFHA.
Oklahoma: Elmore, City of, Garvin County	400374	July 31, 2003	July 20, 1982.
Reinstatements			
Virginia: Winchester, City of, Independent City	510173	September 6, 1974, Emerg November 15, 1978, Reg. November 15, 1978, Sus. February 7, 2003, Rein.	November 15, 1978.
Note: Reinstated on Probationary Status			
Illinois:			
Champaign County, Unincorporated	170894	January 14, 1975, Emerg March 1, 1984, Reg. January 3, 2003, Susp. February 24, 2003, Rein.	January 2, 2003.
Rockdale, Village of, Will County	170710	May 27, 1975, Emerg September 15, 1983, Reg. September 6, 1995, Susp. March 14, 2003, Rein.	March 17, 2003.
Indiana: Westfield, Town of, Hamilton County	180083	August 15, 1975, Emerg March 16, 1981, Reg. February 20, 2003, Susp. March 14, 2003, Rein.	February 19, 2003.
Maryland: Loch Lynn Heights, Town of, Garrett County	240037	May 23, 1975, Emerg August 15, 1979, Reg. August 15, 1979, Susp. March 19, 2003, Rein.	August 16, 1994.
Ohio: Green Springs, Village of, Sandusky/Seneca Counties.	390492	April 2, 1976, Emerg August 15, 1980, Reg. August 15, 1980, Susp. March 20, 2003, Rein.	August 15, 1980.
North Carolina: Wilkes County, unincorporated areas	370256	May 28, 1976, Emerg March 31, 2003, Reg. June 4, 1987, Susp. March 31, 2003, Rein.	August 9, 1999.
Wisconsin: Winnebago County, unincorporated areas	550537	April 15, 1974, Emerg February 4, 1981, Reg. March 18, 2003, Susp. April 2, 2003, Rein.	March 17, 2003.
Tennessee: Lookout Mountain, Town of, Hamilton County	470075	May 6, 1977, Emerg June 20, 1986, With. June 5, 2003, Rein.	November 7, 2002.
Pennsylvania: Banks, Township of, Carbon County	421452	July 25, 1975, Emerg October 1, 1986, Reg. July 9, 2002, Susp. June 23, 2003, Rein.	June, 3, 2002.
Oklahoma: Blaine County, unincorporated areas	400011	May 28, 1993 Emerg August 2, 1995, Reg. August 2, 1995, Susp. June 28, 2003, Rein.	August 2, 1995.
Wisconsin: Monona, City of, Dane County	550088	March 25, 1975, Emerg June 15, 1978, Reg. June 18, 2003, Susp. June 30, 2003, Rein.	June 17, 2003.
Colorado: Eagle, Town of, Eagle County	080238	August 20, 1976, Emerg March 18, 1980, Reg. May 17, 1989, Susp. July 7, 2003, Rein.	March 18, 1980.
Wisconsin:			
Cambridge, Village of, Dane County	550080	November 28, 1975, Emerg June 4, 1980, Reg. June 18, 2003, Susp. July 14, 2003, Rein.	June 17, 2003.
Stoughton, City of, Dane County	550091	April 15, 1975, Emerg June 15, 1978, Reg. June 18, 2003, Susp. July 14, 2003, Rein.	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Waunakee, Village of, Dane County	550093	May 29, 1975, Emerg May 1, 1978, Reg. June 18, 2003, Susp. July 14, 2003, Rein.	Do.
Belleville, Village of, Dane County	550159	July 15, 1975, Emerg November 19, 1980, Reg. June 18, 2003, Susp. July 15, 2003, Rein.	Do.
De Forest, Village of, Dane County	550082	November 28, 1975, Emerg June 4, 1980, Reg. June 18, 2003, Susp. July 15, 2003, Rein.	Do.
Suspensions			
Illinois: Champaign County, unincorporated	170894	January 14, 1975, Emerg March 1, 1984, Reg. January 3, 2003, Susp.	January 2, 2003.
Indiana: Westfield, Town of, Hamilton County	180083	August 15, 1975, Emerg March 16, 1981, Reg. February 20, 2003, Susp.	February 19, 2003.
Wisconsin: Winnebago County, unincorporated areas	550537	April 15, 1974, Emerg February 4, 1981, Reg. March 18, 2003, Susp.	March 17, 2003.
Maine: Allagash, Town of, Aroostook County	230440	March 19, 1974, Emerg August 5, 1985, Reg. April 2, 2003, Susp.	April 2, 2003
North Carolina: Scotland County, unincorporated areas	370316	July 30, 1975, Emerg December 16, 1988, Reg. June 17, 2003, Susp.	June 17, 2003.
Wisconsin:			
Belleville, Village of, Dane County	550159	July 15, 1975, Emerg November 19, 1980, Reg. June 18, 2003, Susp.	Do.
Cambridge, Village of, Dane County	550080	November 28, 1975, Emerg June 4, 1980, Reg. June 18, 2003, Susp.	Do.
De Forest, Village of, Dane County	550082	November 28, 1975, Emerg June 4, 1980, Reg. June 18, 2003, Susp.	Do.
Fitchburg, City of, Dane County	550610	August 23, 2001, Reg. June 18, 2003, Susp.	Do.
Monona, City of, Dane County	550088	March 25, 1975, Emerg June 15, 1978, Reg. June 18, 2003, Susp.	Do.
Oregon, Village of, Dane County	550089	May 28, 1974, Emerg September 30, 1980, Reg. June 18, 2003, Susp.	Do.
Stoughton, City of, Dane County	550091	April 15, 1975, Emerg June 15, 1978, Reg. June 18, 2003, Susp.	Do.
Verona, City of, Dane County	550092	June 24, 1975, Emerg August 1, 1980, Reg. June 18, 2003, Susp.	Do.
Waunakee, Village of, Dane County	550093	May 29, 1975, Emerg May 1, 1978, Reg. June 18, 2003, Susp.	Do.
Probation			
Virginia: Winchester, City of, Independent City	510173	February 7, 2003	November 15, 1978.
Louisiana: Catahoula Parish	220047	June 9, 2003	May 4, 2002.

[1] The City of Fernley has adopted Lyon County (CID #320029) FIRM dated November 20, 1998, panels 0035 and 0055.
[2] The City of Munford has adopted Tipton County (CID #470340) FIRM dated April 2, 1991, panel 0150.
[3] The City of Grant has adopted Washington County (CID #270499) FIRM dated May 17, 1982, panels 0030, 0040, 0125 and 0150.
[4] The Town of Miami Lakes has adopted Miami-Dade County (CID #120635) FIRM dated July 17, 1995, panels 0075, 0080 and 0090.

State/location	Community No.	Suspension rescinded	Current effective map date
Suspension Rescissions **Region V**			
Illinois: Mahomet, Village of, Champaign County	170029	.....do	January 2, 2003.

State/location	Community No.	Suspension rescinded	Current effective map date
Region VII			
Kansas:			
Hamilton County, Unincorporated Areas	200123	.....do	Do.
Syracuse, City of, Hamilton County	200124	.....do	Do.
Region I			
Massachusetts: Worcester, City of, Worcester County	250349	.....do	January 16, 2003.
Region IV			
Mississippi: Claiborne County, Unincorporated Areas	280201	.....do	Do.
Tennessee: Brentwood, City of, Williamson County	470205	.....do	Do.
Region V			
Michigan: Owosso, City of, Shiawassee County	260596	.....do	Do.
Region VI			
Arkansas:			
Conway, City of, Faulkner County	050078	.....do	February 5, 2003.
Faulkner County, Faulkner County	050431	.....do	Do.
Greenbrier, City of, Faulkner County	050328	.....do	Do.
Region III			
Virginia: Fairfax, City of, Independent City	515524	.....do	February 19, 2003.
Region IV			
Mississippi: D'iberville, City of, Harrison County	280336	.....do	Do.
Region V			
Indiana:			
Archadia, Town of, Hamilton County	180496	.....do	Do.
Carmel, City of, Hamilton County	180081	.....do	Do.
Cicero, Town of, Hamilton County	180320	.....do	Do.
Fishers, Town of, Hamilton County	180423	.....do	Do.
Hamilton County, Unincorporated Areas	180080	.....do	Do.
Noblesville, City of, Hamilton County	180082	.....do	Do.
Region X			
Idaho: Boise, City of, Ada County	160002	.....do	Do.
Region IV			
North Carolina:			
Cramerton, Town of, Gaston County	370321	.....do	March 3, 2003.
Dallas, Town of, Gaston County	370322	.....do	Do.
Gaston County, Unincorporated Areas	370099	.....do	Do.
McAdenville, Town of, Gaston County	370101	.....do	Do.
Ranlo, Town of, Gaston County	370324	.....do	Do.
Region V			
Wisconsin: Lincoln County, Unincorporated Areas	550585	.....do	Do.
Region II			
New Jersey: Bernardsville, Borough of, Somerset County	340429	.....do	March 17, 2003.
New York: Rotterdam, Town of, Schenectady County	360740	.....do	Do.
Region V			
Illinois:			
Frankfort, Village of, Will County	170701	.....do	Do.
Joliet, City of, Will County	170702	.....do	Do.
Mokena, Village of, Will County	170705	.....do	Do.
Monroe County, Unincorporated Areas	170509	.....do	Do.
Shorewood, Village of, Will County	170712	.....do	Do.
Will County, Unincorporated Areas	170695	.....do	Do.
Wisconsin:			
Menasha, City of, Winnebago County	550510	.....do	Do.
Neenah, City of, Winnebago County	550509	.....do	Do.
Omro, City of, Winnebago County	550533	.....do	Do.
Oshkosh, City of, Winnebago County	550511	.....do	Do.
Winneconne, Village of, Winnebago County	550512	.....do	Do.
Region V			
Ohio: Frankfurt, Village of, Ross County	390484	.....do	April 2, 2003.
Region I			
Connecticut: Newtown, Town of, Fairfield County	090011	.....do	April 16, 2003.
New Hampshire: Errol, Town of, Coos County	330206	.....do	Do.
Region I			
Maine:			

State/location	Community No.	Suspension rescinded	Current effective map date
Newry, Town of, Oxford County	230337	do	May 5, 2003.
Turner, Town of, Androscoggin County	230010	do	Do.
Region III			
Delaware:			
Cheswold Town of, Kent County	100004	do	Do.
Little Creek, Town of, Kent County	100015	do	Do.
Region IV			
Florida:			
Charlotte County, Unincorporated Areas	120061	do	Do.
Lee County, Unincorporated Areas	125124	do	Do.
Region V			
Illinois:			
Bradley, Village of, Kankakee County	170338	do	Do.
Kankakee, City of, Kankakee County	170339	do	Do.
Region IX			
California: Tehama County, Unincorporated Areas	065064	do	Do.
Region III			
Pennsylvania:			
Carnegie, Borough of, Allegheny County	420019	do	May 15, 2003.
Crafton, Borough of, Allegheny County	420026	do	Do.
Green Tree, Borough of, Allegheny County	420040	do	Do.
Kennedy, Township of, Allegheny County	421072	do	Do.
Mckees Rocks, Borough of, Allegheny County	420052	do	Do.
Pittsburgh, City of, Allegheny County	420063	do	Do.
Robinson, Township of, Allegheny County	421097	do	Do.
Rosslyn Farms, Borough of, Allegheny County	420069	do	Do.
Scott, Township of, Allegheny County	421100		Do.
Thornburg, Borough of, Allegheny County	420077	do	Do.
Region IV			
North Carolina:			
Aurora, Town of, Beaufort County	370014	do	Do.
Bath, Town of, Beaufort County	370288	do	Do.
Beaufort County, Unincorporated Areas	370013	do	Do.
Belhaven, Town of, Beaufort County	370015	do	Do.
Chocowinity, Town of, Beaufort County	370289	do	Do.
Hyde County, Unincorporated Areas	370133	do	Do.
Pantego, Town of, Beaufort County	370016	do	Do.
Washington Park, Town of, Beaufort County	370268	do	Do.
Region II			
New York:			
Plattsburgh, City of, Clinton County	360168	do	June 3, 2003.
Plattsburgh, Town of, Clinton County	360169	do	Do.
Region IV			
North Carolina: Laurinburg, City of, Scotland County	370222	do	June 17, 2003.
Region V			
Wisconsin:			
Black Earth, Village of, Dane County	550079	do	Do.
Cottage Grove, Village of, Dane County	550617	do	Do.
Cross Plains, Village of, Dane County	550081	do	Do.
Dane County, Unincorporated Areas	550077	do	Do.
Madison, City of, Dane County	550083	do	Do.
Marshall, Village of, Dane County	550084	do	Do.
Mazomanie, Village of, Dane County	550085	do	Do.
McFarland, Village of, Dane County	550086	do	Do.
Middleton, City of, Dane County	550087	do	Do.
Sun Prairie, City of, Dane County	550573	do	Do.
Region VIII			
Colorado:			
Wheat Ridge, City of, Jefferson County	085079	do	Do.
Wyoming: Lincoln County, Unincorporated Areas	560032	do	Do.
Region I			
Maine: Beals, Town of, Washington County	230133	do	July 2, 2003.
Region II			
New Jersey:			
Estell Manor, City of, Atlantic County	340573	do	Do.

State/location	Community No.	Suspension rescinded	Current effective map date
Region III			
Pennsylvania:			
Allentown, City of, Lehigh County	420585	.....do	Do.
Salisbury, Township of, Lehigh County	420591	.....do	Do.
Region V			
Wisconsin: Markesan, City of, Green Lake County	550169	.....do	Do.
Region III			
Virginia:			
New Market, Town of, Shenandoah County	510227	.....do	July 16, 2003.
New Market, Town of, Shenandoah County	510227	.....do	Do.
Shenandoah County, Unincorporated Areas	510147	.....do	Do.
Strasburg, Town of, Shenandoah County	510149	.....do	Do.
Toms Brook, Town of, Shenandoah County	510233	.....do	Do.
Woodstock, Town of, Shenandoah County	510150	.....do	Do.
Region IV			
North Carolina:			
Atlantic Beach, Town of, Carteret County	370044	.....do	Do.
Beaufort, Town of, Carteret County	375346	.....do	Do.
Bogue, Town of, Carteret County	370491	.....do	Do.
Cape Carteret, Town of, Carteret County	370046	.....do	Do.
Carteret County, Unincorporated Areas	370043	.....do	Do.
Cedar Point, Town of, Carteret County	370465	.....do	Do.
Emerald Isle, Town of, Carteret County	370047	.....do	Do.
Indian Beach, Town of, Carteret County	370433	.....do	Do.
Morehead City, Town of, Carteret County	370048	.....do	Do.
Newport, Town of, Carteret County	370049	.....do	Do.
Pine Knoll Shores, Town of, Carteret County	370267	.....do	Do.

Note: Do. and do = ditto.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: October 17, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–27054 Filed 10–24–03; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2890; MB Docket No. 03–140; RM–10697]

Radio Broadcasting Services; Avoca, Freeland & Wilkes-Barre, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, reallots Channel 276A from Freeland, PA to Avoca, PA and modifies the license for Station WAMT to specify operation on Channel 276A at Freeland, and reallots Channel 253B from Wilkes-Barre, PA to Freeland, PA and modifies the license for Station WKRZ accordingly. *See* 68 FR 40237, July 7, 2003. The coordinates for Channel 276A at Avoca, PA, are 41–18–20 and 75–45–38. The coordinates for Channel 253B at Freeland are 41–11–56 and 75–49–06. With this action, this proceeding is terminated.

DATES: Effective November 17, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 03–140, adopted October 1, 2003, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Rooom CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Avoca, Channel 276A, by removing Channel 276A and adding Channel 253B at Freeland, and by removing Channel 253B at Wilkes-Barre.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–26958 Filed 10–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2981; MB Docket No. 03–51; RM–10555]

Radio Broadcasting Services; Dickson and Pegram, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Montgomery Broadcasting Company, licensee of Station WQZQ–FM, Channel 273C1, Dickson, Tennessee, deletes Dickson, Tennessee, Channel 273C1, from the FM Table of Allotments, allots Channel 273C1 at Pegram, Tennessee, as the community's first local FM service, and modifies the license of Station WQZQ–FM to specify operation on Channel 273C1 at Pegram. Channel 273C1 can be allotted to Pegram, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 32.9 km (20.5 miles) northwest of Pegram. The coordinates for Channel 273C1 at Pegram, Tennessee, are 36–17–50 North Latitude and 87–19–31 West Longitude.

DATES: Effective November 17, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03–51, adopted October 1, and released October 3, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Dickson, Channel 273C1, and by adding Pegram, Channel 273C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–26957 Filed 10–24–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17, 21 and 22

RIN 1018–AH87

Migratory Bird Permits; Regulations Governing Rehabilitation Activities and Permit Exceptions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This regulation creates a permit category specifically to authorize migratory bird rehabilitation. Migratory bird rehabilitation is the practice of caring for sick, injured, or orphaned migratory birds with the goal of releasing them back to the wild. In addition to establishing this new permit category, this regulation creates two exceptions to migratory bird permit requirements: For public officials responsible for tracking infectious diseases, and for veterinarians who receive injured or sick migratory birds.

EFFECTIVE DATE: This rule is effective November 26, 2003.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Suite 400, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service; 703/358–1714.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits possession of any bird protected by treaties between the U.S. and Canada, Mexico, Japan, and Russia. Birds covered by the Act are referred to as ''migratory birds.'' Prior to this rulemaking, persons engaged in providing treatment to sick, injured, or orphaned migratory birds had to obtain a special purpose permit from the U.S. Fish and Wildlife Service under 50 CFR 21.27. The special purpose permit category is used to authorize activities not specifically covered by other existing types of permits.

Currently, approximately 2,500 special purpose permits for migratory bird rehabilitation purposes are active nationwide, representing almost half the approximately 5,500 currently active special purpose permits. The permits were tailored to address migratory bird rehabilitation activities by means of Standard Conditions attached to every permit. Those Standard Conditions are the basis of the regulatory framework established by this rulemaking, which creates a new permit category specifically for rehabilitation of migratory birds.

The rule addresses rehabilitation of threatened and endangered migratory bird species and amends 50 CFR 17 (Endangered and Threatened Wildlife) to exempt persons who obtain a rehabilitation permit from having to obtain an additional permit under part 17 to care for threatened and endangered migratory bird species. Accordingly, the rule contains numerous provisions addressing rehabilitation of threatened and endangered migratory bird species, including additional requirements to notify and coordinate with the Service.

New Permit Exceptions

This rule also adds a new permit exception to 50 CFR 21.12 to allow Federal, State, and local wildlife officials, land managers, and public health officials responsible for monitoring public health threats to collect, possess, transport, and dispose of sick or dead migratory birds or their parts for analysis to confirm the presence or absence of infectious disease such as West Nile virus and botulism. The exception does not apply to healthy birds, or where circumstances indicate that the death, injury, or disability of a bird was caused by factors other than infectious disease. This permit exception will facilitate timely response to public health concerns and outbreaks of avian infectious disease.

The rule also provides an exemption to the permit requirements of 50 CFR part 17 and 50 CFR part 21 for veterinarians to temporarily hold and treat listed migratory bird species.

Proposed rule and comments received. On December 6, 2001 (66 FR 63349), we proposed a rule establishing a permit category specifically governing the rehabilitation of migratory birds to replace our system of issuing permits for migratory bird rehabilitation under the miscellaneous Special Purpose permit category authorized by 50 CFR 21.27. We received 199 comments on the proposed rule. Of those, 60 were general

comments, most of which were submitted by individuals who were not rehabilitators. Of the remaining 139 comments, 123 were from rehabilitators; 10 were from State agencies; and 6 were from associations.

Section-by-Section Analysis

The following preamble text discusses the substantive comments received and provides our responses to those comments. Additionally, it provides an explanation of significant changes from the proposed rule. We do not address the comments that were favorable and contained no recommendations for revisions. Comments are organized by topic. The citations in the headings correspond to provisions within the Final Rule.

Revisions to 50 CFR part 17: Comment: The rulemaking contains provisions that revise § 17.21 to exempt permitted migratory bird rehabilitators from having to obtain an additional permit under 50 CFR 17, which governs federally listed threatened and endangered species. Yet the word ''endangered'' is not accompanied by the word ''threatened.'' Do those provisions apply to species that are threatened, as well as to those that are endangered?

Service response: The rule addresses both threatened and endangered species. Within existing regulations, § 17.21 addresses endangered species, specifically, while § 17.31 addresses threatened species. However, by reference, most of § 17.21 does apply to threatened, as well as endangered, species because the regulations at § 17.31 state: ''Except as provided in subpart A of this part, or in a permit issued under this subpart, *all of the provisions of § 17.21 shall apply to threatened wildlife,* except § 17.21(c)(5)'' [italics added here for emphasis]. Thus, in order to exempt rehabilitators from the requirement to obtain a separate permit under part 17 to rehabilitate both endangered and threatened species, this rule needs only to amend the sections of part 17 that address endangered species (§ 17.21), and not also § 17.31, which addresses threatened species.

Scope of Regulations. (§ 21.2): The proposed rule contained revisions to § 21.2 in order to allow the new permit regulation to cover rehabilitation of eagles as well as other migratory birds. This was necessary because, under current regulations, permits authorizing activities involving eagles are covered under separate regulations at part 22, rather than part 21, which covers permits for all other migratory birds. Eagles have their own permit regulations because they are protected not only by the MBTA, but also by the Bald and Golden Eagle Protection Act (BGEPA), which contains different, and in some respects more protective, language than the MBTA. This final rule revises the proposed § 21.2 language in order to clarify that the migratory bird permit exemptions at § 21.12(a), (c), and (d) also apply to eagles.

This final rule also introduces a minor revision to part 22 (eagle permits). The revision to § 22.11 accomplishes the same purpose as the changes to § 21.2, and was necessary to bring part 21 (migratory bird permits) and part 22 into agreement. Prior to this rulemaking, § 22.11 provided that certain actions prohibited by the BGEPA may be permitted only under part 22, part 13, and/or § 21.22 (banding or marking permits). Thus, the only permit regulations within part 21 that applied to eagles were regulations pertaining to banding and marking permits. The new § 22.11 language extends the application of part 21 to eagles, by providing that actions prohibited under the BGEPA may be permitted by part 22, part 13, and/or part 21, as provided by § 21.2.

Permit exemption for public health officials. § 21.12(c): The Service has revised this provision for the final rule by adding employees of land management agencies to the list of exempted personnel who may collect infected birds without a permit. We made this revision because of the increasing presence of West Nile virus nationwide, which has been accompanied by an increased need for land managers, such as the National Park Service, to monitor the spread of the virus in avian populations on public lands.

Comment: The word ''toxins'' should be changed to ''causes'' to allow public health officials to pick up birds injured by natural causes.

Service response: Replacing the word ''toxins'' with ''causes'' would create a different result from what we intended. This provision was not meant to allow public health officials to collect birds injured by natural causes or accidents. Rather it is intended to cover only situations where birds are suspected to have been stricken by infectious diseases (including those caused by natural toxins). The final rule continues to provide that public health officials acting without a permit would not be authorized to collect and possess birds that appear to have been injured as the result of anything but infectious diseases or natural toxins. (A different provision within the new permit regulation authorizes any person to pick up an injured bird in order to immediately take it to a permitted migratory bird rehabilitator.)

Comment: Persons exempt from migratory bird permit requirements by § 21.12 should still have to adhere to some facility and husbandry standards.

Service response: As part of a separate rulemaking, we intend to propose language that addresses § 21.12 permit exemptions and establishes baseline facility and husbandry requirements for those entities exempted under § 21.12.

Comment: Public health officials will not adequately safeguard the birds, because they won't be able to recognize the differences between public health threats and other conditions that do not affect public health. Rehabilitators should accompany them. Birds may be unnecessarily killed. The regulations need to include provisions addressing the care of these birds after they are collected, as well as a requirement to notify a permitted rehabilitator, and recordkeeping requirements.

Service response: Rehabilitators are free to volunteer their services to accompany such public health officials. However, whether or not rehabilitators are present, these officials need to be able to pick up birds that may be evidence of a high risk to public health. Furthermore, the majority of these birds will already be dead or mortally ill. We do not agree that it would be in the best interest of the overall protection of migratory birds, or that it will enhance public perception of the field of migratory bird rehabilitation, to impose onerous recordkeeping requirements on persons acting to protect public health in situations where most birds are dead or doomed.

Permit exemption for veterinarians § 21.12(d): Comment: Veterinarians are not usually trained to treat birds. And wild birds may be given less priority since they are not associated with paying customers. Veterinarians should be required to get permits.

Service response: The purpose of this exemption is to make legal a practice that is common today—that is, the situation where a person finds an injured bird, and not knowing what else to do, brings it to a veterinarian. Many veterinarians do not want to turn away an injured creature, particularly if it means that it may not survive long enough to be taken to a permitted migratory bird rehabilitator. Right now, if the veterinarian tries to stabilize the bird, he or she is violating the law. The Service believes that veterinarians should not be forced to make the choice between providing emergency care to a stricken bird and breaking the law. Furthermore, we believe that this provision will foster greater awareness

within the veterinary community of legal status and medical needs of migratory birds, and will build relationships and strengthen communication between veterinarians and migratory bird rehabilitators, resulting in an overall net benefit to migratory birds.

Comment: The veterinary permit exemption is not needed because the new permit regulation's ''Good Samaritan clause'' at § 21.31(a) should cover veterinarians already.

Service response: The good Samaritan clause does not authorize persons to retain birds or to provide stabilizing medical treatment or euthanasia. Under the Good Samaritan clause, a person who finds and takes temporary possession of an injured bird is required to contact a permitted rehabilitator, and transfer the bird to them immediately.

Comment: Veterinarians should be required to contact the Service for one of the following: a referral to a permitted migratory bird rehabilitator, permission to stabilize for transfer within 24 hours, or permission to euthanize.

Service response: The rule states that veterinarians must transfer any bird they do not euthanize to a permitted migratory bird rehabilitator. Veterinarians may contact the Service if they need to find a local rehabilitator, but we do not see what purpose it would serve to require them to contact us for a referral, when in some cases, they will already have such information. Second, the rule only provides authority for necessary stabilization of the bird's condition, which we would certainly grant, should the vet call us, so we do not see what purpose it would serve to require the veterinarian to call us for permission. Finally, euthanasia is a means to stop the suffering of the bird. To require a veterinarian to call the Service could unduly prolong such suffering, so the rule does not require this either.

Comment: Veterinarians should not have to call U.S. Fish and Wildlife Service's Ecological Services personnel when they receive an injured federally listed migratory bird species. Rather, they should have to call a permitted rehabilitator.

Service response: The rule requires veterinarians to contact the Service for the same reason that it requires rehabilitators to contact the Service: specialized facilities exist to care for some listed species, and in those cases, it could be critical that the bird be transferred to the designated facility as soon as possible.

Comment: Why is the veterinarian's requirement to contact the Service when they receive a listed species different than the requirement for rehabilitators? The rule requires veterinarians to contact the Ecological Services Office, whereas rehabilitators are required to contact their issuing Migratory Bird Permit Office?

Service response: Veterinarians are not permit holders, and therefore have no special relationship with the Service. It is just as easy for them to keep the telephone number of the local Ecological Services Office handy (which is the decisionmaking body in this scenario) as it is for them to contact the Regional Migratory Bird Permit Office. In contrast, permitted rehabilitators established a relationship with the Service's Migratory Bird Permit Office (the issuing office) when they applied for and were issued a permit. Contacting the issuing office is easier for them because the telephone number is included with their permit. The issuing office can then contact the Ecological Services Office. In addition, we hope that this rule will foster a new relationship between veterinarians and the Service in relation to migratory birds. In the case of endangered species, it makes sense that that relationship be with Ecological Services, the Service's office that handles listed species.

Comment: Veterinarians should not have to keep records, except for the birds they euthanize, since the rest are transferred to permittees who keep the records.

Service response: We agree with this comment. The rule has been revised to require veterinarians to keep records of only those birds that they euthanize or which otherwise die in their care.

Comment: The phrase ''necessary treatment'' is not well-defined. ''As soon as practicable'' is too ambiguous. Veterinarians should have to apply for a permit if they wish to do more. Veterinarians should be required to contact rehabilitators before performing any extended treatment.

Service response: We have revised the final rule to clarify that, absent a permit, veterinarians may only stabilize or euthanize birds, and we have established a time limit of 24 hours in which veterinarians may keep birds after stabilization without contacting the permit office for permission to retain the bird.

Comment: The rule should require veterinarians to keep birds separated from other animals and away from noise and disturbance.

Service response: While we agree with the recommendation to separate birds from noise and other animals, many vets may not be able to provide such an ideal situation, yet may still be able to aid injured birds that otherwise might not be saved.

Comment: Veterinarians should be required to record the name and contact information for the person who delivered the bird, so that fledglings can be reunited with their parents.

Service response: Under the rule, veterinarians are not authorized to accept healthy fledglings. The rule exempts them from the permit requirement only in cases of sick or injured birds.

Comment: Many veterinarians are not trustworthy; some will use birds to experiment on. How will they be monitored?

Service response: We do not agree that many veterinarians are likely to experiment on migratory birds.

Comment: Veterinarians should not be exempt from permitting requirements. They do far too much damage (stress issues, imprinting, medical supply issues, surgical issues, caging concerns, etc.).

Service response: The rule requires veterinarians to transfer birds to rehabilitators within 24 hours after the bird is stabilized. Many of the concerns noted by the commenter will not arise under this scenario (surgical issues, imprinting). While there is some risk that veterinarians will not provide adequate care, we believe that the majority will, and that the ability of veterinarians to accept birds from the public and stabilize them will result in an overall benefit to migratory birds.

''Good Samaritan clause.'' § 21.31(a).

Comment: This provision should be revised to require people who pick up birds to transfer them to a permitted rehabilitator within 24 hours, not just ''immediately'' as the proposed rule says.

Service response: We believe that the language of the proposed rule will better ensure that Good Samaritans do not delay in finding a permitted rehabilitator to accept the bird.

General permit provisions § 21.31(b).

Comment: The rule should say that rehabilitators provide ''rehabilitative services,'' not ''medical care.'' Only veterinarians may provide medical care, under State licensure.

Service response: We have revised the rule to state that rehabilitators are authorized to provide ''rehabilitative care.''

Comment: The 24-hour limit within which rehabilitators are required to transfer species for which they do not have authorization is too short. Sometimes a qualified rehabilitator is not easily accessible or readily available. Also, in some situations it is

better for the bird not to be moved so soon.

Service response: We have revised the rule to state that the bird must be transferred within 48 hours. The rule also now provides that the permittee must contact the issuing office for authorization to retain the bird until it can be transferred, if a rehabilitator authorized to receive the bird is not available within 48 hours.

Comment: Rehabilitators should be able to use their birds in educational programs.

Service response: The purpose of the rehabilitation permit is to rehabilitate birds for release to the wild. Birds held under a rehabilitation permit can be used for education only if transferred to an educational permit—after being deemed nonreleasable by a veterinarian. Birds undergoing rehabilitative care that are exposed to humans in educational programs could become imprinted, compromising successful reestablishment in the wild. (Within the context of this rulemaking, the word imprinted means *habituated to humans*). Even if not imprinted, the stress from this type of exposure can inhibit the rehabilitation of the bird.

Application process and fee § 21.31(c). Comment: The rule does not say what form the applicant must use to apply for a rehabilitation permit.

Service response: The rule has been revised to state that the applicant must use Service Form 3–200–10b. We removed the provisions within this section that specified what the application must include, since all application requirements are specified on the application form. Notice is published in the **Federal Register** every 3 years alerting the public of their opportunity to review and comment on Service permit application forms and other forms used to collect information from the public. The current Rehabilitation permit application form was open for public comment on September 6, 2000 (65 FR 54060) and March 8, 2001 (66 FR 13947), and will be open for review and comment again in 2003 or 2004.

Comment: The applicant must submit a letter from a permitted rehabilitator stating that the rehabilitator will provide assistance to the applicant, but the rule does not specify what kind of assistance is envisioned. Is it for mentoring purposes for new rehabilitators, or is it supposed to ensure that there is a ''back-up'' rehabilitator available in case of illness or absence? If the former, the requirement to have a relationship with another permitted rehabilitator seems to be geared towards novices. Persons renewing their permits should not need to show this.

Service response: The purpose of this requirement is primarily for mentoring purposes for new applicants. A rehabilitator renewing a permit does not need to resubmit the same information he or she provided in the original permit application. Instead, he or she will use a Service permit renewal form, which only asks for any information that has changed since the applicant last applied.

Comment: The requirement to have another permitted rehabilitator vouch for the applicant's experience is unnecessarily burdensome and implies distrust.

Service response: The letter serves to show that the applicant has had experience rehabilitating birds. We do not believe that asking for a showing of experience implies distrust. It is merely a way to distinguish those applicants who have experience from those who do not. We also do not agree that this requirement is overly burdensome. The letter need not be lengthy. Furthermore, this requirement is not new; it has been a requirement on the Special Purpose—Rehabilitation permit application form for over a decade.

Comment: As part of the application requirements, the cooperating veterinarian should not be required to state knowledge of the training and qualifications of the applicant.

Service response: The application does not require such a statement; rather, it recommends that the veterinarian provide such knowledge if he or she has it. However, we will reconsider the need for this language when the application form is eligible for revision.

Comment: People should not be required to have facilities in place before obtaining their permit. It is not reasonable to ask the applicant to build expensive facilities without knowing whether the permit will be granted.

Service response: Having adequate facilities in place is a standard requirement for all permits authorizing possession of live wildlife. A permit can be issued to authorize rehabilitation of types of birds that do not require extensive or expensive facilities. Then, the permittee can upgrade his or her facilities at any time after the permit is issued to house more birds or different species. When such additions are made, the issuing office will expand the authorization on the permit, assuming the other criteria are also met (i.e., the applicant must also have the required experience to rehabilitate the new species he or she wishes to add to the permit).

Comment: The permit application fee should be waived because of the vital public service rehabilitators perform. Rehabilitators voluntarily do the Service's work for them, and are funded through donations and community support. Some may not be able to afford to pay the fee.

Service response: Although we believe the work of rehabilitators is very valuable, it is not a Service responsibility. None of the applicable laws or treaties make provision for care of individual birds, nor are funds appropriated by Congress for such a purpose. Rather, we are charged with and receive funding for implementing the various Migratory Bird Treaties and the Migratory Bird Treaty Act, which prohibit virtually any human contact with migratory birds unless authorized by regulations we issue, or by a permit from us. The permit program has significant costs, and we are directed by Congress and the Office of Management and Budget to charge a fee for providing permits, to recover at least some of these costs. Because of this, we do not receive appropriated funding sufficient to cover all costs of issuing permits, and must depend upon application fee revenues to make up the balance. In this particular case, the permit application fee is $5 or $10 dollars annually, which is not a significant financial burden upon any one applicant.

What criteria will the Service consider before issuing a permit? § 21.31(d). Comment: What criteria will the Service use to decide what species a person will be qualified to rehabilitate? The rule only says he or she must have ''adequate experience.'' What is ''adequate experience?''

Service response: We were reluctant to define exactly what type and amount of experience will be considered adequate, because of the different types of experiences that a person could have that might contribute to his or her ability to rehabilitate birds. An applicant who has cared for hundreds of uninjured orphaned nestlings, but who has never had any hands-on experience with injured birds, will not be qualified for a permit that authorizes rehabilitation of injured and sick birds. Depending on the extent of the applicant's experience working with baby birds, he or she may be qualified for a permit that is restricted to caring for orphaned nestlings. Similarly, hands-on experience working with injured and sick songbirds will not be sufficient to qualify an applicant for a permit to rehabilitate eagles—though it may be enough to enable the applicant to obtain a permit to work with passerines. However, because numerous

commenters were uncomfortable without some guidance as to what we will consider ''adequate experience,'' we revised this section to require at least 100 hours of hands-on experience with the types of species (not each and every specific species) that the applicant intends to rehabilitate, or ''comparable experience.'' Applicants' experience with migratory bird rehabilitation must span at least 1 year. This indicates an enduring interest in the field, as opposed to a temporary enthusiasm. Up to 20 hours of the time requirement may be fulfilled through attending migratory bird rehabilitation seminars and training courses.

Comment: There should be a formal examination or review process to ensure that applicants have the necessary knowledge to treat migratory birds. Or the Service should set up a training and accreditation program to train prospective rehabilitators.

Service response: While a written test or accreditation program may have value, our priority is that the applicant have hands-on experience in migratory bird rehabilitation. We believe that the application requirements and issuance criteria of this rule will adequately ensure that permittees are qualified.

Comment: People should not be required to have experience before getting their own rehabilitation permit. It is too hard for them to get that experience without first having a permit. Having a permitted rehabilitator with little or no experience is better than having no rehabilitator at all, as would be the case in some areas. In order to gain the prior experience, the Service could institute a ''novice'' class of rehabilitators who would be more tightly regulated. They could gain their experience during the time spent in the novice class. Also, applicants may not want to admit to experience acquired without a permit.

Service response: We do not believe it is advisable to allow people with little or no experience to handle migratory birds, which are wild animals and have very particular needs. We do not think it would be safe for the people or the birds. Providing safe and effective rehabilitative care for sick and injured migratory birds requires knowledge that is difficult to impossible to acquire without rehabilitation experience. To gain experience, a person dedicated to becoming a migratory bird rehabilitator can volunteer as a subpermittee for a federally permitted rehabilitator. Most rehabilitators can always use the assistance of capable individuals who are willing to learn.

Comment: The regulations should provide for a licensed sponsor who could determine after a year if the subpermittee was ready to receive permittee status.

Service response: We feel that this rule accomplishes the same objectives as a formal 1-year requirement for a sponsor, but with more flexibility. We expect most applicants to gain experience by working with permittees as subpermittees, and we ask the permit applicant to include a letter of reference from a permitted rehabilitator who has knowledge of the applicant's experience.

Comment: The rule should require permittees to have at least 6 months of experience in rehabilitation, a portion of which must occur in the spring.

Service response: The rule has been revised to require that an applicant have experience spanning an entire year, in order to qualify for a permit. The purpose of this provision is primarily to ensure that the applicant's interest is more than fleeting, but it will also make it more likely that successful applicants will have rehabilitation experience during nesting season.

Comment: People should not have to show prior experience with every species they wish to rehabilitate, since more than 800 species of birds are protected by the MBTA.

Service response: The rule requires experience with the types of species you intend to rehabilitate, not with each and every species. For example, if you have adequate experience working with red-tailed hawks, goshawks, and barred owls, we may issue you a permit authorizing rehabilitation of raptors, even though you have never handled Cooper's Hawks, Harris's Hawks or American Kestrels. Of course, issuance of the permit would also be contingent on whether you have adequate facilities for rehabilitating raptors.

Comment: The rule states that the Service will consider how much experience a person has rehabilitating species that are federally listed as threatened or endangered. This language should be removed because most people will have no experience with listed species, since these species are rare.

Service response: We agree with this comment. Although some listed species may be locally abundant where they do occur, most are rarely encountered. Furthermore, rehabilitative treatment for most listed species will not differ categorically from treatment for unlisted birds. The language of the rule has been revised to reflect that permittees will be authorized to accept listed species with the condition that they immediately contact the Service to ascertain whether the Service will require the permittee to transfer the bird to a designated special facility.

Comment: The requirement to have a working relationship with a veterinarian should not apply to rehabilitators who are veterinarians or ''other qualified biological specialists'' such as ornithologists or raptor biologists.

Service response: We agree that an applicant need not have an agreement with a licensed veterinarian if the applicant is a licensed veterinarian. The rule has been revised to reflect this. However, we do not agree that an advanced degree in biology or ornithology includes the type of medical education that can substitute for veterinary expertise.

Comment: Some rehabilitators do not have access to a veterinarian. They should be able to send birds to rehabilitators who have such a relationship.

Service response: A veterinarian must be available to treat birds that need medical care. To involve another rehabilitator in the transfer to the veterinarian is an unnecessary burden on the second rehabilitator and is not in the best interest of the bird, which may need more immediate medical attention. We believe, and the rule reflects, that the originating rehabilitator should establish his or her own agreement with the veterinarian without going through another rehabilitator, particularly if the veterinarian will wind up treating the bird anyway.

Comment: The rule should state that the veterinarians will provide ''medical care,'' not ''veterinary assistance.'' Also, the rule does not define ''qualified'' veterinarian. It should be changed to ''licensed.''

Service response: We agree with these comments and have revised the rule accordingly.

Comment: The rule should contain provisions addressing what happens if the relationship with the veterinarian is terminated. Commenters make no suggestion of what kind of provisions would be appropriate. The rule should state that the rehabilitator must maintain a working relationship with a veterinarian throughout the tenure of the permit.

Service response: We agree with this comment and have revised the rule to add a condition within § 21.31(e) that the permittee must maintain a working relationship with a licensed veterinarian.

Comment: Veterinarians could encounter liability issues if they commit on paper to providing assistance.

Service response: No veterinarian is required to enter into such an agreement. None need participate in

migratory bird rehabilitation if it makes him or her uncomfortable. Also, the veterinary relationship has been a requirement of the rehabilitation permit for many years, and we have not heard any concerns from veterinarians regarding this provision.

Comment: The rule should state that an applicant must have ''State authorization'' rather than a State ''permit or license'' if required by the State. Some States require authorization, but it is not in the form of either a permit or a license.

Service response: The rule has been revised to include ''other authorization.''

Comment: The rule does not say what happens when the rehabilitator loses his or her State permit.

Service response: Section 21.31(g) has been revised to further clarify that the Federal permit is not valid unless the permittee possesses and adheres to the terms of his or her State authorization.

Facilities § 21.31(e)(1). Comment: The Service should not use the Minimum Standards for Wildlife Rehabilitation (MSWR) as guidelines because the MSWR includes references to requirements that are outside the purview of the Service.

Service response: The rule has been revised to clarify that it refers only to the suggested caging dimensions within the MSWR, and not to the other topics within the MSWR.

Comment: The Service should not require rehabilitators to conform to MSWR recommendations because they are too restrictive, and could be cost prohibitive.

Service response: The rule does not require anyone to conform to the MSWR; rather it states that the Service will use the MSWR as guidelines in evaluating applicants' facilities. This provision reflects the Service's current policy. Use of the Minimum Standards provides the permit issuing office with preliminary parameters to use as guidelines for judging what constitutes suitable avian housing. The use of a common reference will foster consistent treatment for applicants.

Comment: The Service may be too rigid about enforcement of the MSWR caging dimensions.

Service response: We have revised the language of this section to state that the Service will authorize variation from the standards where doing so is reasonable and necessary to accommodate a particular rehabilitator's circumstances, unless a determination is made that such variation will jeopardize migratory birds. The revised language states more strongly that the Service will apply flexibility in our use of the Minimum Standards. We will use the Minimum Standards as a ''starting point'' for evaluating what are acceptable cage sizes, without forcing rehabilitators to have cages with the published dimensions. The rule leaves room for variation, while providing the regulated community with basic parameters that the Service considers acceptable.

Comment: The Service's reliance on the MSWR disenfranchises those rehabilitators who do not belong to IWRC and NWRA and those who are unaware of the existence of the standards document.

Service response: We do not agree that the proposal would disenfranchise nonmembers of the IWRC/NWRA, since that MSWR document is widely available to members and nonmembers alike, and we have been using it and referencing it for years in the Standard Conditions for rehabilitation permits.

Comment: The rule should not reference an external document (MSWR), because it is privately published and subject to change. Which edition does the Service mean to use?

Service response: The rule has been revised to state that it refers to the 2000 (3rd Edition) of the MSWR.

Comment: The Service should replace the use of the MSWR as guidelines with the exact language on Page 20, paragraph 2, of the MSWR. This would give the applicant more flexibility, but ensure high standards.

Service response: The language to which the commenter refers does not include any mention of actual cage dimensions. We need established general parameters for what the Service will consider acceptable cage dimensions. Such parameters give the Service something consistent to work with in assessing applicants' facilities, as well as providing guidance for applicants to use in planning their facilities.

Comment: The rule makes no provision for flight caging. Birds need to do more than open their wings to be conditioned for release.

Service response: Cages used to condition birds for release are addressed in the MSWR as part of the caging dimensions that the Service will use as guidelines.

Comment: No mention is made of overcrowding. No mention is made of providing clean, fresh water and food. No mention is made of the need to safely clean the cage.

Service response: We have added the following conditions to the rule: ''Birds must not be overcrowded'' and ''You must provide the birds in your care with a diet that is appropriate and nutritionally approximates the natural diet consumed by the species in the wild, with consideration for the age and health of the individual bird.'' We also replaced the requirement to keep the floor clean and well-drained with the following condition: ''Enclosures must be kept clean, well-ventilated, and hygienic.''

Comment: The rule should require that birds not be in sight of predators, including predatory birds. Also, the rule should require facilities to have quarantine areas to protect against the spread of infectious diseases.

Service response: While we view these suggestions as good advice, we consider them beyond the threshold of what ought to be mandated by this regulation.

Comment: The caging dimensions of the MSWR are too ''ambitious'' for Unlimited Activity and Limited Activity birds, more than a reasonable minimum. Some reduction in overall sizes should be acceptable.

Service response: We realize that some recommendations within the MSWR are viewed by some rehabilitators to be ambitious or optimum rather than minimal, and we agree that in many instances, some reduction in cage size will be acceptable. The rule provides for variation from the suggested dimensions of the MSWR where such variation will not jeopardize migratory birds.

Comment: The MSWR recommends too much water depth in pools for wading birds. Two feet of water can be a struggle for a recuperating pelican. It could also result in hypothermia. These minimum depths should either be reduced or dropped entirely.

Service Response: We appreciate observations like this because they can help us to evaluate facilities. Common sense information from applicants with experience is valuable and will help us to understand why variation from the standards may not jeopardize birds.

Comment: The MSWR recommends wood as a caging material. However, this is a bad material to use in some areas, such as Florida, because it rapidly rots, fails to withstand tropical storms, and blocks healthy air flow in humid environments. Also, soft netting can entangle birds and interfere with air circulation.

Service Response: The rule does not state what specific materials must be used for caging or netting, nor does it reference the MSWR's recommendations for materials.

Comment: The facilities criteria in the rule give no guidance to permit applicants and leave too much to the discretion of the Service.

Service Response: Most people who commented on the facilities standards of the rule were not concerned that too much discretion was left to the Service. Rather, many commenters felt that the standards will not allow for enough flexibility. As written, the rule reflects the Service's intent to be as specific as possible, while at the same time ensuring we remain flexible in authorizing reasonable variation from the specifics.

Comment: The requirement that caging be large enough for the birds to fully extend their wings does not make sense for facilities that are used during the first stages of rehabilitation—when the birds' movement is intentionally restricted.

Service Response: We deleted this provision from the final rule, since cage dimensions are already addressed by reference to the MSWR, which provide for the different types of cages recommended for different stages of recovery.

Comment: The rule should not require permittees to dedicate one cage to just one species. People need to be able to ''decorate'' cages to suit different species. Will the Service have to approve every new cage to house a different species?

Service Response: The rule does not require that cages be dedicated to particular species. As long as the cage is adequate for any species that will be housed in it, it is acceptable. The permit will authorize categories of species, not individual species. Facilities generally can be built to house types of species (*e.g.*, large raptors, small waterbirds), not individual species (*e.g.*, Swainson's Hawk, American Avocet). When rehabilitators receive species for which they do not have adequate facilities, they must transfer the birds to rehabilitators with such facilities.

Comment: The prohibition against displaying birds to the public is unrealistic. Keeping the birds from hearing and seeing people (in particular hearing people) can be difficult. Also, rehabilitation birds are a good educational tool that generates public empathy and support for the facility.

Service Response: The Service issues a permit to hold and use birds for educational programs, but it is not the rehabilitation permit. The purpose of the rehabilitation permit is to rehabilitate birds for reintroduction to the wild. Proximity to people can cause stress that impedes recovery, and exposure to human activity can habituate birds to people to the degree that they lose natural instincts necessary to survive in the wild. For those reasons, use of rehabilitation birds in educational formats remains prohibited in the rule. It is possible to insulate birds from the public. However, it is also true that some birds enter rehabilitation facilities already somewhat habituated to humans. The rule continues to provide that rehabilitation birds not be exposed to the public or used in educational formats. However, in rare cases, birds enter rehabilitation facilities already somewhat habituated to humans. Accordingly, the language of the rule has been revised to state that birds may not be displayed to the public ''unless you use video equipment, barriers, or other methods to reduce noise and exposure to humans to levels *the birds would normally encounter in their habitat.*'' (emphasis added).

Comment: The rule should provide that facilities currently approved under the existing Special Purpose Rehabilitation permit will not fall out of compliance under the new rule.

Service Response: The final rule contains a ''grandfather clause,'' which states, in part, ''If your facilities have already been approved on the basis of photographs and diagrams, and authorized under a valid § 21.27 special purpose permit, then they are preapproved to be authorized under your new permit issued under this section, unless those facilities have materially diminished in size or quality from what was authorized when you last renewed your permit, or unless you wish to expand the authorizations granted by your permit (*e.g.*, the number or types of birds you rehabilitate).''

Subpermittees § 21.31(e)(3). Comment: The rule should not authorize subpermittees, because their lack of experience results in higher mortality rates and imprinting. People should be encouraged to volunteer with permitted rehabilitators, but volunteers should not be allowed to take birds home to facilities outside those of the rehabilitator.

Service Response: Volunteers are often critical to migratory bird rehabilitation. Few rehabilitators can afford to pay staff to do the work that volunteers do. In addition to the valuable services subpermittees provide to rehabilitators, the subpermittee system serves as a training and recruitment program for bringing new rehabilitators into the field. We do not believe that allowing subpermittees to take birds to off-site facilities endangers migratory birds, because the permittee is responsible for ensuring that subpermittees are qualified to provide adequate care. Off-site subpermittee facilities must meet the same standards as the permittee's facilities. For these reasons, we believe that allowing subpermittees to take birds to authorized off-site facilities ensures better care for migratory birds by increasing the availability of round-the-clock care.

Comment: Subpermittees should not have to be 18 or older. Many younger people can provide valuable services while gaining valuable knowledge and experience.

Service Response: The rule requires that a person who will be performing activities that require permit authorization in the absence of the permittee or subpermittee must be a subpermittee, and it also requires that subpermittees be 18 or older. However, minors would be allowed to help in all other situations except those that involve actions for which a permit is required (handling the birds, basically) when the permittee or a subpermittee is not present. Since we would not issue a rehabilitation permit to minors, we will not authorize minors to perform activities that require a permit without supervision.

Comment: Subpermittees' names should be on file, but including all their qualifications could be difficult for big facilities, where large numbers of subpermittees change frequently.

Service Response: The application requirement to list the qualifications of the subpermittees has been deleted from the rule. However, this information is still requested on the permit application form 3–200–10b. We intend to drop this requirement from the form when our application forms are revised and reauthorized. Meanwhile, new subpermittees need only be named in writing to the issuing office without an accompanying description of their qualifications.

Comment: Large facilities should not have to immediately submit the names of new subpermittees. This requirement is too burdensome with so much turnover amongst volunteers at large facilities. Instead, there should be a requirement to send in amendments every quarter listing the current subpermittees.

Service Response: Not everyone who works under a rehabilitation permit needs to be on file with the Service as a subpermittee under that permit. Numerous people may be assisting at large rehabilitation centers. However, only those who will be conducting activities that require a permit in the absence of the permittee or a named subpermittee must be on file with the permit office. For instance, a facility may have 25 volunteers, but only four who conduct activities that require permit authority when the permittee is

offsite or otherwise unavailable to oversee activities conducted under his or her permit. In that case, only those four volunteers need to be on file with the Service as subpermittees. The remaining 21 people do not need to be named subpermittees as long as the permittee or one of the four listed subpermittees is present when they conduct activities that require permit authorization. We believe that, even for large centers with high volunteer turnover, the need to update named subpermittees will not be onerous, since not everyone assisting with permitted activities is required to be on file with the Service.

Comment: This requirement to list subpermittees would be particularly burdensome as applied to those who transport birds to and from the facility. Transporters don't really have contact with the birds anyway. Could they merely be listed with the rehabilitator's records, and not with the permit office?

Service response: Many transporters have frequent contact with the birds they pick up and deliver to rehabilitators, so we believe they should be treated like other subpermittees.

Comment: The subpermittee system should be replaced by an apprentice licensing program with mandatory training.

Service response: We believe the subpermittee requirements of the rule, together with the oversight of permitted rehabilitators, will provide sufficient training for persons entering the field of migratory bird rehabilitation. This system has been in place for many years, with few problems.

Comment: The rule does not specify whether the subpermittee's facilities must meet the same requirements as the permittee's facilities.

Service response: The rule has been revised to state that the subpermittee's facilities must meet the same standards as the permittee's facilities.

Comment: Do a subpermittee's facilities really need to be approved when it is just a shoe box for nestlings?

Service response: The Service does not need to see photographs and diagrams of a shoe box. However, the address where any subpermittee will be caring for nestlings outside of the permittee's premises must be provided in writing to the permit office and authorized by the permit office before any nestlings are transferred to the alternate site.

Comment: The rule does not state whether subpermittees are bound by all the requirements of the regulation. Also, who is responsible to supervise off-site activities of subpermittees?

Service response: The final rule states that ''As the primary permittee, you are legally responsible for ensuring that your subpermittees, staff, and volunteers adhere to the terms of your permit when conducting migratory bird rehabilitation activities.''

Comment: Subpermittees who provide frequent or long-term care offsite should be required to obtain their own permits.

Service response: We have considered mandating that permittees who provide frequent and/or, long-term care off-site obtain their own permits, but decline to do so because some people simply do not want to be permittees but may be able to provide quality care for birds under another person's permit. The rule requires the same standards for subpermittee facilities, and because it requires the permittee to be responsible for the subpermittee's rehabilitation activities, we believe that permittees will keep sufficient oversight over subpermittees to protect the birds under their care.

Imprinting § 21.31(e)(4)(i). Comment: The provision requiring imprinted birds to be turned over to the Service should be removed from the rule. Sometimes rehabilitators receive birds that have already been imprinted. And, some imprinting is likely to occur no matter what.

Service response: The rule has been revised to clarify that the requirement to transfer imprinted birds to a third party applies only to birds that have been imprinted while under the care of the permittee. The permittee will be required to transfer any bird imprinted under his or her care to another facility specified by the Service. After no longer than 180 days, however, all surviving birds that are nonreleasable, whether imprinted or not, must be transferred to another permit (unless additional authorization is granted from the permit office)—since the rehabilitation permit only authorizes possession of birds undergoing rehabilitative care.

Comment: Turning birds over to the Government will result in needless euthanasia. Rehabilitators will have to tell the public that the birds were transferred and possibly euthanized.

Service response: In the rare situations when the Service has removed imprinted birds from a permittee, we have placed the birds with migratory bird education permit holders to use in educational programs.

Comment: Some degree of imprinting will not interfere with a bird's ability to survive in the wild. If birds are too imprinted to survive in the wild, they should be placed in licensed sanctuaries.

Service response: The intent of this provision is to require rehabilitators to take precautions to prevent birds from becoming so habituated to humans that they cannot survive in the wild. It is in the best interest of migratory birds as a whole that they not be perceived as pets by the public or treated as such by permittees. Therefore, the rule requires that rehabilitators take precautions to avoid imprinting, and provides that the Service may remove birds from the care of those who do not do so.

Comment: The Service should not take imprinted birds away from rehabilitators because the Government doesn't have good facilities for holding them.

Service response: We do not hold birds in these situations. We place them with other permittees whom we have identified prior to the transfer.

Comment: The rule should require that all imprinted birds that are not listed as threatened or endangered be euthanized.

Service response: We do not agree that all non-listed imprinted birds should be euthanized. (See next comment.)

Comment: Imprinted birds should be allowed to be used for education or for foster parenting.

Service response: Imprinted birds may be used for foster parenting under the proposed rule—but the rule does not allow persons to use birds they themselves have allowed to become imprinted. The Service places imprinted birds with other permit holders for foster parenting or educational use.

Release § 21.31(e)(4)(ii) Comment: The 180-day limit for keeping birds in rehabilitation without additional authorization is too short. Many birds take over a year to be ready for release, plus it must be done during an appropriate season. A specific limit is arbitrary and not necessary. This decision should be left to the rehabilitator.

Service response: Rarely do birds need to be kept longer than 180 days. If more time is needed for rehabilitation, or if a bird must be held until the appropriate season for its release, the rule provides that the permittee need only contact the permit office for authorization. The instances where birds need longer than 180 days to be readied for release are infrequent enough that we do not consider this notification requirement to be burdensome. The longer birds remain in rehabilitation, the greater the chance they will become habituated to captivity. Moreover, without a limit, birds could be kept indefinitely.

Comment: The 180-day provision is good for experienced rehabilitators, but

less experienced rehabilitators should still be held to the 90-day period with permission needed to extend it.

Service response: We do not agree that less experienced rehabilitators should be allotted less time to treat and condition birds for release.

Comment: The proposed rule says nothing about the need to release birds as soon as possible. The 180-day period is too long. Birds will become habituated to people and the conditions of rehabilitation facilities.

Service response: The final rule states that birds must be released as soon as they are releasable (and seasonal conditions allow). Therefore, the 180-day limit will apply only to those birds that are not yet ready for release.

Comment: Rehabilitators should not need to get permission to keep birds longer than 180 days for foster parenting.

Service response: The purpose of the rehabilitation permit is to authorize possession of birds so that they may be provided the rehabilitative care necessary to return them to the wild. If a bird is not ready for release before the 180-day limit, but is still expected to be releasable in the future, and is suitable for foster parenting, it may be used for that purpose until released. If the rehabilitator's veterinarian determines that a bird is permanently injured and nonreleasable, the rehabilitator may submit a written request to possess the bird for foster-parenting purposes. If the request is justified and approved, the Regional permit office will amend the rehabilitator's permit to reflect this authority.

Comment: The rule should include the guidelines for release that are contained within the Minimum Standards for Wildlife Rehabilitation, or it should provide some other guidance for when the bird is ready for release.

Service response: Generally, regulations should state what is required, not what is recommended. In the interest of flexibility, the rule does not establish regulatory requirements for release of birds. There are simply too many variables. The Minimum Standards and other publications of the rehabilitation community, as well as the guidance provided by peers, can serve as valuable sources for determining suitable conditions for release.

Comment: Rehabilitators should not have to coordinate with State and local wildlife officials about where to release the birds. Most local and State wildlife officials would not want to be consulted so frequently.

Service response: This was a recommendation in the proposed rule, not a requirement. Since it was not a requirement, we have removed it from the final rule.

Comment: State conservation agencies should be notified before rehabilitators release listed species.

Service response: The rule provides that if a bird is of a species that is listed by the Federal Government as threatened or endangered, the rehabilitator must coordinate with the Service before releasing the bird. In many cases, we will involve the State because we work in partnership with State agencies on issues involving wildlife. However, some States may not wish the Federal Government to mandate State involvement in the release of federally listed species via Federal regulation. It is more appropriate that State regulations, rather than Federal, address whether or not rehabilitators must contact the State before releasing listed species.

Comment: The rehabilitator should not need to contact the Service before releasing a threatened or endangered species.

Service response: We strongly disagree with this comment. The determination of where to release an individual of a listed species is more critical than it is for nonlisted species in terms of overall success of the species. The optimal release site may be one where the individual bird is most likely to rejoin wild populations and reproduce. The Service's biologists will often have information the rehabilitator does not regarding the location and viability of wild populations of listed migratory bird species.

Euthanasia § 21.31(e)(4)(iii) and § 21.31(e)(4)(iv). Comment: You should delete the requirement to euthanize birds that cannot feed themselves, perch upright, or ambulate; or are blind, or require amputation of a leg, foot, or wing at the elbow or above. Some birds with these conditions can lead useful lives as educational birds or foster parents for juvenile migratory birds in rehabilitation. These decisions should be left up to the permittee and the veterinarian.

Service response: The euthanasia requirements are based on humane consideration for the birds. The handicaps and stress caused by these type of injuries frequently lead to repeated additional injuries and ailments throughout the duration of the bird's life. The Service does not believe that birds should be subjected to this trauma and poor quality of life for the sake of their human keepers, even if such birds could be used as educational tools. Educational programs face no shortage of less disabled nonreleasable birds. However, because extraordinary circumstances may warrant an exception to this rule, we have revised the rule to include the following narrow exemption: The permit issuing office may waive the euthanasia requirement where (1) a veterinarian makes a written recommendation that the bird should be kept alive despite the severity of its injuries, including an analysis of why the bird is not expected to experience the injuries and/or ailments that typically occur in birds with these injuries, and a commitment (from the veterinarian) to provide medical care for the bird for the duration of its life, including complete examinations at least once a year; and (2) a placement is available for the bird with a person or facility authorized to possess it (*e.g.*, someone with a migratory bird education permit), where it will be provided that veterinary care.

Comment: If a permitted rehabilitation facility is willing to take on the burden of caring for birds with the types of injuries for which the rule requires euthanasia, why not let them?

Service response: First and foremost, the Service considers keeping a bird alive under these conditions to be inhumane (*see* above). Secondly, the purpose of the rehabilitation permit is to recover birds for release to the wild, not to retain birds in captivity. Nonreleasable birds must be transferred to another permit to be legally possessed. Most rehabilitated birds that are kept in captivity are transferred to an educational use permit, which requires that the bird be used for conservation education. The Service does not issue permits simply to keep birds in captivity. Allowing people to maintain migratory birds in sanctuary situations would compromise the status of migratory birds as wildlife. We believe that this outcome would be detrimental to migratory birds and would constitute an abrogation of our responsibility to protect and conserve wildlife.

Comment: The mandatory euthanasia requirements will stop people from bringing sick and injured birds to rehabilitators.

Service response: We think this scenario is highly unlikely. People bring birds to rehabilitators out of humane consideration for the birds. The euthanasia requirements are borne from the same humane consideration. If a bird has sustained trauma and injuries that are likely to cause the bird stress, pain, and/or further injury throughout the duration of its life, euthanasia is the kindest, most humane treatment people can provide.

Comment: Euthanasia for these types of injuries should only be mandatory if

the bird does not acclimate well and cannot be placed.

Service response: We disagree with this comment. Birds should not be subjected to amputations only to be euthanized later due to failure to acclimate. That is why the rule states that birds must be euthanized rather than undergo amputation.

Comment: Euthanasia requirements should not be different for listed species. Rehabilitators should be authorized to euthanize any bird that is suffering due to an injury too serious to heal without having to call the Service for permission.

Service response: The final rule continues to require rehabilitators to contact the issuing office before euthanizing listed species. The reason for this difference in treatment is that a rare situation could arise in which the suffering of the bird might be outweighed by a critical need to recover its species. For example, the addition of a blind endangered bird could be significant to a dwindling gene pool. The rule continues to provide that the rehabilitator may proceed with euthanasia if Service personnel are not available and the euthanasia is warranted because of humane considerations for the bird.

Placement and Transfer of Birds § 21.31(e)(4)(v) and § 21.31(e)(4)(vi). Comment: Rehabilitators should not have to get prior approval from the Service before placing nonreleasable birds or their parts or feathers with another permittee authorized to hold migratory birds.

Service response: The requirement to obtain approval from the issuing office before transferring nonreleasable birds will ensure that birds are transferred to persons authorized to possess such birds, and not to someone whose permit has expired, or who already has the maximum number of birds authorized by his or her permit.

Comment: Rehabilitators should be required—not just allowed—to donate dead specimens to institutions authorized by permit to possess migratory bird specimens or exempted from the permit requirements under § 21.12.

Service response: We encourage permittees to transfer dead specimens to other permit holders or exempt institutions who can use them. However, many rehabilitators are already stretched to their limits trying to care for the live birds they hold under their permit, and the Service believes they should not be burdened with an additional requirement to locate authorized persons to receive each dead specimen.

Comment: The rule should not require that all dead eagles be sent to the National Eagle Repository. Rather, it should require permittees to notify the State so the State can do necropsy, and then send the birds to the Repository.

Service response: Not all States wish to be contacted by rehabilitators with eagle carcasses. The rule has been revised to clarify that permittees must comply with State requirements requiring State notification and necropsy—where such requirements exist.

Imping Feathers § 21.31(e)(4)(viii). Comment: The rule does not specify what the Service considers to be a ''reasonable'' number of feathers that a rehabilitator may keep for imping purposes.

Service response: We do not believe the regulation should establish a specific number of feathers that may be legally retained for imping purposes. Based on location, populations of species, and specialization, rehabilitators will need varying numbers of feathers of particular species. The final regulation states that a ''reasonable number'' will be based on the numbers and species for which the permittee regularly provides care.

Taking blood samples § 21.31(e)(4)(ix). Comment: The rule should allow rehabilitators to take blood and tissue samples for research that would aid rehabilitators and the species with which they work, as long as doing so does not jeopardize the individual bird. For example, blood may be drawn to establish normal values for particular species, or to research contagious diseases that are not human health hazards.

Service response: We have modified this provision to clarify that samples may be taken for purposes of diagnosis and recovery not just of the individual bird, but of the birds under the permittee's care, generally. For broader research purposes, the rehabilitator should obtain a migratory bird scientific collecting permit issued under 50 CFR 21.23.

Recall of birds § 21.31(e)(4)(xi). Comment: The proposed rule states that migratory birds held under a rehabilitation permit remain under the stewardship of the Service and may be recalled at any time. Under what circumstances would the Government recall birds? What is the justification?

Service response: The rule has been revised to clarify that permittees do not own the migratory birds they hold under this permit. The language concerning recall has been removed because we do not believe it is necessary that this regulation state that the Service would and does remove birds from the possession of permittees when the quality of care provided to the birds is not adequate or when a permittee violates wildlife laws, regulations, or the terms of the permit.

Notification to the Service § 21.31(e)(5) and throughout. Comment: The rule contains too many notification requirements. The requirements for permittees to contact the Service so often are too burdensome.

Service response: The proposed regulation contained 11 discreet requirements for the permittee to notify the Service and/or gain additional authorization under certain circumstances. Ten of those notification requirements are not new in this regulation, but are carried over from the current standard conditions attached to all existing permits. Seven apply only to threatened and endangered species, and are needed so that the Service can determine the best placement for these birds. The Service is engaged in active recovery efforts for many listed migratory bird species, and because of the relative scarcity of listed species, the placement of each individual can have greater ramifications for the conservation of the species than is the case for non-listed species. Because listed species are relatively rare, most rehabilitators do not routinely encounter them, so these notification requirements will not be used often and should not create a burden for rehabilitators.

Of the remaining three notifications, two should seldom be needed: the requirement to contact a Service law enforcement officer when there is reason to believe that a bird has been injured as the result of criminal activity; and the requirement to gain approval from the issuing office to keep a bird longer than 180 days. The final requirement—to obtain authorization from the issuing office before transferring a nonreleasable bird to another person—is an important safeguard to ensure that birds are placed with persons who are legally authorized to possess migratory birds.

The only new notification provision the proposed rule contained was the requirement to contact the Service if the rehabilitator suspects that a bird has an avian virus or other contagious disease. We have revised that provision to require the permittee to contact his or her State or local authority that is responsible for monitoring the particular health threat, rather than notify the Service. In the case of West Nile Virus, for example, the public is usually advised to contact their county public health agency to report diseased

birds, but in some States a designated State agency is responsible for receiving those calls. While this information may be of some use to the Service, we do not have primary responsibility for responding to reports of contagious diseases that are considered to be public health threats, even when such diseases are carried by birds. Requiring rehabilitators to contact the responsible State or local agency, rather than the Service, will eliminate what would have been a redundant notification. Because rehabilitators are in a good position to contribute to nationwide efforts to monitor contagious avian diseases, the requirement to notify the appropriate State or local authority will benefit to the public by enhancing efforts to protect the health and safety of humans, livestock and wildlife.

Comment: The Service should set up a 24-hour hotline to receive the required calls from rehabilitators, and it should be an 800 number.

Service response: Aside from the notifications required in circumstances involving threatened and endangered species, which we believe will not be exercised often, the rule does not contain excessive requirements to contact the Service (*see* above).

Comment: The rule relies too heavily on the Internet for obtaining phone numbers of other Service offices. Other forms of access to such information should be provided.

Service response: We are revising our permit information tracking system so that it can record and generate the phone numbers for Service Law Enforcement offices that are local to the permittee. Permits will be issued using this new capacity, with the necessary contact information printed on the permit. The rule has been revised to reflect the fact that the contact information for these offices is listed on the permit.

Comment: Rehabilitators should not have the burden of contacting the Service immediately upon receiving a threatened or endangered species. This provision fails to recognize the actual conditions under which rehabilitators are working. Immediate notification could jeopardize the bird, which may need immediate stabilization. Often personnel are not there to receive the calls (*e.g.*, on weekends)

Service response: The rule has been revised to require the permittee to contact the Service within 24 hours of receiving a threatened or endangered species. If Service personnel cannot be reached, you should leave a message.

Comment: The proposed rule requires rehabilitators to report birds that appear to have been injured by criminal activity to both the Office of Law Enforcement and to the Migratory Bird Permit Office. Rehabilitators should not have to call two Service offices to report this.

Service response: We agree with this comment and have revised the rule to remove the requirement to notify the permit office.

Comment: Immediate notification to law enforcement where birds appear to have been injured as the result of criminal activity is not practicable. Rehabilitators are often busy stabilizing bird(s). Instead, the requirement to notify the Service should be ''within 48 hours.''

Service response: Service Law Enforcement personnel need to be notified immediately when it appears a crime has taken place. Otherwise, evidence needed to build a successful investigation may be compromised or lost before it can be collected.

Comment: ''Criminal activity'' should be more clearly defined. Poisoning and electrocution should not be considered criminal activity.

Service response: Poisoning and electrocution are considered criminal activity in many circumstances. Power companies and pesticide manufacturers and applicators are frequently held liable for killing birds, particularly when ample evidence exists that they knew or should have known that their actions were likely to kill birds. Electrocution of birds on power lines is generally considered a prosecutable violation, since reasonable industry-accepted measures have been identified that can be implemented to avoid killing migratory birds. We believe that the rule need not further specify what is meant by criminal activity, since it is not possible to define all the criminal activities that could take place, or always clearly identify under what circumstances a particular action is criminal. The provision requires that rehabilitators notify the Service when they have reason to believe that birds under their care were injured as the result of a criminal act, so that we have the opportunity to pursue the case, if appropriate.

Comment: The rule should require permittees to contact their State conservation agencies as well as the Service whenever notification is required.

Service response: Not all States want these notifications. As a Federal agency, we will not impose this requirement on States that do not wish to be contacted. It is more appropriate for State regulations to address this requirement.

Recordkeeping § 21.31(e)(7). Comment: It would be useful to some States if the information required in the recordkeeping provisions included the county and distance to the nearest town.

Service response: The information required to be kept in the permittee's records is the same information that we ask for in the annual report. It is not useful for our purposes to document the county or the nearest town, and we do not have enough staff to sift through extra information that we will not use. Also, we do not wish to burden permittees by requiring them to keep and submit information that we will not use. Those States that find that information useful may wish to include those items as reporting requirements in their State regulations.

Comment: Rehabilitators should be required to record the location where the bird was found, if known, because it is important for purposes of data collection and release. Also, the location of release should be required in records for enforcement purposes. The incident that caused the distress or injury should be recorded (*e.g.*, collision with window, cat attack), if known, for purposes of future analysis. Records should include the name and contact information of the person who found and/or delivered the bird because of possible exposure to zoonotic diseases.

Service response: While much of this information could be useful to the rehabilitator, or to a third party, we do not at this time have a need to collect this information. If permittees wish to keep these records, we encourage them to do so, but we see no reason to require information to be collected and submitted to us when we will not use it.

Comment: Why should the permittee be required to keep the records for 5 years? That should be the Service's responsibility. This requirement is an unnecessary burden on the permittee.

Service response: The requirement that permittees keep records for 5 years predates this rule and applies to all Service permits, and is codified at 50 CFR part 13.46. We also keep the information submitted via annual reports, but if discrepancies arise, permittees may benefit by being able to produce their own records.

Additional Conditions May be Placed on the Face of the Permit. § 21.31(e)(9). *Comment:* There should be no further reason to condition permits if a person meets the requirements set forth in the rule. This provision appears to contradict the rule's stated intent to ''codify * * *, clarify * * *, and * * *specify'' migratory bird rehabilitation permit policy. The Service should specify what sort of ''additional conditions'' are meant by

this provision. It's too open-ended and could be abused.

Service response: We have revised this provision to clarify its meaning and scope. Our intent is to provide that permits may be tailored so that they differ from one another according to the circumstances of the applicants (*e.g.*, what kind of experience and facilities they have). If all rehabilitation permits had exactly the same set of standard conditions and no additional conditions, every permittee would be qualified to rehabilitate any number of all types of migratory birds, without exception. For example, rehabilitators who intend to rehabilitate only nestlings do not need extensive caging. The Service needs to be able to differentiate what types of birds these nestling rehabilitators are authorized to rehabilitate from those a passerine rehabilitator is authorized to rehabilitate or those a large facility with flight cages or pools for waterbirds may rehabilitate. This can be done only if permits can be further conditioned on their face at the time of issuance (or later, if the permittee demonstrates that he or she has expanded the facilities and/or gained additional experience).

Comment: The ''additional conditions'' provision would be more palatable if there existed some kind of review/appeal process for applicants to appeal.

Service response: Regulations addressing the process for challenging permit decisions, including permit conditions, are set forth in 50 CFR 13.29. These regulations address procedures for all Service permits, and cover how to file a Request for Reconsideration to the issuing office. They also set forth procedures for filing a written appeal to the Regional Director if the applicant/permittee is dissatisfied with the determination made on the Request for Reconsideration.

Comment: To avoid the creation of additional conditions, the Service should establish a multi-tiered permit incorporating different levels of experience and facilities standards, where each level has standardized conditions.

Service response: We do not believe such a system could adequately capture all the variables and particulars that make one situation different from another. Additional conditions would still be necessary in order to accommodate these variables, or else some permits would simply have to be denied—which we do not view as a good alternative.

Liability Clause § 21.31(e)(10). Comment: As worded, the provision of the proposed rule that indemnifies the Service from liability could confer unreasonable liability to the permittee, resulting in lawsuits against rehabbers.

Service response: We have removed this provision from the rule because permit liability for all Service permits is already set forth at 50 CFR 13.50, which reads: ''any person holding a permit under this subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.''

Oil Spill Provisions § 21.31(f). Comment: Why does the Service want to be notified whenever a dead bird is found at the site of an oil spill?

Service response: There are a variety of legal aspects relating to oil spills, including the ability of the government to recover damages for birds and other wildlife killed or injured, and in some cases to bring criminal charges. In such cases, the Service must be able to document the number and locations of dead birds and other wildlife before they are removed from the site. Since it is not generally possible to determine until after the immediate cleanup or site stabilization whether this information will be needed, we collect it routinely.

Comment: How can the public get copies of *Best Practices for Care of Migratory Birds During Oil Spill Response*, the document referenced in the rule?

Service response: We have inserted a footnote into the rule, providing information on how to obtain this document.

Term of Permit § 21.31(h). Comment: Permit tenure should be 1 year only. If a 5-year tenure is included in the final regulation, the wording should be more clear as to whether all rehabilitation permits will be issued for 5 years, or whether some will have shorter terms.

Service response: Because the majority of rehabilitators' circumstances will not substantially change from year to year, we do not see any purpose in renewing permits annually. We believe that the annual report requirement will allow the Service to monitor the factors that are most important to safeguard the welfare of birds held under rehabilitation permits. We do not wish to burden the permittees with an annual permit renewal, nor do we believe that processing every permittee's renewal every year is a good use of limited Service resources. Although most permits will have a tenure of 5 years under the final regulation, the wording ''No rehabilitation permit will have a term exceeding five (5) years'' allows the Service the flexibility to issue some rehabilitation permits for less than 5 years, if appropriate.

Comment: The rule does not contain any provisions for the renewal process.

Service response: Regulations covering permit renewal for all Service-issued permits are set forth in 50 CFR 13 (General Permit Procedures). For the rehabilitation permit, as for other migratory bird permits, the permittee need not submit all of the information required in an original permit application. Instead, he or she should submit a Service permit renewal form, which is mailed to all permittees when their permits are nearing expiration. The form asks the permittee to certify that the information previously submitted (through either the original permit application or a subsequent renewal or amendment) is still accurate. If any required information has changed, the permittee must submit the updated information.

Comment: The annual report/permit renewal process is not timed smoothly, with permits expiring at the end of the calendar year, but annual reports due at the end of the following January. Renewal permits should be sent separately (first), so the rehabilitator does not have to operate under an expired permit.

Service response: We have adjusted the timing of the permit renewal process to address this problem. Rehabilitation permits will be issued to be valid starting on April 1, rather than January 1. As existing permits are renewed, they will be re-issued with a 5-year tenure, as provided by this rule. Permits will expire on March 31st rather than December 31st. This will result in a more logical, coordinated process wherein permittees can submit their annual reports and renewal requests together, and the renewal request will be received well before the expiration of the permit.

Comment: Renewal should be correlated with State permit renewal.

Service response: Permit tenure and renewal dates vary widely from State to State. Federal permits would have to have different tenures depending on the State in which the permittee resides. Tracking and maintaining renewals under these circumstances would be very difficult for the Service. Therefore, we will continue to process renewals at the same time each year.

Will I need to apply for a new permit if I already have a Special Purpose—Rehabilitation permit? § 21.31(i) Comment: The rule does not say whether current permit holders will be ''grandfathered,'' or whether they will have to reapply under the new regulations.

Service response: Current permit holders need not take any special action

as a result of the new rule. When it is time to renew their permits, if they wish to continue rehabilitating migratory birds, they should apply for renewal using the Service permit renewal form mailed to them by the issuing office. Rehabilitation permits will be renewed under the new permit category created by this rule. In addition, the final rule contains a ''grandfather clause,'' which states, in part: ''If your facilities have already been approved on the basis of photographs and diagrams, and authorized under a valid § 21.27 special purpose permit, then they are preapproved to be authorized under your new permit issued under this section, unless those facilities have materially diminished in size or quality from what was authorized when you last renewed your permit, or unless you wish to expand the authorizations granted by your permit (*e.g.*, the number or types of birds you rehabilitate).''

Inspections. Comment: The rule does not address rehabilitation facility inspections.

Service response: Inspection of permittees' facilities is addressed in 50 CFR 13.47. The regulations provide that a Service Law Enforcement official (''the Director's agent'') may inspect the premises, wildlife, and records at ''any reasonable hour.''

Comment: Facility inspections should be conducted before issuing each permit and then at regular intervals during the term of the permit to ensure that facilities maintain standards.

Service response: Although we will conduct site visits prior to issuing some permits, we do not have the resources to inspect all applicants' facilities. As part of the application process, the applicant must submit photographs and diagrams of his or her facilities. These should provide enough information to determine whether most applicants' facilities are adequate. Many State conservation agencies have more resources available to them than we do, and are able to send officers out to perform inspections more regularly. Coordination between State agencies and the Service allows us to identify situations where problems exist and Federal inspection may be warranted.

Additional Comments

Comment: Permitted rehabilitators should not be allowed to raise, rehabilitate, or release non-native species such as European starlings and house sparrows because these negatively affect native migratory bird species.

Service response: The Service does not have the authority to prohibit possession or rehabilitation of birds that are not protected by the Federal laws we are charged with implementing. We agree that rehabilitation of common invasive species such as starlings and house sparrows could have a minor negative impact on conservation of native species, and we would prefer that exotic species not be released to the wild. However, this issue is the jurisdiction of State governments, which have primary regulatory authority on most matters concerning wildlife.

Comment: The Service should transfer permitting authority to the States to administer, where States demonstrate they meet certain Federal standards.

Service response: At this time, the majority of the States have not developed specific regulations regarding migratory bird rehabilitation. As of 1999, according to a study conducted by Allan M. Casey III and Shirley J. Casey (*A Study of the State Regulations Governing Wildlife Rehabilitation During 1999*), only 33 States had regulations addressing wildlife rehabilitation. These vary widely in terms of scope and the level of detail addressed. State regulations pertaining specifically to migratory bird rehabilitation are virtually nonexistent.

Comment: The rule should require that the permittee be a member of either the National Wildlife Rehabilitators Association (NWRA), the International Wildlife Rehabilitation Council (IWRC), or both.

Service response: We do not agree that membership in the NWRA or the IWRC should be a prerequisite for obtaining or maintaining a Federal migratory bird rehabilitation permit. Both associations have contributed to the increasing quality of wildlife rehabilitation, and they have much to offer rehabilitators in the way of continuing education, networking, and other services. However, both the NWRA and the IWRC are nongovernmental organizations and are not affiliated with the Service. The criteria of this rule should ensure that permittees have basic competence and qualifications necessary for migratory bird rehabilitation. As with any profession, rehabilitators will always be in a position to gain additional knowledge and skills. Membership in the NWRA and/or IWRC may provide a means of attaining this growth and improvement, should rehabilitators elect to join either or both associations.

Comment: The rule should require permittees to provide evidence of continuing education every 2 years.

Service response: While we strongly encourage permittees to attend classes, conferences, seminars, and presentations in order to increase knowledge and improve skills, we believe that the qualifications for obtaining the Federal permit, together with the experience gained by putting the permit to use, will guarantee a basic level of knowledge and experience sufficient to rehabilitate migratory birds, without our mandating additional formal training.

Comment: Some provisions of the rule will interfere with recovery operations of chemical companies that operate under special purpose rehabilitation permits. The troubling provisions include the following requirements: listing all individuals on the permit (helpers at the chemical company recovery operations are usually seasonal college students and other temporary labor), conforming to facility requirements, maintaining a working relationship with veterinarians, and establishing a working relationship with another permitted rehabilitator. These recovery operations only hold birds long enough to clean off sodium carbonate (Na_2CO_3) or to allow fresh water to rinse off dilute phosphoric acid.

Service response: Because such recovery efforts operate under parameters much different from those governing the activities of ''typical'' migratory bird rehabilitators, the Service will continue to issue permits for this type of recovery operation under the Special Purpose permit (§ 21.27) rather than the permit category created by this rule.

Comment: The rule has far too many new paperwork requirements.

Service response: This rule does not introduce any new paperwork requirements. All reporting requirements remain unchanged from what has been required under the Special Purpose—Rehabilitation permit category.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531, *et seq.*), requires all Federal agencies to ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat.'' The Service underwent intra-Service consultation pursuant to section 7 of the ESA and determined that the activities authorized by this rule will not jeopardize listed species or result in destruction or adverse modification of critical habitat.

Required Determinations

Responsibilities of Federal Agencies To Protect Migratory Birds (Executive

Order 13186). This rule has been evaluated for impacts to migratory birds, with emphasis on species of management concern, and is in accordance with the guidance in E.O. 13186.

Regulatory Planning and Review (Executive Order 12866). In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB has made this final determination of significance under E.O. 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

b. This rule will not create serious inconsistencies or otherwise interfere with other agencies' actions. The Fish and Wildlife Service is the only Federal agency responsible for enforcing the Migratory Bird Treaty Act.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not have anything to do with the afore-mentioned programs.

d. This rule does not raise novel legal or policy issues. Rehabilitation activities for migratory birds currently operate under a different permit than that proposed in this rule.

Regulatory Flexibility Act. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must either certify that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.*, small business, small organizations, and small governmental jurisdictions) or prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act. This rule requires applicants for migratory bird rehabilitation permits to pay the fee listed in the Service permit application fee schedule at 50 CFR 13.11. Currently, the Service waives fees for migratory bird rehabilitation permit applicants. This rulemaking reinstates the standard $25 permit application fee and extends the term of the permit to 5 years. The net effect is that approximately 2,500 persons will pay $25 every 5 years to obtain and renew migratory bird rehabilitation permits, amounting to $5 per year per rehabilitator. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities. A final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. We have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

b. This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings. In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required.

Federalism. In accordance with Executive Order 13132, and based on the discussions in Regulatory Planning and Review above, this rule does not have significant Federalism effects. A Federalism assessment is not required. Because of the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This rule does not have a substantial direct effect on fiscal capacity, nor does it change the roles or responsibilities of Federal or State governments or intrude on State policy or administration.

Civil Justice Reform. In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system, and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Department of the Interior has certified to the Office of Management and Budget that this rule meets the applicable standards provided in Sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act. This rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collection associated with migratory bird permit programs has been approved by OMB under control number 1018–0022, which expires April 30, 2004. The Service 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.

National Environmental Policy Act. We have determined that this rule is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.10.

Government-to-Government Relationship with Tribes. In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, this rule will have no effect on federally recognized Indian tribes.

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons set forth in this preamble, we amend 50 CFR chapter I as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.21 to add paragraphs (c)(6), (c)(7), (d)(3), and (d)(4) to read as follows:

§ 17.21 Prohibitions.

* * * * *

(c) * * *

(6) Notwithstanding paragraph (c)(1) of this section, any person acting under a valid migratory bird rehabilitation permit issued pursuant to § 21.31 of this subchapter may take endangered migratory birds without an endangered

species permit if such action is necessary to aid a sick, injured, or orphaned endangered migratory bird, provided the permittee:

(i) Notifies the issuing Migratory Bird Permit Office immediately upon receipt of such bird (contact information for your issuing office is listed on your permit and on the Internet at *http://offices.fws.gov*); and

(ii) Disposes of or transfers such birds, or their parts or feathers, as directed by the Migratory Bird Permit Office.

(7) Notwithstanding paragraph (c)(1) of this section, persons exempt from the permit requirements of § 21.12(c) and (d) of this subchapter may take sick and injured endangered migratory birds without an endangered species permit in performing the activities authorized under § 21.12(c) and (d).

(d) * * *

(3) Notwithstanding paragraph (d)(1) of this section, any person acting under a valid migratory bird rehabilitation permit issued pursuant to § 21.31 of this subchapter may possess and transport endangered migratory birds without an endangered species permit when such action is necessary to aid a sick, injured, or orphaned endangered migratory bird, provided the permittee:

(i) Notifies the issuing Migratory Bird Permit Office immediately upon receipt of such bird (contact information for your issuing office is listed on your permit and on the Internet at *http://offices.fws.gov*); and

(ii) Disposes of or transfers such birds, or their parts or feathers, as directed by the Migratory Bird Permit Office.

(4) Notwithstanding paragraph (d)(1) of this section, persons exempt from the permit requirements of § 21.12(c) and (d) of this subchapter may possess and transport sick and injured endangered migratory bird species without an endangered species permit in performing the activities authorized under § 21.12(c) and (d).

* * * * *

PART 21—MIGRATORY BIRD PERMITS

■ 3. The authority citation for part 21 is revised to read as follows:

Authority: 16 U.S.C. 703–712; Pub. L. 106–108; 16 U.S.C. 668a.

■ 4. Revise § 21.2(b) to read as follows:

§ 21.2 Scope of regulations.

* * * * *

(b) This part, except for § 21.12(a), (c), and (d) (general permit exceptions); § 21.22 (banding or marking); § 21.29 (Federal falconry standards); and § 21.31 (rehabilitation), does not apply to the bald eagle (*Haliaeetus leucocephalus*) or the golden eagle (*Aquila chrysaetos*), for which regulations are provided in part 22 of this subchapter.

* * * * *

■ 5. Amend § 21.12 to add paragraphs (c) and (d) to read as follows:

§ 21.12 General exceptions to permit requirements.

* * * * *

(c) Employees of Federal, State, and local wildlife and land management agencies; employees of Federal, State, and local public health agencies; and laboratories under contract to such agencies may in the course of official business collect, possess, transport, and dispose of sick or dead migratory birds or their parts for analysis to confirm the presence of infectious disease. Nothing in this paragraph authorizes the take of uninjured or healthy birds without prior authorization from the Service. Additionally, nothing in this paragraph authorizes the taking, collection, or possession of migratory birds when circumstances indicate reasonable probability that death, injury, or disability was caused by factors other than infectious disease and/or natural toxins. These factors may include, but are not limited to, oil or chemical contamination, electrocution, shooting, or pesticides. If the cause of death of a bird is determined to be other than natural causes or disease, Service law enforcement officials must be contacted without delay.

(d) Licensed veterinarians are not required to obtain a Federal migratory bird permit to temporarily possess, stabilize, or euthanize sick and injured migratory birds. However, a veterinarian without a migratory bird rehabilitation permit must transfer any such bird to a federally permitted migratory bird rehabilitator within 24 hours after the bird's condition is stabilized, unless the bird is euthanized. If a veterinarian is unable to locate a permitted rehabilitator within that time, the veterinarian must contact his or her Regional Migratory Bird Permit Office for assistance in locating a permitted migratory bird rehabilitator and/or to obtain authorization to continue to hold the bird. In addition, veterinarians must:

(1) Notify the local U.S. Fish and Wildlife Service Ecological Services Office immediately upon receiving a threatened or endangered migratory bird species. Contact information for Ecological Services offices can be located on the Internet at *http://offices.fws.gov*;

(2) Euthanize migratory birds as required by § 21.31(e)(4)(iii) and § 21.31(e)(4)(iv), and dispose of dead migratory birds in accordance with § 21.31(e)(4)(vi); and

(3) Keep records for 5 years of all migratory birds that die while in their care, including those they euthanize. The records must include: the species of bird, the type of injury, the date of acquisition, the date of death, and whether the bird was euthanized.

■ 6. Add § 21.31 to subpart C to read as follows:

§ 21.31 Rehabilitation permits.

(a) *What is the permit requirement?* Except as provided in § 21.12, a rehabilitation permit is required to take, temporarily possess, or transport any migratory bird for rehabilitation purposes. However, any person who finds a sick, injured, or orphaned migratory bird may, without a permit, take possession of the bird in order to immediately transport it to a permitted rehabilitator.

(b) *What are the general permit provisions?*

(1) The permit authorizes you to:

(i) Take from the wild or receive from another person sick, injured, or orphaned migratory birds and to possess them and provide rehabilitative care for them for up to 180 days;

(ii) Transport such birds to a suitable habitat for release, to another permitted rehabilitator's facilities, or to a veterinarian;

(iii) Transfer, release, or euthanize such birds;

(iv) Transfer or otherwise dispose of dead specimens; and

(v) Receive, stabilize, and transfer within 48 hours types of migratory bird species not authorized by your permit, in cases of emergency. If a rehabilitator authorized to care for the bird is not available within that timeframe, you must contact the issuing office for authorization to retain the bird until it can be transferred.

(2) The permit does not authorize the use of migratory birds for educational purposes.

(c) *How do I apply for a migratory bird rehabilitation permit?* You must apply to the appropriate Regional Director—Attention Migratory Bird Permit Office. You can find addresses for the appropriate Regional Directors in § 2.2 of subchapter A of this chapter. Your application package must consist of the following:

(1) A completed application (Form 3–200–10b);

(2) A copy of your State rehabilitation permit, license, or other authorization, if one is required in your State; and

(3) A check or money order made payable to the ''U.S. Fish and Wildlife Service'' in the amount of the

application fee for permits issued under this section listed in § 13.11 of this chapter.

(d) *What criteria will the Service consider before issuing a permit?* (1) Upon receiving an application completed in accordance with paragraph (c) of this section, the Regional Director will decide whether to issue you a permit based on the general criteria of § 13.21 of this chapter and whether you meet the following requirements:

(i) You must be at least 18 years of age with at least 100 hours of hands-on experience, gained over the course of at least 1 whole year, rehabilitating the types of migratory birds you intend to rehabilitate (*e.g.*, waterbirds, raptors), or comparable experience. Up to 20 hours of the 100-hour time requirement may be fulfilled by participation in migratory bird rehabilitation seminars and courses.

(ii) Your facilities must be adequate to properly care for the type(s) of migratory bird species you intend to rehabilitate, or you must have a working relationship with a person or organization with such facilities.

(iii) You must have an agreement with a licensed veterinarian to provide medical care for the birds you intend to rehabilitate, unless you are a licensed veterinarian.

(iv) You must have a State permit, license, or other authorization to rehabilitate migratory birds if such authorization required by your State.

(2) In issuing a permit, the Regional Director may place restrictions on the types of migratory bird species you are authorized to rehabilitate, based on your experience and facilities as well as on the specific physical requirements and behavioral traits of particular species.

(e) *What are the standard conditions for this permit?* In addition to the general permit conditions set forth in part 13 of this chapter, rehabilitation permits are subject to the following conditions:

(1) *Facilities*. You must conduct the activities authorized by this permit in appropriate facilities that are approved and identified on the face of your permit. In evaluating whether caging dimensions are adequate, the Service will use as a guideline the standards developed by the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council (*Minimum Standards for Wildlife Rehabilitation, 2000*).[1] The Regional Migratory Bird Permit Office will authorize variation from the standards where doing so is reasonable and necessary to accommodate a particular rehabilitator's circumstances, unless a determination is made that such variation will jeopardize migratory birds. However, except as provided by paragraph (f)(2)(i) of this section, all facilities must adhere to the following criteria:

(i) Rehabilitation facilities for migratory birds must be secure and provide protection from predators, domestic animals, undue human disturbance, sun, wind, and inclement weather.

(ii) Caging must be made of a material that will not entangle or cause injury to the type of birds that will be housed within.

(iii) Enclosures must be kept clean, well-ventilated, and hygienic.

(iv) Birds must not be overcrowded, and must be provided enough perches, if applicable.

(v) Birds must be housed only with compatible migratory bird species.

(vi) Birds may not be displayed to the public unless you use video equipment, barriers, or other methods to reduce noise and exposure to humans to levels the birds would normally encounter in their habitat. You may not use any equipment for this purpose that causes stress or harm, or impedes the rehabilitation of any bird.

(2) *Dietary requirements*. You must provide the birds in your care with a diet that is appropriate and nutritionally approximates the natural diet consumed by the species in the wild, with consideration for the age and health of the individual bird.

(3) *Subpermittees*. Except as provided by paragraph (f)(2)(ii) of this section, anyone who will be performing activities that require permit authorization under paragraph (b)(1) of this section when you or a subpermittee are not present, including any individual who transports birds to or from your facility on a regular basis, must either possess his or her own Federal rehabilitation permit, or be authorized as your subpermittee by being named in writing to your issuing Migratory Bird Permit Office. Subpermittees must be at least 18 years of age and possess sufficient experience to tend the species in their care. Subpermittees authorized to care for migratory birds at a site other than your facility must have facilities adequate to house the species in their care, based on the criteria of paragraph (e)(1) of this section. All such facilities must be approved by the issuing office. As the primary permittee, you are legally responsible for ensuring that your subpermittees, staff, and volunteers adhere to the terms of your permit when conducting migratory bird rehabilitation activities.

(4) *Disposition of birds under your care*. (i) You must take every precaution to avoid imprinting or habituating birds in your care to humans. If a bird becomes imprinted to humans while under your care, you will be required to transfer the bird as directed by the issuing office.

(ii) You may not retain migratory birds longer than 180 days without additional authorization from your Regional Migratory Bird Permit Office. You must release all recuperated birds to suitable habitat as soon as seasonal conditions allow, following recovery of the bird. If the appropriate season for release is outside the 180-day timeframe, you must seek authorization from the Service to hold the bird until the appropriate season. Before releasing a threatened or endangered migratory bird, you must coordinate with your issuing Migratory Bird Permit Office.

(iii) You must euthanize any bird that cannot feed itself, perch upright, or ambulate without inflicting additional injuries to itself where medical and/or rehabilitative care will not reverse such conditions. You must euthanize any bird that is completely blind, and any bird that has sustained injuries that would require amputation of a leg, a foot, or a wing at the elbow or above (humero-ulnar joint) rather than performing such surgery, unless:

(A) A licensed veterinarian submits a written recommendation that the bird should be kept alive, including an analysis of why the bird is not expected to experience the injuries and/or ailments that typically occur in birds with these injuries and a commitment (from the veterinarian) to provide medical care for the bird for the duration of its life, including complete examinations at least once a year;

(B) A placement is available for the bird with a person or facility authorized to possess it, where it will receive the veterinary care described in paragraph (e)(4)(iii)(A) of this section; and

(C) The issuing office specifically authorizes continued possession, medical treatment, and rehabilitative care of the bird.

(iv) You must obtain authorization from your issuing Migratory Bird Permit Office before euthanizing endangered and threatened migratory bird species. In rare cases, the Service may designate

[1] Copies may be obtained by contacting either the National Wildlife Rehabilitators Association: 14 North 7th Avenue, St. Cloud MN 56303–4766, *http://www.nwawildlife.org/default.asp;* or the International Wildlife Rehabilitation Council: 829 Bancroft Way, Berkeley, CA 94710, *http://www.iwrc-online.org.*

a disposition other than euthanasia for those birds. If Service personnel are not available, you may euthanize endangered and threatened migratory birds without Service authorization when prompt euthanasia is warranted by humane consideration for the welfare of the bird.

(v) You may place nonreleasable live birds that are suitable for use in educational programs, foster parenting, research projects, or other permitted activities with persons permitted or otherwise authorized to possess such birds, with prior approval from your issuing Migratory Bird Permit Office.

(vi)(A) You may donate dead birds and parts thereof, except threatened and endangered species, and bald and golden eagles, to persons authorized by permit to possess migratory bird specimens or exempted from permit requirements under § 21.12.

(B) You must obtain approval from your issuing office before disposing of or transferring any live or dead endangered or threatened migratory bird specimen, parts, or feathers.

(C) You must send all dead bald and golden eagles, and their parts and feathers to: National Eagle Repository, Building 128, Rocky Mountain Arsenal, Commerce City, CO 80022. If your State requires you to notify State wildlife officers of a dead bald or golden eagle before sending the eagle to the Repository you must comply with State regulations. States may assume temporary possession of the carcasses for purposes of necropsy.

(D) Unless specifically required to do otherwise by the Service, you must promptly destroy all other dead specimens by such means as are necessary to prevent any exposure of the specimens to animals in the wild.

(vii) With authorization from your issuing Migratory Bird Permit Office, you may hold a nonreleasable bird longer than 180 days for the purpose of fostering juveniles during their rehabilitation. You may also use birds you possess under an educational permit to foster juveniles.

(viii) You may possess a reasonable number of feathers for imping purposes, based on the numbers and species of birds for which you regularly provide care.

(ix) You may draw blood and take other medical samples for purposes of the diagnosis and recovery of birds under your care, or for transfer to authorized facilities conducting research pertaining to a contagious disease or other public health hazard.

(x) You may conduct necropsies on dead specimens in your possession, except that you must obtain approval from your Regional Migratory Bird Permit Office before conducting necropsies on threatened or endangered species.

(xi) This permit does not confer ownership of any migratory bird. All birds held under this permit remain under the stewardship of the U.S. Fish and Wildlife Service.

(5) Notification to the U.S. Fish and Wildlife Service.

(i) You must notify your issuing Migratory Bird Permit Office within 24 hours of acquiring a threatened or endangered migratory bird species, or bald or golden eagle, whether live or dead. You may be required to transfer these birds to another facility designated by the Service.

(ii) You must immediately notify the local U.S. Fish and Wildlife Service Law Enforcement Office if you have reason to believe a bird has been poisoned, electrocuted, shot, or otherwise subjected to criminal activity. Contact information for your local Service Law Enforcement office is listed on your permit, or you can obtain it on the Internet at *http://offices.fws.gov.*

(iii) If the sickness, injury, or death of any bird is due or likely due to avian virus, or other contagious disease or public health hazard, you must notify and comply with the instructions given by the State or local authority that is responsible for tracking the suspected disease or hazard in your location, if that agency is currently collecting such information from the public.

(6) You must maintain a working relationship with a licensed veterinarian. If your working relationship with your original cooperating veterinarian is dissolved, you must establish an agreement within 30 days with another licensed veterinarian to provide medical services to the birds in your care, and furnish a copy of this agreement to the issuing office.

(7) *Recordkeeping.* You must maintain complete and accurate records of all migratory birds that you receive, including for each bird the date received, type of injury or illness, disposition, and date of disposition. You must retain these records for 5 years following the end of the calendar year covered by the records.

(8) *Annual report.* You must submit an annual report that includes the information required by paragraph (e)(7) for the preceding calendar year to your issuing Migratory Bird Permit Office by the date required on your permit. You may complete Service Form 3–202–4, or submit your annual report from a database you maintain, provided your report contains all, and only, the information required by Form 3–202–4.

(9) At the discretion of the Regional Director, we may stipulate on the face of your permit additional conditions compatible with the permit conditions set forth in this section, to place limits on numbers and/or types of birds you may possess under your permit, to stipulate authorized location(s) for your rehabilitation activities, or otherwise specify permitted activities, based on your experience and facilities.

(f) *How does this permit apply to oil and hazardous waste spills?* Prior to entering the location of an oil or hazardous material spill, you must obtain authorization from the U.S. Fish and Wildlife Service Field Response Coordinator or other designated Service representative and obtain permission from the On-Scene Coordinator. All activities within the location of the spill are subject to the authority of the On-Scene Coordinator. The U.S. Fish and Wildlife Service is responsible for the disposition of all migratory birds, dead or alive.

(1) Permit provisions in oil or hazardous material spills. (i) In addition to the rehabilitation permit provisions set forth in paragraph (b) of this section, when under the authority of the designated U.S. Fish and Wildlife Service representative this permit further authorizes you to temporarily possess healthy, unaffected birds for the purpose of removing them from imminent danger.

(ii) This permit does not authorize salvage of dead migratory birds. When dead migratory birds are discovered, a Service law enforcement officer must be notified immediately in order to coordinate the handling and collection of evidence. Contact information for your local Service Law Enforcement office is listed on your permit and on the Internet at *http://offices.fws.gov.* The designated Service representative will have direct control and responsibility over all live migratory birds, and will coordinate the collection, storage, and handling of any dead migratory birds with the Service's Division of Law Enforcement.

(iii) You must notify your issuing Migratory Bird Permit Office of any migratory birds in your possession within 24 hours of removing such birds from the area.

(2) Conditions specific to oil and hazardous waste spills. (i) *Facilities.* Facilities used at the scene of oil or hazardous waste spills may be temporary and/or mobile, and may provide less space and protection from noise and disturbance than facilities authorized under paragraph (e)(1) of this

section. Such facilities should conform as closely as possible with the facility specifications contained in the Service policy titled *Best Practices for Migratory Bird Care During Oil Spill Response.*[2]

(ii) *Subpermittees.* In cases of oil and hazardous waste spills, persons who assist with cleaning or treating migratory birds at the on-scene facility will not be required to have a rehabilitation permit or be a subpermittee; however, volunteers must be trained in rescue protocol for migratory birds affected by oil and hazardous waste spills. A permit (or subpermittee designation) is required to perform extended rehabilitation of such birds, after initial cleaning and treating, at a subsequent location.

(g) *Will I also need a permit from the State in which I live?* If your State requires a license, permit, or other authorization to rehabilitate migratory birds, your Federal migratory bird rehabilitation permit will not be valid if you do not also possess and adhere to the terms of the required State authorization, in addition to the Federal permit. Nothing in this section prevents a State from making and enforcing laws or regulations consistent with this section that are more restrictive or give further protection to migratory birds.

(h) *How long is a migratory bird rehabilitation permit valid?* Your rehabilitation permit will expire on the date designated on the face of the permit unless amended or revoked. No rehabilitation permit will have a term exceeding 5 years.

(i) *Will I need to apply for a new permit under this section if I already have a special purpose permit to rehabilitate migratory birds, issued under § 21.27 (Special purpose permits)?* (1) If you had a valid Special Purpose—Migratory Bird Rehabilitation Permit issued under § 21.27 on November 26, 2003, your permit will remain valid until the expiration date listed on its face. If you renew your permit, it will be issued under this section.

(2) If your original permit authorization predates permit application procedures requiring submission of photographs and diagrams for approval of your facilities, and your facilities have never been approved by the migratory bird permit office on the basis of such photographs and diagrams, you must submit photographs and diagrams of your facilities as part of your renewal application. If those facilities do not meet the criteria set forth under this section, your permit may be renewed for only 1 year. We will re-evaluate your facilities when you seek renewal in a year. If you have made the improvements necessary to bring your facilities into compliance with paragraph (e)(1) of this section, and the other criteria within this section for permit issuance are met, your permit may be renewed for up to the full 5-year tenure.

(3) If your facilities have already been approved on the basis of photographs and diagrams, and authorized under a valid § 21.27 special purpose permit, then they are preapproved to be authorized under your new permit issued under this section, unless those facilities have materially diminished in size or quality from what was authorized when you last renewed your permit, or unless you wish to expand the authorizations granted by your permit (*e.g.*, the number or types of birds you rehabilitate). Regulations governing permit renewal are set forth in § 13.22 of this chapter.

PART 22—EAGLE PERMITS

■ 7. The authority citation for part 22 continues to read as follows:

Authority: 16 U.S.C. 668a; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

■ 8. Amend § 22.11 by revising the first sentence to read as follows:

§ 22.11 What is the relationship to other permit requirements?

You may not take, possess, or transport any bald eagle (*Haliaeetus leucocephalus*) or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds, except as allowed by a valid permit issued under this part, 50 CFR part 13, and/or 50 CFR part 21 as provided by § 21.2, or authorized under a depredation order issued under subpart D of this part. * * *

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Dated: October 14, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 03–26823 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–55–P

[2] You can obtain copies of this document by writing to the U.S. Fish and Wildlife Service, Division of Environmental Quality, 4401 North Fairfax Drive, MS 322, Arlington, VA, 22203.

Proposed Rules

Federal Register
Vol. 68, No. 207
Monday, October 27, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Docket No. LS–01–08]

RIN 0581–AB98

Livestock Mandatory Reporting; Amendment To Revise Lamb Reporting Definitions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would amend the Livestock Mandatory Reporting regulations to modify the requirements for the submission of information on domestic and imported boxed lamb cuts sales. This rule would amend the definition of ''carlot-based'' by inserting language to limit carlot-based sales of boxed lamb cuts to transactions between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items. This rule would also amend the definition of ''importer'' by reducing the volume level of annual lamb imports establishing a person as an importer from 5,000 metric tons of lamb meat products per year to 2,500 metric tons. This amendment would improve the accuracy and reliability of the data being reported by the Agricultural Marketing Service (AMS) on domestic boxed lamb cuts sales by ensuring that the bulk of data being reported is representative of the market, thus enabling producers to evaluate market conditions and make more informed marketing decisions. This amendment would also increase the volume of imported products that would be reported to AMS, which will permit AMS to publish reports on the sales of imported boxed lamb cuts.

DATES: Comments must be submitted on or before December 26, 2003 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Comments may be sent to John E. Van Dyke, Chief, Livestock and Grain Market News Branch, Livestock and Seed Program, Agricultural Marketing Service, USDA, 1400 Independence Avenue, SW, Room 2619-South Building, Stop 0252, Washington, DC 20250–0242; telephone (202) 720–6231, facsimile (202) 690–3732, E-mail *marketnewscomments@usda.gov*. For further information, contact John E. Van Dyke at the above address. Comments received may be inspected at 1400 Independence Avenue, SW, Room 2619-South Building, Washington, DC between 7:30 a.m. and 4 p.m. The comments will also be posted on the Livestock and Grain Market News Branch Web site, located at *http://www.ams.usda.gov/lsmnpubs/*.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Livestock Mandatory Reporting Act of 1999 (Act) [7 U.S.C. 1635h–1636h], regulations implementing a mandatory program of reporting information related to the marketing of cattle, swine, lambs, and products of such livestock, were published in the **Federal Register** on December 1, 2000 (65 FR 75464). This Livestock Mandatory Reporting (LMR) program requires the submission of market information by packers who have annually slaughtered an average of 125,000 cattle or 100,000 swine over the most recent 5 calendar year period, or have annually slaughtered or processed an average of 75,000 lambs over the most recent 5 calendar year period. Importers who have annually imported an average of 5,000 metric tons of lamb meat products over the most recent 5 calendar year period are also subject to mandatory reporting requirements. The LMR program is intended to provide information on pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products that can be readily understood by producers, packers, and other market participants.

Section 241 of the Act gives the Department of Agriculture (USDA) authority to establish a mandatory lamb price reporting program that will, (1) provide timely, accurate, and reliable market information; (2) facilitate more informed marketing decisions; and (3) promote competition in the lamb slaughtering industry. AMS established submission requirements for lamb packers and lamb importers in accordance with this authority based upon its extensive knowledge of the lamb industry gained through a program of voluntary market information reporting of lamb.

Under the mandatory lamb price reporting program, packers are required to report information daily on domestic sales of boxed lamb cuts each reporting day including prices for sales, the type of sale, the branded product characteristics, the quantity of each sale, the USDA grade, trim specification, weight range, delivery period, the quantity of boxes of each cut, the weight range of each cut, and the product state of refrigeration. USDA reports on domestic boxed lamb cut sales to the public once each reporting day.

For any calendar year, a lamb importer who imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years is required to report to USDA weekly the prices received for imported lamb cuts sold on the domestic market. Additionally, an importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years is also required to report the above information, if USDA determines that the person should be considered an importer based on their volume of lamb imports.

Because there are not enough daily sales of imported products to meet the confidentiality guidelines and allow USDA to publish daily reports, lamb importers are required to report weekly prices received for sales of imported boxed lamb cuts sold on the domestic market during the prior week including the quantity of each transaction, the type of sale, the branded product characteristics, the product state of refrigeration, the cut of lamb, the trim specification, the cut weight range, and the product delivery period.

Boxed lamb is defined in the LMR regulations to mean those carlot-based portions of a lamb carcass including fresh primals, subprimals, cuts fabricated from subprimals, excluding portion-control cuts such as chops and steaks similar to those portion cut items described in the Institutional Meat Purchase Specifications (IMPS) for

Fresh Lamb and Mutton Series 200, and thin meats (*e.g.*, inside and outside skirts, pectoral meat, cap and wedge meat, and blade meat) not older than 14 days from date of manufacture; fresh ground lamb, lamb trimmings, and boneless processing lamb not older than 7 days from date of manufacture; frozen primals, subprimals, cuts fabricated from subprimals, and thin meats not older than 180 days from date of manufacture; and frozen ground lamb, lamb trimmings, and boneless processing lamb not older than 90 days from date of manufacture.

In the period since the implementation of the LMR program on April 2, 2001, the current collection of boxed lamb cuts market information has prevented AMS from publishing meaningful market information on sales of imported and domestic boxed lamb cuts. Because of this, the current definitions of the terms ''carlot-based'' and ''importer'' under the LMR regulations need to be amended.

In the LMR regulations, the term ''carlot-based'' is defined as, ''any transaction between a buyer and a seller destined for three or less delivery stops consisting of one or more individual boxed lamb items or any combination of carcass weights.'' However, in practice, the definition of carlot-based has resulted in having virtually all sales of boxed lamb cuts reported, including distributive-based transactions, as frequently packers of boxed lamb cuts do not know the exact number of stops a truck will make at the time that the prices are established and the sales are made.

Distributive-based sales are largely comprised of unique, value-added products in which prices often reflect added customer services. Because of the uniqueness of the distributive trade and the potential affect that the inclusion of such information might have on the aggregated reports AMS would publish, it was not intended to include the information in the LMR program. Such information may create a perception of wide price ranges in market reports for boxed lamb cuts and could send misleading signals to producers and packers as to the true direction of the market direction.

AMS has discussed and reviewed the issue of carlot-based and distributive-based transactions with lamb industry packers and processors. Based upon its review of this matter, including actual reporting on a 1,000 pounds or more basis, AMS believes that the 1,000 pound threshold is a more accurate dividing line between carlot-based sales and distributive-based sales and is consistent with the original intent of the regulation.

In order to conform to the original intent of not including these types of transactions, AMS proposes amending the boxed lamb cuts portion of the definition of ''carlot-based'' (7 CFR 59.300) by limiting reportable sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items. The 1,000 pound threshold is intended to separate out distributive-based transactions. This proposal would amend the definition of ''carlot-based'' to read, ''The term ''carlot-based'', when used in reference to lamb carcass sales, means any transaction between a buyer and a seller destined for three or less delivery stops consisting of any combination of carcass weights, provided, however, that when used in reference to boxed lamb cuts sales, the term ''carlot-based'' means any transaction between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items.''

AMS is proposing to establish the 1,000 pound threshold as the level dividing the majority of carlot-based sales from distributive-based sales. AMS believes that the 1,000 pound threshold would limit the submission of information on boxed lamb cut sales to more significant sales allowing AMS to publish more accurate and timely information on the boxed lamb cuts market while reducing the submission of information by covered lamb packers.

In the LMR regulations, the term ''importer'' (7 CFR 59.300) is defined as, ''any person engaged in the business of importing lamb meat products that takes ownership of such lamb meat products with the intent to sell or ship in U.S. commerce. For any calendar year, the term includes only those that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, the term includes those that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years, if USDA determines that the person should be considered an importer based on their volume of lamb imports.''

Because imported products comprise over one-third of the U.S. market (based on U.S. Census Bureau data, 66,882 metric tons in 2002) and can affect prices for domestic lamb, lamb importers were included for more complete information on lamb meat products being imported into the U.S., including the types, quantities, and prices of these products.

In the comment period prior to the publication of the final rule for the LMR program, AMS received five comments expressing concern that the lamb import threshold of 5,000 metric tons and the domestic lamb packer threshold of an average 75,000 head per year for each of the preceding 5 years were not comparable. These commenters believed that the threshold for lamb importers was set too high in relation to the domestic packer threshold and should be lowered to ensure adequate coverage of the imported lamb market. At that time, AMS expressed concern that lowering the threshold would increase the number of smaller importers that would be required to report. AMS believed that the products imported by many of these operations were so unique that AMS would be unable to report them without disclosing proprietary information. AMS expected that the 5,000 metric ton lamb importer threshold would cover a comparable percentage of the lamb imports as slaughter and processing are being covered by the cattle, swine and lamb packer definitions, or approximately 80% of lamb imported into the U.S.

During the period since the implementation of the LMR program on April 2, 2001, AMS has determined that the 5,000 metric ton provision limits the number of covered importers to a level below that which is necessary to ensure confidentiality of published information. As a result, AMS has been unable to publish market information on sales of imported boxed lamb cuts.

When AMS formulated its initial estimates on the number of importers that would be required to report under LMR, it was anticipated that six companies would meet the 5,000 metric ton threshold. However, after implementation of the LMR program, it was determined that the 5,000 metric ton threshold did not cover a sufficient number of lamb importers necessary to publish market information on imported lamb in accordance with the confidentiality provisions of the Act. After analyzing U.S. Customs Service data for total lamb imported for each of the 5 years between 1998 and 2002, AMS believes that the proposed 2,500 metric ton threshold would cover eight lamb importers which would allow AMS to collect and publish market reports on the imported boxed lamb cuts market in accordance with the confidentiality provisions of the Act.

AMS proposes amending the definition of ''importer'' to lower the existing 5,000 metric ton provision to 2,500 metric tons. This proposal would amend the definition of ''importer'' to read, ''The term 'importer' means any

person engaged in the business of importing lamb meat products who takes ownership of such lamb meat products with the intent to sell or ship in U.S. commerce. For any calendar year, the term includes only those that imported an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, the term includes those that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years, if USDA determines that the person should be considered an importer based on their volume of lamb imports.

The establishment of the 2,500 metric tons provision would be more consistent with the 75,000 head provision defining a lamb packer for purposes of livestock mandatory reporting. The 2,500 metric ton provision is equal to approximately 5.5 million pounds of lamb meat product ($2,500 \times 2204.6 = 5,511,500$ pounds). The 75,000 head provision is equal to approximately 5.3 million pounds of lamb meat product based upon an average lamb carcass weight of 71 pounds (National Agricultural Statistics Service data for 2001) ($75,000 \times 71 = 5,325,000$ pounds).

AMS welcomes written comments on the proposed changes. All comments will become a matter of public record.

Executive Orders 12866 and 12988

Although not economically significant, this proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. AMS has prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the proposed action, an examination of alternative approaches, and an analysis of the benefits and costs.

Need for Proposed Action. As stated in the background section, the current definition of carlot-based in the LMR regulations has resulted in requiring nearly all sales of boxed lamb cuts to be reported, including distributive-based transactions. It was not the Agency's intent to include this type of information in the LMR program as it may have created a perception of wide price ranges in market reports for boxed lamb cuts and could send misleading signals to producers and packers as to the true direction of the market.

AMS believes that amending the boxed lamb cuts portion of the definition of ''carlot-based'' by limiting reportable sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items would limit the submission of information on boxed lamb cut sales to significant sales, thus allowing AMS to publish more accurate and reliable market information and reduce the submission of information by covered lamb packers.

The current definition of ''importer'' in the LMR regulations has also resulted in difficulties in reporting market information on sales of imported boxed lamb cuts. For any calendar year, the term ''importer'' includes only those that import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years. AMS expected that the 5,000 metric ton threshold would cover a comparable percentage of lamb imports as slaughter and processing are being covered by the cattle, swine, and lamb packer definitions, or approximately 80% of lamb imported into the U.S. However, this has not been the case. When this program was initially implemented, only two importers would have been covered under the LMR program which hindered AMS'' ability to collect and publish market information on imported boxed lamb cuts.

AMS believes that amending the definition of importer to lower the existing 5,000 metric ton threshold to 2,500 metric tons would now cover eight lamb importers and would allow AMS to collect and publish market reports on the imported boxed lamb cuts market.

Alternatives. Various methods were considered by which the objectives of the rule could be accomplished. The Agency looked at other ways of defining carlot-based such that distributive-sales would not be covered, including using 500 pounds as the threshold. However, after discussions with lamb industry packers and processors, AMS believes that a 500 pound threshold could result in the inclusion of products for which prices could be established on factors other than the market value and that a 1,000 pound threshold would be a more accurate dividing line between carlot-based sales and distributive-based sales.

The Agency also looked at other ways of defining the term importer. AMS received several comments in the comment period prior to the publication of the final LMR regulations which supported a threshold of 2,500 metric tons in defining an importer. At that time, AMS believed that this level would preclude AMS from reporting a significant number of transactions due to confidentiality guidelines. However, AMS now believes that lowering the threshold to 2,500 metric tons would cover eight importers which is a sufficient number of importers to allow AMS to publish market information without disclosing proprietary information.

Summary of Benefits. This proposal would allow AMS to collect and publish market reports on the imported boxed lamb cuts market. As imports account for over one-third of the U.S. market and can greatly impact the prices for domestic lamb, implementation of this rule would enable participants to better evaluate market conditions and make more informed marketing decisions, thus improving the reporting services of AMS.

Summary of Costs. In the final LMR regulations (65 FR 75464), AMS prepared a complete cost analysis of the LMR program. This amendment is not anticipated to substantially change these prior estimates. AMS estimates that the total annual burden on each small lamb importer would remain at $2,070, including $87 for annual costs associated with electronically submitting data, $150 for annual share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS. AMS estimates that the total annual burden on each small lamb packer would remain at $7,860, including $5,875 for annual costs associated with electronically submitting data, $150 for annual share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS. The estimate of the number of importers that would be required to report would increase from six to eight.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. States and political divisions of States are specifically preempted by § 259 of the Act from imposing requirements in addition to, or inconsistent with, any requirements of the Act with respect to the submission or publication of information on the prices and quantities of livestock or livestock products. Further, the Act does not restrict or modify the authority of the USDA to administer or enforce the Packers and Stockyards Act, 1921 [7 U.S.C. 181 *et seq.*]; administer, enforce, or collect voluntary reports under the Act or any other laws; or access documentary evidence as provided under sections 9 and 10 of the Federal Trade Commission Act [15 U.S.C. 49, 50]. There are no

administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

In promulgating the final LMR regulations (65 FR 75464), AMS considered the potential civil rights implications on minorities, women, or persons with disabilities and prepared a Civil Rights Impact Analysis to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or family status.

The proposed amendments to the LMR regulations do not alter any of the findings of the Civil Rights Impact Analysis on the LMR regulations.

Regulatory Flexibility Act

This proposed rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*]. The purpose of the RFA is to consider the economic impact of a rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace have been evaluated. Regulatory action should be appropriate to the scale of the businesses subject to the action. The collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. The Act (7 U.S.C. 1635–1636) requires AMS to collect and publish livestock market information. The required information is only available directly from those entities required to report under the Act and by the LMR regulations and exists nowhere else. Therefore, the LMR regulations do not duplicate market information reasonably accessible to the Agency.

In formulating this proposed rule, particular consideration was given to reducing the burden on entities while still achieving the objectives of the LMR regulations. Accordingly, proposed thresholds were set which would redefine those sales transactions considered to be ''carlot-based'' and therefore required to be reported under the LMR program, and those entities which would be required to report information on sales of imported boxed lamb cuts including applicable branded product.

The proposal would require packers to report information on carlot-based sales transactions of boxed lamb cuts consisting of 1,000 pounds or more of one or more individual boxed lamb items. The definition of ''carlot-based'' would be amended to read, ''The term ''carlot-based'', when used in reference to lamb carcass sales, means any transaction between a buyer and a seller destined for three or less delivery stops consisting of any combination of carcass weights. When used in reference to boxed lamb cuts sales, the term ''carlot-based'' means any transaction between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items.''

Additionally, the proposal would also require importers that imported an average of 2,500 metric tons of lamb meat products per year to report information on sales transactions of boxed lamb cuts. The definition of ''importer'' would be amended to read, ''For any calendar year, lamb importers that imported an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years would be required to report. Additionally, lamb importers that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years if the USDA determines that the person should be considered an importer based on the volume of lamb imports are required to report.''

Implementation of the proposed amendment redefining the term ''carlot-based'' would not change the number of entities required to submit information on sales of boxed lamb cuts under the LMR regulations.

Implementation of the proposed amendment redefining the term ''importer'' would slightly increase the original estimate of the number of lamb importers required to submit information on sales of imported boxed lamb cuts under the LMR regulations. After analyzing the U.S. Customs Service data for total lamb imported into the U.S. by importer for each of the 5 years between 1998 and 2002, AMS believes that the 2,500 metric ton threshold would now cover eight importers of lamb into the U.S. (one importer is also a packer).

Accordingly, we also have prepared a regulatory flexibility analysis. The RFA compares the size of meat packing plants to the Standard Industrial Code (SIC) established by the Small Business Administration (SBA) [13 CFR 121.201] to determine the percentage of small businesses within the meat packing industry and the wholesale meat products trade, including importers. Under these size standards, meat packing companies with 500 or less employees are considered small business entities (SIC 2011) and lamb importers with 100 or less employees are considered small business entities (SIC 5147).

The objective of this proposed rule is to improve the price and supply reporting services of USDA. AMS believes that this objective can be accomplished by amending the definitions of the terms ''carlot-based'' and ''importer'' in the LMR regulations.

The LMR regulations provide for the mandatory reporting of market information by livestock packers who for any calendar year have slaughtered a certain number of livestock during the immediately preceding 5 calendar years. Lamb plants required to report include those that for any calendar year slaughter or process the equivalent of 75,000 head per year during the immediately preceding 5 calendar years. Additionally, for any calendar year lamb importers that imported an average of 5,000 metric tons of lamb meat products per calendar year during the immediately preceding 5 calendar years are also required to report details of their purchases. Additionally, lamb packers and lamb meat processors and importers that did not slaughter or process the equivalent of 75,000 head per year or import 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years are required to report if the USDA determines that they should be considered an importer based on their volume of lamb imports. This proposed rule would amend the LMR regulations to redefine those entities considered as importers by changing the 5,000 metric ton provision to 2,500 metric tons.

These packers and importers are required to report the details of all transactions involving domestic sales of boxed lamb cuts including applicable branded product, and imported boxed lamb cuts including applicable branded product to AMS. Lamb information is reported to AMS according to the schedule mandated by the LMR regulations with sales of boxed lamb cuts reported once each day. Previous week sales of imported boxed lamb cuts including applicable branded boxed lamb cuts are reported once weekly on the first reporting day of the week.

For any calendar year, lamb packers required to report include those that slaughtered or processed the equivalent of 75,000 head per year during each of the immediately preceding 5 calendar years. Also included are processing plants that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years but are determined to be a packer by USDA based on the capacity of the processing plant. For any calendar year, an importer that imported an average of

2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years would be required to report under this proposed rule. Additionally, a lamb importer that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years would also be required to report under this proposed rule if USDA determines that the person should be considered an importer based on the volume of lamb imports. Under this proposal, 20 individual plants including importers would be required to report information on boxed lamb sales. Based on the criteria established by the SBA to classify small businesses (SIC 2011 and 5147), all 20 of these lamb plants and importers would be considered small businesses with no lamb packer employing more than 500 people and no lamb importer employing more than 100 people. The figure of 20 lamb packer and importer plants required to report represents approximately 3.0% of the lamb plants and importers in the U.S. Nearly all of the remaining approximately 97.0% of lamb plants and importers would be considered small businesses and would be exempt from mandatory reporting.

The LMR regulations require the reporting of specific market information regarding the buying and selling of livestock and livestock products. The information is reported to AMS by electronic means and the adoption of the proposed rule would not affect this requirement. Electronic reporting involves the transfer of data from a packer's or importer's electronic recordkeeping system to a centrally located AMS electronic database. The packer or importer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS.

Once the required information has been entered into the AMS database, it is aggregated and processed into various market reports which are released according to the daily and weekly time schedule set forth in the LMR regulations. As an alternative, AMS also developed and made available web-based input forms for submitting data online as AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system.

In the LMR regulations, AMS estimated the total annual burden on each small lamb packer to be $7,860 including $5,875 for annual costs associated with electronically submitting data, $150.00 for annual share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS. AMS estimated the total annual burden on each small importer of lamb to be $2,070 including $87 for annual costs associated with electronically submitting data, $150.00 for annual share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS.

This proposed rule does not substantially change these prior estimates. While adjusting the 5,000 metric ton provision that establishes those lamb importers covered under the LMR regulations to 2,500 metric tons increases the number of lamb importers required to report to eight, the estimated annual cost burden per importer of $2,070 remains the same. Amending the definition for the term ''carlot-based'' by limiting covered sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items would be expected to lessen the number of covered sales transactions that are submitted to AMS. However, AMS's submission burden estimates were based on lamb packers and importers using electronic reporting methods to automatically compile and submit required information. AMS believes the burden savings resulting from electronically compiling and submitting a reduced number of sales transactions to be negligible considering that the speed of electronic systems is measured in milliseconds.

Each packer and importer required to report information to USDA must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, class, head count, weight, quality grade, yield grade, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers and importers are required by the LMR regulations to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. Reporting packers and importers are also required to maintain copies of the information provided to AMS. All of the above-mentioned paperwork must be kept for at least 2 years. Packers and importers are not required to report any other new or additional information that they do not generally have available or maintain. Further, they are not required to keep any information that would prove unduly burdensome to maintain. The paperwork burden that is imposed on the packers and importers is further discussed in the section entitled Paperwork Reduction Act that follows.

In addition, AMS has not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this proposed rule.

Professional skills required for recordkeeping under the LMR regulations are not different than those already employed by the reporting entities. Reporting is accomplished using computers or similar electronic means. This proposed rule does not affect the professional skills required for recordkeeping.

The LMR regulations require lamb slaughter and processing plants and lamb importers of a certain size to report information to the USDA at prescribed times throughout the day and week. The LMR regulations already exempt many small businesses by the establishment of daily slaughter, processing, and import capacity thresholds. Based on figures published by the National Agricultural Statistics Service, there were 538 lamb federally inspected slaughter plants operating in the U.S. at the end of 2001. The LMR regulations require 20 lamb packers and importers to report information (approximately 2% of all federally inspected lamb plants and approximately 1% of all lamb importers). Therefore, approximately 98% of all lamb packers and approximately 99% of lamb importers are not required to report. As discussed earlier, this proposed rule does not change this requirement.

With regard to alternatives, if the definitions of importer and carlot-based are not changed, AMS would continue to be hindered in reporting more accurate and reliable information on sales of imported and domestic boxed lamb cuts.

AMS will continue to work actively with those small businesses required to report to minimize the burden on them to the maximum extent practicable.

Paperwork Reduction Act

In accordance with OMB regulation (5 CFR Part 1320) that implements the Paperwork Reduction Act (44 U.S.C. Chapter 35), the information collection has been previously approved by OMB and assigned OMB control number 0581–0186. A revised information collection package has been submitted to OMB for approval of a 15 hour increase in total burden hours.

The purpose of this proposed rule is to amend the LMR regulations (65 FR 75464) to modify the requirement for

the submission of information on domestic and imported boxed lamb cuts sales. All other provisions of the LMR regulations will remain the same. Adjusting the 5,000 metric ton provision that establishes those lamb importers covered under the LMR regulations to 2,500 metric tons increases the estimated number of lamb importers required to report from six to eight. This change will not substantially impact the overall total burden hours. The estimated annual cost burden per importer of $2,070 remains the same. Amending the definition for the term ''carlot-based'' by limiting covered sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items would be expected to lessen the number of covered sales transactions required to be submitted to AMS. However, AMS's submission burden estimates were based on lamb packers and importers using electronic reporting methods to automatically compile and submit required information. AMS believes the burden savings resulting from electronically compiling and submitting a reduced number of sales transactions to be negligible considering that the speed of electronic systems is measured in milliseconds.

AMS is committed to implementation of the Government Paperwork Elimination Act which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent practicable.

List of Subjects in 7 CFR Part 59

Lamb, Livestock, Reporting, Importer.

For the reasons set forth in the preamble, Chapter I, of Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 59—LIVESTOCK MANDATORY REPORTING

1. The authority citation for part 59 continues to read as follows:

Authority: 7 U.S.C. 1621 et. seq.

Subpart D—Lamb Reporting

§ 59.300 [Amended]

2. The definition of the term *Carlot-based* is revised to read as follows:

The term *Carlot-based* when used in reference to lamb carcass sales means any transaction between a buyer and a seller destined for three or more delivery stops consisting of any combination of carcass weights. When used in reference to boxed lamb cuts sales, the term *Carlot-based* means any transaction between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items.

3. In the definition of the term *Importer*, the number ''5,000'' is revised to read ''2,500'' each time it appears.

Dated: October 21, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–27015 Filed 10–24–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV03–966–4 PR]

Tomatoes Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Florida Tomato Committee (Committee) for the 2003–2004 and subsequent fiscal periods from $.02 to $.025 per 25-pound container or equivalent of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Authorization to assess tomato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 26, 2003.

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

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable tomatoes beginning on August 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

This rule would increase the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $.02 to $.025 per 25-pound container or equivalent of tomatoes.

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

For the 2001–02 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA (68 FR 15338, March 31, 2003; 66 FR 56599, November 9, 2001).

The Committee met on September 4, 2003, and unanimously recommended 2003–04 expenditures of $1,773,100 and an assessment rate of $0.025 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were $1,910,840. The assessment rate of $0.025 is $.005 higher than the rate currently in effect. The number of assessable containers during 2003–04 is estimated to be 50 million and the recommended assessment rate would generate $1,250,000 in income. The Committee's financial reserve is now estimated to be $1,767,427 and is available to cover the deficit in assessment income. The increased assessment rate would allow the Committee to maintain its financial reserve at a level it deems appropriate.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $700,000 for education and promotions, $405,000 for salaries, $320,000 for research, $49,000 for employee health insurance, and $61,000 for employee retirement. Budgeted expenses for these items in 2002–03 were $900,000 for education and promotion, $370,730 for salaries, $320,000 for research, $38,250 for employee health insurance, and $54,860 for employee retirement, respectively.

The assessment rate recommended by the Committee was derived by examining anticipated expenses and expected shipments of Florida tomatoes and considering available reserves. As mentioned earlier, tomato shipments for the year are estimated at 50 million which should provide $1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve currently total $1,767,427 and are within the maximum permitted by the order of not to exceed one fiscal period's expenses as stated in § 966.44.

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

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 100 producers of tomatoes in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2002–03 season was approximately $9.59 per 25-pound container or equivalent, and total fresh shipments for the 2002–03 season were 50,974,342 25-pound equivalent cartons of tomatoes. Committee data indicates that approximately 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average annual price of $9.59 per 25-pound container, about 75 percent of handlers could be considered small businesses under SBA's definition. Therefore, the majority of handlers of Florida tomato handlers may be classified as small entities. It also is believed that the majority of Florida tomato producers may be classified as small entities. This rule would increase the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.02 to $0.025 per 25-pound container of tomatoes. The Committee unanimously recommended 2003–04 expenditures of $1,773,100 and an assessment rate of $0.025 per pound container. The proposed assessment rate of $0.025 is $0.005 higher than the 2002–03 rate. The quantity of assessable tomatoes for the 2003–04 season is estimated at 50 million 25-pound cartons. Thus, the $0.025 rate should provide $1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 year include $700,000 for education and promotions, $405,000 for salaries, $320,000 for research, $49,000 for employee health insurance, and $54,860 for employee retirement. Budgeted expenses for these items in 2002–03 were $900,000 for education

and promotion, $370,730 for salaries, $320,000 for research, $38,250 for employee health insurance, and $54,860 for employee retirement, respectively.

As previously mentioned, the number of assessable containers during 2003–04 is estimated to be 50 million and the recommended assessment rate would generate $1,250,000 in income. The Committee's financial reserve is now estimated to be $1,767,427 and is available to cover the deficit in assessment income. The increased assessment rate would allow the Committee to maintain its financial reserve at a level it deems appropriate.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $1,773,100 which included increases in administrative and office salaries, research, and education and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the tomato industry. The assessment rate of $0.025 per 25-pound container of tomatoes was determined by examining the anticipated expenses and expected shipments and considering available reserves. The recommended assessment rate would generate $1,250,000 in income. This is approximately $523,100 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2003–04 season could range between $6.45 and $10.37 per 25-pound container of tomatoes. Therefore, the estimated assessment revenue for the 2003–04 as a percentage of total grower revenue could range between .4 and .2 percent, respectively.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 4, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

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

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

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2003–04 fiscal period began on August, 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past fiscal periods.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is proposed to be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.234 is revised to read as follows:

§ 966.234 Assessment rate.

On and after August, 1, 2003, an assessment rate of $0.025 per 25-pound container or equivalent is established for Florida tomatoes.

Dated: October 21, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–27014 Filed 10–24–03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 214, and 299

[ICE No. 2297–03]

RIN 1653–AA23

Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104–208

AGENCY: Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: On March 1, 2003, the former Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002 (HSA) (Public Law 107–296). The Service's adjudications functions transferred to the U.S. Citizenship and Immigration Services (CIS) of DHS, and the Service's Student and Exchange Visitor Information System (SEVIS) functions transferred to the Bureau of Immigrations and Customs Enforcement (ICE) of DHS. For the sake of simplicity, any reference to the Service has been changed to DHS, even when referencing events that preceded March 1, 2003. This rule proposes to amend the regulations of DHS to provide for the collection of a fee to be paid by certain aliens who are applying for F–1, F–3, M–1, or M–3 student visas or for a J–1 visa as an exchange visitor. Generally, the rule proposes a fee of $100, although applicants for certain J–1 exchange programs will pay a reduced fee of $35, and certain other aliens will be exempt from the fee altogether. This proposed rule explains which aliens will be required to pay the fee, describes the consequences that an alien seeking an F, J, or M nonimmigrant visa faces upon failure to pay the fee, and specifies which aliens are exempt from the fee. This fee is levied on students applying for F, J, or M nonimmigrant visas to cover the costs of administering and maintaining the SEVIS system and ensuring compliance by individuals, schools, and organizations with the system's requirements. The fee imposed under this proposed rule will pay for the continued operation of the SEVIS

program and will also include the funds to hire SEVIS Liaison Officers and other ICE officers to ensure compliance with the SEVIS requirements.

DATES: Written comments must be submitted on or before December 26, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference ICE No. 2297–03 on your correspondence. Comments may also be submitted electronically to DHS at *rfs.regs@dhs.gov.* When submitting comments electronically, you must include ICE No. 2297–03 in the subject box. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Jill Drury, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 800 K Street, NW, Room 1000, Washington, DC 20536, telephone (202) 514–1988.

SUPPLEMENTARY INFORMATION:

Background

Who Are F, J, and M Nonimmigrants?

The Immigration and Nationality Act (Act) provides for the admission of different classes of nonimmigrants, who are foreign nationals seeking temporary admission to the United States.

The purpose of the nonimmigrant's intended stay in the United States determines his or her proper nonimmigrant classification. Some classifications permit the nonimmigrant's spouse and qualifying child(ren) to accompany the nonimmigrant to the United States, or to join the nonimmigrant here. To qualify, a child must be unmarried and under the age of 21.

F–1 nonimmigrants, as defined in section 101(a)(15)(F) of the Act, are foreign students coming to the United States to pursue a full course of study in DHS-approved colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, other academic institutions, or in language training programs in the United States. For the purposes of this rule, the term ''school'' refers to all of these types of DHS-approved institutions. An F–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an F–1 student.

J–1 nonimmigrants, as defined in section 101(a)(15)(J) of the Act, are foreign nationals who have been selected by a sponsor designated by the United States Department of State (DOS) (formerly the United States Information Agency [USIA]) to participate in an exchange visitor program in the United States. The J–1 classification includes aliens who are participating in programs under which they will receive graduate medical education or training. A J–2 nonimmigrant is a foreign national who is the spouse or qualifying child of a J–1 exchange visitor.

M–1 nonimmigrants, as defined in section 101(a)(15)(M) of the Act, are foreign nationals pursuing a full course of study at a DHS-approved vocational or other recognized nonacademic institution (other than in language training programs) in the United States. The term ''school'' also encompasses those institutions attended by M–1 students for the purposes of this rule. An M–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an M–1 student.

On November 2, 2002, Congress passed the Border Commuter Student Act of 2002, Pub. L. (107–274), which created new F–3 and M–3 nonimmigrant classifications for certain aliens who are citizens of Canada or Mexico who continue to reside in their home country while commuting to the United States to attend an approved F or M school. Such border commuter students are not subject to the existing requirement for F–1 and M–1 students to be pursuing a full course of study, and are specifically permitted to engage in either full-time or part-time studies. DHS recently adopted regulations relating to border commuter students, 67 FR 54941 (August 27, 2002) (codified at 8 CFR 214.2(f)(18) and (m)(19)), and will be amending those regulations in the future to make the necessary conforming amendments in response to the new legislation. In this proposed rule, DHS merely notes that the new F–3 and M–3 students will be subject to the same rules regarding the collection of the fee as for F–1 and M–1 students.

Why Is DHS Proposing This Rule?

This rule is necessary to implement section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 8 U.S.C. 1372, (regarding the program to collect information relating to nonimmigrant foreign students and other exchange program participants) and provides for the collection of the required fee to defray the costs of this program. Section 641 of IIRIRA requires DHS to collect current information, on an ongoing basis, from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during the course of their stay in the United States, using electronic reporting technology to the fullest extent practicable.

DHS has implemented the Student and Exchange Visitor Information System (SEVIS) to carry out this statutory requirement. The substantive requirements and procedures for SEVIS have been promulgated in separate rulemaking proceedings. *See* 67 FR 34862 (May 16, 2002) (proposed rule implementing SEVIS); 67 FR 44343 (July 1, 2002) (interim rule for schools to apply for preliminary enrollment in SEVIS); 67 FR 60107 (Sept. 25, 2002) (interim rule for certification of schools applying for enrollment in SEVIS); 67 FR 76256 (Dec. 11, 2002) (DHS's final rule implementing SEVIS); 67 FR 76307 (Dec. 12, 2002) (DOS interim rule implementing SEVIS).

In accordance with section 641(e) of IIRIRA, as amended, 8 U.S.C. 1372(e), which directs that this information collection system be self-funded by aliens in those visa classifications, DHS proposes to set the amount of the fee and outline the regulatory provisions associated with such a fee.

What Does This Rule Propose To do?

Based partly on a fee study of the costs of implementing SEVIS conducted in 2002, and upon the costs of ensuring compliance with the program, this rule proposes to set the regular fee at $100. Section 641(e)(3) of IIRIRA provides that aliens applying for a J–1 visa as a participant in an exchange program sponsored by the Federal Government are exempt from the fee. Under section 641(e) of IIRIRA, as amended by section 110 of the Making Appropriations for the Government of the District of Columbia and Other Activities Chargeable in Whole or in Part Against the Revenues of Said District of Columbia for the Fiscal Year Ending September 30, 2001 and for Other Purposes, Pub. L. 106–553 dated December 21, 2000, aliens who are applying for a J–1 visa as an au pair, camp counselor, or participant in a summer work travel program are subject to a reduced fee of not more than $35. DHS is also proposing in this rule that dependent aliens (F–2, J–2, and M–2) are exempt from paying a fee in connection with that status.

Aliens who are subject to the fee will pay the fee prior to being granted an F–1, F–3, J–1, M–1 or M–3 nonimmigrant visa (or, for aliens who are exempt from the visa requirement under section 212(d)(4) of the Act, prior to their admission to the United States). Similarly, aliens already in the United States who apply for a change of status

to one of those classifications (for example, an alien admitted as an F–2 dependent or a B–2 visitor for pleasure who seeks to pursue full-time study as an F–1 college student) also will pay the fee prior to applying for the change of status. However, an alien who has already paid the $100 or $35 fee, prior to obtaining F, J, or M nonimmigrant status, is not required to pay the fee again at the time of applying for an extension of status in the same classification as an F, J or M nonimmigrant. DHS has sought to build in as much flexibility as possible for the payment of the fee, recognizing that aliens abroad will be required to pay the fee prior to seeking an F, J or M visa at a U.S. embassy or consulate. Accordingly, DHS proposes two options for aliens to pay the fee:

(1) The alien may pay the fee by mail, by submitting Form I–901, Fee Remittance for Certain F, M, and J Nonimmigrants, together with a check or money order drawn on a U.S. bank and payable in U.S. dollars to ''I–901 Student/Exchange Visitor Processing Fee;'' or

(2) The alien may submit the fee electronically, by completing Form I–901 through the Internet and using a credit card.

These options are similar to the usual means that any student or exchange visitor abroad would use to pay fees and expenses to the school or exchange program. The requirement that a check or money order be drawn on an U.S. bank does not necessarily mean that the student living abroad must approach an U.S. bank to make a payment. As provided in 8 CFR 103.7(a)(1), an application fee submitted from outside the U.S. ''may be made by bank international money order or foreign draft drawn on a financial institution in the United States'' and payable in U.S. currency. Many foreign banks are able to issue checks or money orders drawn on a U.S. bank. Accordingly, students may obtain checks from banks chartered or operated in the U.S., from foreign subsidiaries of U.S. banks, or from foreign banks that have an arrangement with a U.S. bank to issue a check, money order, or foreign draft that is drawn on a U.S. bank.

DHS will issue a paper receipt to the alien in each case acknowledging the payment. As discussed further below in response to the public comments on the December 21, 1999 proposed rule, an alien who submits the fee electronically will be able to print out an immediate electronic receipt. Finally, DHS intends to incorporate the fee payment information electronically into SEVIS, which will then be passed in a data share arrangement to the Department of State so that a consular officer abroad will be able to confirm that the fee has been paid at the time the alien applies for an F, J, or M visa.

To accommodate multiple options for payment, DHS intends to continue to consider alternate means for payment where available. Such options may include other companies that have products and services that facilitate fee payment and fee receipt abroad or collection of the fee payment by another federal agency.

How Has Congress Amended the Law as It Relates to the Collection of the Fee?

The provisions in this proposed rule have taken into account amendments to section 641 of IIRIRA contained in section 404 of the Visa Waiver Permanent Program Act of 2002, Pub. L. 106–396 dated October 20, 2000, and section 416 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56, dated October 26, 2001.

As initially enacted by Congress, section 641(e) of IIRIRA required the schools and exchange programs to collect the fee. Because of the many concerns presented by that approach, DHS, working in cooperation with other governmental agencies and members of the regulated community, submitted to Congress amendatory language to section 641(e) of IIRIRA, removing the schools and exchange visitor programs from the role of fee collectors. Congress adopted this language with modifications in section 404 of the Pub. L. 106–396. The fee will now be collected from the alien directly by DHS.

The USA PATRIOT Act expanded the class of nonimmigrants subject to the fee. Section 416 of the USA PATRIOT Act provided that the SEVIS program and the applicable fee cover all F and M students attending an approved educational institution, not merely those attending an institution of higher education. It also specifically required that flight schools be included in both the fee requirement and the underlying tracking system.

Was a Previous Proposed Rule Published Prior to the Issuance of This Proposed Rule?

On December 21, 1999, a proposed rule was published in the **Federal Register** at 64 FR 71323, proposing to implement the fee collection process pursuant to section 641(e) of the IIRIRA. Specifically, the proposed rule sought to establish a $95 fee that schools and exchange visitor programs would collect and remit on behalf of qualifying F–1, J–1, and M–1 nonimmigrants upon the occurrence of certain events during the course of the student's or exchange visitor's stay in the United States. The proposed rule also calculated the basis for the user fee population base and outlined the associated program costs from which the fee amount was derived. Written comments were due by February 22, 2000.

A total of 4,617 comments were received on the proposed rule.

Since the receipt of comments on the initial proposed rule, the HSA abolished the Service. Likewise, there have been several statutory changes relating to the collection of fees. SEVIS, a concept at the time of the proposed rule, has been implemented and I–20's and DS–2019's not issued through the SEVIS system are no longer valid. In light of these factors, DHS is issuing this proposed rule, in lieu of implementing a final rule.

The following is a discussion of differences between this proposed rule and the rule proposed in 1999, as well as comments received regarding the 1999 proposed rule and DHS's response. Many commenters to the 1999 proposed rule addressed identical issues in their comments, and as a result, the number of comments exceeds the number of issues discussed here. This proposed rule also responds to legislative enactments affecting the collection and the fee amount that occurred after publication of the 1999 proposed rule. Taking into consideration both the comments received and the passage of the new legislation, DHS proposes the resulting regulatory provisions set forth herein.

Significant Differences Between This Proposed Rule and the Rule Proposed in 1999

On December 21, 1999, a fee of $95 was proposed in the **Federal Register** to support SEVIS (64 FR 71323). After careful evaluation of the costs to design, develop, and maintain the statutorily mandated information collection system, DHS now proposes the fee as $100 for nonimmigrant students and exchange visitors, and $35 for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program, initially arriving or continuing a program in the United States. In addition, DHS proposes to collect the fee from the student or exchange visitor directly, rather than placing the burden on the school or exchange program to collect or remit the fee.

Additionally, DHS now has specifically authorized an exemption

from fee payment for aliens who initially paid a SEVIS fee and applied for an F–1, F–3, J–1, M–1, or M–3 visa, but whose initial application was denied by the consular officer abroad. DHS has provided that such an alien will not have to pay a new SEVIS fee if the new application for a visa is made within nine months of the notice of denial. This length of time was selected as consistent with exceptions for payment of duplicative fees. DHS acknowledges that this policy may differentiate in treatment between aliens present in the United States and aliens who are outside the United States. However, DHS believes it is imperative for aliens to be extended the benefit of only paying one fee for a limited time period, to take into account changes in program upkeep and maintenance as well as individual circumstances.

DHS seeks comments from the public regarding the length of time provided in the exception for aliens re-applying after a denial of a visa by a consular officer.

Discussion of Comments Received Regarding the 1999 Proposed Rule

There was a total 4,617 comments regarding the collection of the required fee as set forth in the 1999 proposed rule. The following paragraphs will address each issue raised in comments received. This discussion will not describe in detail the provisions outlined in the 1999 regulation, but rather will address only those provisions relevant to the comments received. In general, commenters opposed imposition of this fee. Many commenters felt the fee itself was excessive. Many commenters also discussed various aspects of the fee collection process. The vast majority of commenters suggested that the fee should not be collected by educational institutions or exchange visitor programs, but should instead be collected by the Federal Government. As previously stated in the summary to this proposed rule, all reference to the Service has been changed to DHS even though the events may have preceded March 1, 2003.

I. Fee Amount

A primary issue of concern cited by the majority of commenters was that the proposed $95 fee was excessive and that the imposition of this fee disproportionately would affect students who stay in the United States for shorter periods than a full 4-year course of study. Commenters further stated that the proposed regulation outlining the collection and remittance of the fee was based on inaccurate and outdated data.

As discussed in the 1999 proposed rule, at 64 FR 71323, an extensive fee study was conducted to arrive at the fee amount authorized by the proposed rule, utilizing the enrollment figures for foreign students and exchange visitors on the best available data. The proposed $95 fee as indicated in the 1999 proposed rule was necessary to cover the design and development costs of carrying out section 641 of IIRIRA.

To address the concerns raised by the education community and to reassess the amount of the fee based on changes in the student program and project funding since publication of the proposed rule, DHS decided to undertake a new fee review. KPMG Consulting was hired to conduct an objective fee review and ensure that applicable federal law and fee guidance were adhered to. The fee review included the recovery of historical costs and costs over the FY 2003/2004 time period, as well as the appropriated monies received. The fee review also included costs for increased staffing and training for DHS personnel involved in the student program at DHS headquarters, district offices, service centers and regional offices as well as the DOS.

The fee study methodologies for the initial fee study and the second fee study were essentially the same. The basic change between the two studies is the assumptions that went into the calculation of the fee. The second fee study took into account changes resulting from the $36.8 million in counter-terrorism funding to expedite development of SEVIS and the legislation that identified the $35 fee for certain J nonimmigrants. DHS has determined that the student fee should also provide for the resources necessary to ensure compliance with regulations. The need to pay for these additional resources was not included in the KPMG study, but is now factored into the determination of the calculation of the fee amount in these regulations.

SEVIS Liaison Officers will be a local resource for schools and students, providing timely and accurate information or assistance in meeting the requirements of the program. SEVIS Liaison Officers may visit schools, interview school officials, review records, compare system information to school information, and assist schools with system security issues. They will also coordinate with local school representatives and work on local training programs. Finally, SEVIS Liaison Officers will be available to assist immigration and other law enforcement officials who may have a need for information derived from SEVIS. Other ICE officers will conduct investigations to ensure compliance with these regulations. In addition, these officers will work in conjunction with SEVIS Liaison Officers for school reviews and re-certifications.

This initial fee as authorized by IIRIRA is not to exceed $100. Further, the fee for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program is not to exceed $35. However, IIRIRA also provides that the Secretary of Homeland Security may, on a periodic basis, revise the amount of the fee imposed and collected to take into account changes in the cost of carrying out this program. Pursuant to the Chief Financial Officers Act of 1990, DHS will review this fee every two years. Upon review, if it is found that the fee is either too high or too low, a new fee may be requested.

This fee proposed in this rule will support personnel costs, ongoing system operation and maintenance costs, training costs, and other costs related to the program. Based on prior data, approximately 362,400 F–1 students are expected to enter the United State in Fiscal Year 2004. Another 312,000 J–11 exchange visitors are also expected to enter the United States. In order to ensure that the personnel, system operations and maintenance, and training costs are supported, as well as providing compliance resources for the program on a sustained basis, and to remain within the initial $100 limitation on the fee amount, DHS recalculated the fee to cover the costs of 61 SEVIS Liaison Officers and 182 other ICE officers in the field. Based upon estimates of the total foreign student population and estimates of the total man-hours that will be needed to ensure compliance with the SEVIS requirements, DHS has estimated that this number of officers will constitute approximately 60% of the personnel resources needed for compliance efforts. DHS intends to staff 100% of the necessary SEVIS Liaison Officers and ICE Officers necessary to ensure compliance efforts, even if the costs of staffing exceed the funds generated by this proposed fee. Because of the initial $100 fee limitation, however, the fee proposed in this rule is now determined to be $100, and $35 for certain J nonimmigrants.

The application of user fees as a funding source for compliance activities has been widely used and permitted since the introduction of user fees in the early 1980's. A federal agency is allowed to recoup the ''full cost'' of providing special benefits, including the costs of enforcement, collection,

research, establishment of standards, and regulation, when calculating its fees. Indeed, DHS currently recoups the cost of detecting and deterring fraud and protecting the integrity of benefits and documents through its immigration benefit application fees.

Commenters objected both to the concept of a fee, as well as the fee level proposed. Many commenters to the 1999 proposed rule stated that the imposition of a fee would adversely affect the position of the United States in the international student market, and that the regulations authorizing collection of such a fee will interfere with important cultural exchanges. Additionally, many commenters noted that the imposition of the fee would affect the availability of seasonal and short-term foreign employees. DHS understands these concerns; however, collection of a fee of up to $100 associated with the student and exchange visitor data collection system was mandated by Congress. Thus, DHS is required, by statute, to impose a fee on the system's participants and, as noted above, DHS has taken into account the program costs in setting the fee. Finally, no supporting documentation was provided by the commenters to demonstrate that the imposition of a fee will have the adverse effects suggested in the comments.

II. The Collection and Remittance Process

Most commenters to the 1999 proposed rule expressed strong opposition over the proposed rule's designation of educational institutions and exchange visitor programs as fee collectors. Comments stemming from this primary topic included: the lack of resources and infrastructure at educational institutions and exchange visitor programs to collect and remit the fee; the inappropriateness of requiring such groups to serve as enforcers of federal law in instances where the student or exchange visitor failed to pay the fee; and the absence of any financial assistance from the government to help defray the cost of setting up a fee collection system. Rather, commenters suggested that the Federal Government should directly collect the proposed fee without involving these institutions and programs in the collection and remittance process.

As previously discussed, subsequent to the publication of the 1999 proposed rule, Congress revised the law to provide that DHS itself will collect the fee directly from the alien prior to the alien's classification as an F–1, F–3, J–1, M–1, or M–3 nonimmigrant, and this revised proposed rule incorporates this statutory change. The schools and exchange visitor programs in which such aliens wish to participate will not need to have any role whatsoever in the collection of the required fees. Additionally, consistent with comments made to the 1999 proposed rule and with section 641 of IIRIRA, which directs that the design and development of the student/exchange visitor information collection system be electronic. DHS now proposes a fee payment process that utilizes both electronic and paper-based methods. Aliens with access to the Internet will be able to complete the Form I–901 and remit payment through a website sponsored by the Federal Government. Given that some students and exchange visitors may not have access to the Internet, the Form I–901 will also be available on paper, and those aliens may remit payment to DHS by mail to the address listed on Form I–901. DHS also solicits suggestions as to whether there might be alternative payment methods offered to facilitate fee payment and receipt.

Aliens who apply for their nonimmigrant visas while abroad will be required to pay the fee prior to submitting their visa application to the U.S. embassy or consulate with jurisdiction over their place of residence. Aliens who are already located in the United States will be required to pay the fee prior to submitting their request to DHS for change of classification as an F or M student or a J–1 exchange visitor. Aliens who are exempt from the visa requirement described in section 212(d)(4) of the Act will be required to pay the fee prior to the granting of admission to the United States. Upon payment in each of these situations, DHS will provide the alien with a paper receipt to be used by the alien to demonstrate that he or she has complied with the fee requirement.

DHS and the DOS are also working on integrating a data share arrangement in order to provide consular officers electronic access to an F, J, or M nonimmigrant's fee payment information. For those nonimmigrants who are unable to receive the paper receipt, in the future, the consular officer will be able to verify fee payment information when verifying the electronic Form I–20 or DS–2019 information. Such an arrangement will ensure that in instances where paper receipts sent by mail are either not received in a timely manner or not at all, the issuance of the nonimmigrant visa will not be delayed unnecessarily.

III. Aliens Exempt From the Fee

The law provides that an alien seeking J–1 status to participate in an exchange program that is sponsored by the U.S. government is exempt from paying a fee.

IV. The Frequency of the Fee

Many commenters to the 1999 proposed rule suggested that the fee should not be required each time a student or exchange visitor changes institutions or programs. DHS agrees with this suggestion and therefore proposes in this rule that students and exchange visitors will not have to pay a new fee upon each transfer to a new school or exchange program or upon commencement of a new program immediately following completion of the initial program. Rather, students and exchange visitors will only be required to pay the fee prior to being classified into the F, J, or M visa category. Thus, aliens seeking either initial enrollment at a school or initial participation in an exchange visitor program will be required to pay the fee prior to applying for their visas. As a result, many aliens will be paying the fee while abroad. As stated in section 641(e) of IIRIRA, as amended, such aliens will be required to present proof of fee payment, as part of their visa application, to the U.S. embassy or consulate prior to the granting of the visa. In the future, as part of a data share arrangement between SEVIS and DOS, consular officers will have electronic access to an alien's fee payment information. At that time, DOS may use the electronic information to verify whether the fee has been paid by the alien and may not require the alien to present the actual paper receipt as proof of payment. However, until such a data share arrangement is in place, if the alien does not submit the paper receipt as proof of payment, the consular officer will be required to deny the visa application. Similarly, aliens already located in the United States will be required to pay the fee prior to applying to DHS for change of classification to an F, J, or M visa category. It is important to note that under this proposed rule, the alien will be required to pay the fee only one time prior to being classified as an F, J, or M nonimmigrant. Students or exchange visitors whose initial visa applications are denied by a United States consular officer will not be required to pay the fee again when reapplying for the same status for which the alien originally applied within nine months of the notice of denial.

Students and exchange visitors who have already paid the SEVIS fee would

only be required to pay a new SEVIS fee if they are applying for a new nonimmigrant visa to begin a new course of study or new program or for change of status in order to begin a new nonimmigrant status, not if they are merely extending an existing course of study or transferring to a new school or program level. Many commenters to the 1999 proposed rule suggested that the fee should be imposed one time only or should be an annual fee. DHS cannot adopt these suggestions. To collect a fee for each student and exchange visitor on an annual basis would be overly burdensome to the government as well as the affected parties, and would result in more money being collected than is necessary to fund the program. However, to collect the fee only once, for the lifetime of each student or exchange visitor, would be insufficient to cover program costs. With each event that occurs during the course of a student's or exchange visitor's stay in the United States, the data collection system mandated by section 641 of IIRIRA, will require updates by the school official or program officer and/or require adjudication by a government official, all of which require resources to be expended and funded. Where an F or M nonimmigrant is applying for reinstatement of student status because of a violation of status more than 5 months in duration, the nonimmigrant will be required to pay a new fee to DHS prior to the application for reinstatement in order to be granted a return to valid status. Similarly, pursuant to 22 CFR 62.45, where an exchange visitor applies for reinstatement after a substantive violation or after falling out of his or her J program status for longer than 120 days, the exchange visitor will be subject to paying a new fee prior to applying for reinstatement. The new fee amount may be $35 or $100, depending on the type of exchange visitor program to which the J–1 nonimmigrant is seeking to be reinstated.

The following chart outlines who is required to pay a fee under the proposed rule and when fee payment is required:

Fee payment *not* required if applicant is:
- An F–2, J–2 or M–2 dependent.
- A J–1 participant in an exchange program sponsored by the Federal government.
- An F–1, F–3, J–1, M–1, or M–3 nonimmigrant transferring between schools, programs or program categories.
- An F–1, F–3, J–1, M–1, or M–3 nonimmigrant requesting/applying for an extension of course of study or program.
- An alien who paid an initial fee when seeking an F–1, F–3, J–1, M–1, or M–3 visa from a consular official abroad for initial attendance at an approved school or exchange program, who was denied a visa by the consular officer, and is re-applying for the same status within nine months of the denial.
- Applying for a change of classification between an F–1 and F–3 nonimmigrant or between M–1 or M–3 nonimmigrant.

Fee payment *is* required if the applicant is:
- An alien seeking an F–1, F–3, J–1, M–1, or M–3 visa from a consular officer abroad for initial attendance at a DHS-approved school or initial participation in a Department of State-designated exchange program.
- An alien exempt from the visa requirement described in section 212(d)(4) of the Act, applying for admission to the United States to begin initial attendance at a DHS-approved school or initial participation in a Department of State-designated exchange program.
- An alien in the United States seeking a change of status to F–1, F–3, J–1, M–1, or M–3 (except in the case of change classification between F–1 and F–3 or between M–1 or M–3).
- A J–1 nonimmigrant who is applying for reinstatement after a substantive violation, or who has been out of program status for longer than 120 days but less than 270 days during the course of his or her program.
- An F or M nonimmigrant applying for reinstatement of student status because of a violation of status more than 5 months in duration.

Fee payment is *reduced* if applicant is:
- A J–1 nonimmigrant participating in a summer work/travel, au pair, or camp counselor program.

V. Applicability of the Fee Requirement

Many commenters to the 1999 proposed rule stated that the fee should not be retroactive to August 1, 1999, and should only be collected once the student and exchange visitor information system is fully operational. Congress mandated in section 641 of the IIRIRA that the student/exchange visitor information collection program be funded by those aliens included in the program. This system is currently operational and DHS is incurring associated costs. As such, while the fee is not being imposed retroactively, this fee must be collected as soon as feasibly possible. This proposed rule therefore anticipates collection of fees upon implementation of a final rule.

Many commenters to the 1999 proposed rule suggested that F–1 nonimmigrant students participating in intensive English programs should be exempt from the fee requirement, that the fee should be waived for all short-term J–1 or F–1 nonimmigrants, or that the fee should be limited to F–1 students who are in a degree-seeking program. The language of section 641 of IIRIRA does not limit the application of the fee requirement to students in this specific category. Rather, the statute (as amended by Public Law 106–396) directs the Secretary of Homeland Security to impose a fee on all F and M students and J exchange visitors, with the sole exception of J–1 exchange visitors who have come to the United States as participants in an exchange program sponsored by the Federal Government.

Many commenters stated that the language of the proposed fee rule published in December 1999 was ambiguous as to whether or not the fee requirement applied to F–1 nonimmigrants attending private high schools. Section 641(e)(1) of IIRIRA as amended by Public Law 107–56, now directs the Secretary of Homeland Security to collect this fee from students enrolled in other approved educational institutions as well. As a result of this statutory change, the proposed rule subjects F–1, F–3, J–1, M–1, and M–3 nonimmigrants enrolled in public and private high schools or private elementary schools to fee payment. Many commenters stated that the language in section 641(e) of IIRIRA, ''sponsored by the Federal Government,'' is ambiguous, and suggested that, because all J–1 nonimmigrants are in some way sponsored by the Federal Government, all J–1 nonimmigrants should be exempt from paying the fee. DHS cannot adopt this suggestion. In determining who should be exempt from the fee, Congress specifically exempted J–1 nonimmigrants who are participating in an exchange program sponsored by the Federal Government. If Congress intended all J–1 nonimmigrants to be exempt from the fee, it would not have provided for this express exemption. In fact, Congress provided for a reduced fee of $35 for three other specific categories of J–1 programs. Thus, this provision falls under the principle of *expressio unius:* when one or more things of a class are expressly mentioned, others of the same class are necessarily excluded. That is, by expressly noting that those J–1 nonimmigrants sponsored by the Federal Government are exempt from the fee, other J–1 program participants must therefore not be exempted.

VI. Miscellaneous Comments and Concerns

Many commenters stated that the 1999 proposed rule allows the fee money remitted to DHS to be used for purposes outside the scope of section

641(e) of IIRIRA. The commenters stated that revenue generated from collection of the fee should be deposited in an account separate from the general Examinations Fee Account. In response to these comments, and in recognition that section 641(e) of IIRIRA specifies that the fee be imposed for the specific purpose of designing, developing, and maintaining the F, J, and M nonimmigrant monitoring system, DHS will establish a sub-account under the general Examinations Fee Account, into which revenue generated by the fee will be placed. Only costs associated with the F, J, and M nonimmigrant monitoring system and program mandated by section 641(e) of IIRIRA will be supported by the funds in this account.

Several commenters noted that the 1999 proposed rule imposed yet another fee on international students, and that foreign countries will respond to the fee by imposing fees on U.S. students studying abroad. DHS is statutorily mandated by section 641(e) of IIRIRA to impose and collect a fee from each student and exchange visitor identified under section 641(e)(3) of IIRIRA. Additionally, under 31 U.S.C. 9701, DHS must assess a fee for the participation in any program that affords a particular benefit to an identifiable recipient.

In converting the older paper-based process to one that is automated, DHS intends the reengineered student and exchange visitor information collection program to benefit all F, J, and M nonimmigrants by creating a more effective and timely process for verifying their compliance with the conditions of their status.

Several commenters to the 1999 proposed rule suggested that those F, J, and M nonimmigrants subject to the fee should be refunded or credited for fees that are paid in error. DHS agrees with this suggestion. As with all fees imposed by DHS, students and exchange visitors will be refunded any amount of the fee that is erroneously remitted on the part of the alien to DHS.

VII. Description of Fee Payment Process

Several commenters stated that the 1999 proposed rule did not address the process by which the fee will be collected from students/exchange visitors who obtain their visas through a change of status. As previously discussed, nonimmigrants who are seeking a change of status to F–1, F–3, J–1, M–1, or M–3 status will be required to pay the fee prior to the granting of their new status. Under this proposed rule, payment of the fee may be remitted either electronically or by paper prior to the nonimmigrant's application for a change of classification. The nonimmigrant will be required to provide evidence of payment as part of his or her application for change of status. Absence of proof of fee payment will result in a denial of the application request. In the future, the officers will also have access to the electronic fee payment information in SEVIS to verify payment in instances where the paper receipt is lost or never received by the nonimmigrant.

DHS is cognizant of the fact that many prospective students and exchange visitors are from developing countries that may have delays in mail delivery and may lack easy access to the Internet. For this reason, DHS has designed the fee payment process to provide several methods for payment and for timely receipt of payment confirmation. The fee payment process will begin after the student receives his or her Form I–20 from a DHS-approved school or after the exchange visitor receives the Form DS–2019 from an exchange visitor program authorized by the DOS. The fee may be paid either by: (1) submitting payment using Form I–901, Fee Remittance for Certain F, J, and M Nonimmigrants, by mail or (2) completing Form I–901 and making payment electronically over the Internet.

The fee payment may be completed by schools, programs, family members, or friends on behalf of the applicant. If the Internet is used to complete the Form I–901 and payment, the applicant will be required to use a credit card. The form will be accessible at www.FMJfee.com or through DHS SEVIS Web page. In the future, applicants may have the added capability of payment by electronic funds transfers through an ACH (Alternate Clearinghouse) debit transaction. The Form I–901 will also be available by calling the Forms Center at 1–800–870–3676.

If the Form I–901 and payment are completed by mail, the applicant will be required to pay by using either a check, money order, or foreign draft drawn on a U.S. bank, in U.S. dollars, and to submit the form and payment to the P.O. box address listed on the Form I–901. The check or money order must be made payable to ''The Department of Homeland Security, Immigration and Customs Enforcement.'' DHS does not allow applicants to pay any of DHS fees with foreign currency due to fluctuations in currency rates. Furthermore, DHS does not allow applicants to pay fees with checks drawn on foreign banks as the collection process is slow and expensive and there is no guarantee on these funds as there is with funds drawn on U.S. banks.

After the completed Form I–901 and accompanying fee payment have been received by DHS, a receipt will be issued on the Form I–797, Notice of Action, to the prospective student or exchange visitor, by mail. All fee receipts will be printed and mailed to the applicant within 3 days of the fee payment being processed. Applicants will also have the option to have the receipt sent to them in an expedited manner. If this option is chosen, the receipt will be delivered by a courier for an additional fee. If the applicant pays the fee over the Internet, the applicant will be able to print and retain an electronic receipt at that time, in addition to the receipt that will be received by mail.

Once the student or exchange visitor has received the Form I–797 as proof of payment of the fee, either electronically or via mail, he or she will submit the Form I–797 in conjunction with either the application for a visa abroad, admission to the United States, if exempt from visa requirements, or a change of status if in the United States. As previously stated, in the future, in instances where the receipt is not received or is lost by the applicant, the consular officer or DHS officer will have access to the fee payment information in SEVIS to verify that a fee has been paid for a particular individual.

Regulatory Flexibility Act

The Secretary of Homeland Security, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, preliminarily certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although this rule levies a fee on nonimmigrant students and exchange visitors initially arriving or continuing a program in the United States, and this fee will have an impact on these nonimmigrants, DHS is required by statute to collect a fee to support an electronic information collection system on foreign students and exchange visitors. The fees were arrived at after careful evaluation of the costs to design, develop, and maintain the statutorily-mandated information collection system.

Since Congress has changed the law to provide that DHS will collect the fee directly from the student or exchange visitor, rather than having the school or exchange program collect and remit the fee, the schools and exchange programs will no longer need to be involved in any way with respect to the collection of the fee, although they are free to offer

assistance to their prospective students or exchange visitors if they choose to do so. The students and exchange visitors impacted by this rule are not considered small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. This rule levies a fee in the amount of $100 on nonimmigrant students and exchange visitors and a fee in the amount of $35 for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program, initially arriving or continuing a program in the United States.

Executive Order 12866

This rule is considered by the Department of Homeland Security to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review. In particular, the Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs.

The costs to the public that this rule imposes are primarily the fees that must be paid by nonimmigrant students and exchange visitors that will be processed through the SEVIS system and admitted to the United States. DHS is required by section 641 of Public Law 104–208 to collect a fee to recover the cost of collecting student information electronically. On December 21, 1999, a fee of $95 was proposed in the **Federal Register** to support the SEVIS (64 FR 71323). After careful evaluation of the costs to design, develop, and maintain the statutorily mandated information collection system, DHS is now proposing a fee of $100 for nonimmigrant students and exchange visitors, and $35 for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program, initially arriving or continuing a program in the United States. The fees imposed under this proposed rule will support personnel costs, ongoing system operation and maintenance costs, training costs, and other costs related to the program as well as provide for the resources necessary to ensure compliance with the regulations.

As discussed previously in the introductory section of this rule, approximately 362,400 F–1 students are expected to enter the United States in Fiscal Year 2004. Another 312,400 J–1 exchange visitors are also expected to enter the United States. Based upon historical trends, it is further estimated that as many as 10% may subsequently violate the terms of their non-immigrant status each year. However, in an effort to compensate for the possible inaccuracies of earlier systems and data the estimated number of violators has been reduced to 5%. Using this percentage, DHS estimates 33,750 foreign students and exchange visitors might be subject to enforcement actions on an annual basis although no actual measure of the number of student and exchange visitors who have violated their immigration status has ever been conducted. In addition to the personnel, system operations and maintenance, and training costs that these fees will support, and while remaining within the initial $100 statutory limitation on the fee amount, DHS has recalculated the fee to cover the costs of 61 SEVIS liaison officers and 182 other ICE officers in the field. Based upon estimates of the total foreign student population and estimates of the total man-hours that will be needed to ensure compliance with the SEVIS requirements, DHS has estimated that this number of officers will constitute approximately 60% of the personnel resources needed for compliance efforts.

The costs to DHS of either not assessing the fees under this rule or assessing the fees at a lesser amount would be the inability to continue to implement and operate the SEVIS system, if no fees were imposed, or at a minimum, a more limited ability to ensure compliance with by foreign students and exchange visitors with the requirements of the SEVIS system. Additionally, if the fees are not imposed or are imposed at a lesser amount the public could incur the intangible cost of reduced security as a result of a more limited ability to ensure compliance. The imposition of this fee also shifts the burden of funding program operating and compliance efforts to the population actually utilizing the SEVIS system. If the fees are not imposed or are imposed at a lesser amount, the general public, rather than the population of SEVIS users, would be responsible for bearing the cost of program implementation and conformity; this would be explicitly contrary to the directive of section 641 of Public Law 104–208, to collect a fee to recover the costs of SEVIS to the government.

The costs of this rule, the fees imposed on foreign students and exchange visitors, are outweighed by the overall benefits to the public that SEVIS provides. SEVIS is a vital tool in furthering the protection of the public by: (1) Enhancing the process by which foreign students and exchange visitors gain admission to the United States; and (2) increasing the ability of DHS to track and monitor foreign students and exchange visitors in order to ensure that they arrive in the United States, show up and register at the school or exchange program, and properly maintain their status during their stay as valued guests in this country.

In addition, DHS will collect the fee directly from the student or exchange visitor, rather than placing the burden on the school or exchange program to collect and remit the fee. Thus, this will lessen the burden on schools and exchange programs who will no longer need to take part in the collection of the fee, although they are free to offer assistance to their prospective students or exchange visitors if they choose to do so.

SEVIS provides a proper balance between openness to international students and exchange visitors and the security obtained by enforcing the law. Balanced against the costs and the requirements to collect information electronically, the burden imposed by this regulation appears to DHS to be justified by the benefits.

Executive Order 13132

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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this

rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information required by the Form I–901, Fee Remittance Form for Certain F, J, and M Nonimmigrants, is considered an information collection and subject to review and clearance under the Paperwork Reduction Act procedures. Accordingly, DHS has submitted this information collection requirement to OMB for emergency clearance under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and record keeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and record keeping requirements, Students.

8 CFR Part 299

Immigration, Reporting and record keeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296 116 Stat. 2135 (6 U.S.C. 1 *et. seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7(b)(1) is proposed to be amended by adding the entry for Form I–901 to the listing of fees, in proper alpha/numeric sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–901. For remittance of the SEVIS fee levied on certain F, J, and M nonimmigrant aliens—$100 ($35 for J–1 au pairs, camp counselors, and participants in a summer work/travel program).

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

4. Section 214.2 is amended by:

a. Adding a new paragraph (f)(19);

b. Adding a new paragraph (j)(5); and

c. Adding a new paragraph (m)(20).

The additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(19) *Remittance of the fee.* An alien who applies for F–1 or F–3 nonimmigrant status in order to enroll in a program of study at a Department of Homeland Security (DHS)-approved educational institution is required to pay the SEVIS fee to DHS in advance, pursuant to § 214.13(c), except as otherwise provided in that section.

* * * * *

(j) * * *

(5) *Remittance of the fee.* An alien who applies for J–1 nonimmigrant status in order to commence participation in a Department of State (DOS)-designated exchange visitor program is required to pay the SEVIS fee to DHS in advance, pursuant to § 214.13(c), except as otherwise provided in that section.

* * * * *

(m) * * *

(20) *Remittance of the fee.* An alien who applies for M–1 or M–3 nonimmigrant status in order to enroll in a program of study at a DHS-approved vocational educational institution is required to pay the SEVIS fee to DHS in advance, pursuant to § 214.13(c), except as otherwise provided in that section.

* * * * *

5. Section 214.13 is added to read as follows:

§ 214.13 SEVIS fee for certain F, J, and M nonimmigrants.

(a) *Applicability.* Except as otherwise provided in this section, the following aliens are required to submit a payment of a $100 fee to the Department of Homeland Security (DHS), in advance, in connection with obtaining nonimmigrant status as a student or exchange visitor, in addition to any other applicable fees:

(1) An alien who applies for F–1 or F–3 nonimmigrant status in order to enroll in a program of study at a DHS-approved institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended, or in a program of study at any other DHS-approved academic or language-training institution including private elementary and secondary schools and public secondary schools;

(2) An alien who applies for J–1 nonimmigrant status in order to commence participation in an exchange visitor program designated by the Department of State (DOS) (with a reduced fee for certain exchange visitors as provided in paragraph (e) of this section); and

(3) An alien who applies for M–1 or M–3 nonimmigrant status in order to enroll in a program of study at a DHS-approved vocational educational institution, including a flight school.

(b) *Aliens not subject to a fee.* No SEVIS fee is due with respect to: (1) A J–1 exchange visitor who is coming to the United States as a participant in an exchange program sponsored by the Federal Government.

(2) *Dependents.* The principal alien must pay the fee, when required under this section, in order to obtain F–2, J–2, or M–2 status for his or her dependents. However, an F–2, J–2, or M–2 dependent is not required to pay a separate fee under this section in order to obtain that status or during the time they remain in that status.

(c) *Time for payment of SEVIS fee.* An alien who is subject to payment of the SEVIS fee must remit the fee directly to DHS as follows:

(1) An alien seeking an F–1, F–3, J–1, M–1, or M–3 visa from a consular officer abroad for initial attendance at a DHS-approved school or to commence participation in a Department of State-approved program, must pay the fee to DHS before applying for the visa.

(2) An alien who is exempt from the visa requirement described in section 212(d)(4) of the Act must pay the fee to DHS before the alien applies for admission to the United States to begin initial attendance at a DHS-approved school or initial participation in a Department of State-approved program.

(3) A nonimmigrant alien in the United States seeking a change of status to F–1, F–3, J–1, M–1, or M–3 must pay the fee to DHS before the alien submits the application for change of nonimmigrant status, except as

provided in paragraph (d) of this section.

(4) A J–1 nonimmigrant who is applying for reinstatement after a substantive violation, or who has been out of program status for longer than 120 days during the course of his or her program, must pay the applicable fee to DHS prior to applying for reinstatement to valid J–1 status.

(5) An F or M student who is applying for reinstatement of student status because of a violation of status more than 5 months in duration, must pay a new fee to DHS in connection with the application for reinstatement in order to be granted a return to valid status.

(d) *Circumstances where no new fee is required.* (1) *Extension of stay or transfer.* An alien who has previously paid the fee prior to obtaining his or her current status, as a student or exchange visitor is not required to pay a new fee in connection with:

(i) An application for an extension of stay as provided in § 214.2(f)(7) or (m)(10);

(ii) An application for transfer as provided in § 214.2(f)(8) or (m)(11); or

(iii) An application for post-completion practical training as provided in § 214.2(f)(10)(ii) or (m)(14).

(2) *New program in the same classification.* An F–1, F–3, M–1, or M–3 nonimmigrant who has previously paid the fee is not required to pay a new fee for an extension of status in connection with enrollment in a new course of study in the same nonimmigrant status. For purposes of the preceding sentence, no fee is required for changes between the F–1 and F–3 classifications, and no fee is required for changes between the M–1 and M–3 classifications.

(3) *Re-application following denial of application by consular officer.* An alien who fully paid a SEVIS fee in conjunction with an initial application for an F–1, F–3, J–1, M–1, or M–3 visa from a consular officer and whose initial application was denied, who is reapplying for the same status within 9 months following the notice of denial.

(e) *Special rules for J–1 exchange visitors.* (1) A J–1 exchange visitor coming to the United States as an au pair, camp counselor, or participant in a summer work/travel program is subject to a reduced fee of $35.

(2) A J–1 exchange visitor applying for a change of category as provided in 22 CFR 62.41 is not required to pay the fee.

(3) A J–1 exchange visitor applying for transfer of program as provided in 22 CFR 62.42 is not required to pay the fee.

(4) A J–1 exchange visitor applying for an extension of program as provided in 22 CFR 62.43 is not required to pay the fee.

(f) Reserved.

(g) *Procedures for payment of the SEVIS fee.* (1) *Options for payment.* An alien subject to payment of a fee under this section may pay the fee by any procedure approved by DHS, including:

(i) Submission of Form I–901, to DHS by mail, along with the proper fee paid by check, money order, or foreign draft drawn on a financial institution in the United States and payable in United States currency, as provided by § 103.7(a)(1) of this chapter;

(ii) Electronic submission of Form I–901 to DHS using a credit card, or other electronic means of payment accepted by DHS; or

(iii) Any other designated payment service and receipt mechanism approved by DHS.

(2) *Receipts.* DHS will generate and mail a receipt for each fee payment under this section.

(i) If the payment was made by mail, DHS may provide for an expedited delivery of the receipt, upon request, for an additional fee.

(ii) If payment was made electronically or through a DHS-designated payment service and receipt mechanism, DHS will accept a properly completed receipt that is printed out electronically or provided by the payment service's mechanism in lieu of the receipt generated by DHS.

(3) *Recording electronic fee payment.* DHS will maintain an electronic record of payment for the alien to reflect the receipt of the required fee under this section. If the alien's record indicates that the fee has been paid, an alien who has lost or did not receive a receipt for a fee payment under this section will not be denied an immigration benefit solely because of a failure to submit proof of payment of the fee.

(4) *Third-party payments.* DHS may accept payment of the required fee for an alien from an approved school or a designated exchange program, or from another appropriate source, in accordance with procedures approved by DHS.

(h) *Reinstatement.* (1) In certain instances, the alien must pay the initial required fee in order to be eligible to apply for reinstatement. An F or M student who has been out of status for more than 5 months at the time of seeking reinstatement of student status pursuant to § 214.2(f)(16) or (m)(16) must pay a new fee in connection with the application for reinstatement. A J–1 nonimmigrant who has a substantial violation or who has been out of program status for longer than 120 days but less than 270 days during the course of his or her program must pay a new fee to DHS, if applicable, before applying for reinstatement to valid J–1 status. Approval of reinstatement also reinstates the status of any dependents.

(2) The failure by an F or M student or a J–1 exchange alien to pay the required fee is a violation of status for the principal alien and his or her dependents. For purposes of reinstatement, the principal alien and his or her dependents will not be considered to have gone out of status ''through no fault of his or her own'' or ''for minor or technical infractions.'' Payment of the fee does not, however, preserve the lawful status of any F, J, or M nonimmigrant who has violated his or her status in some other way.

PART 299—IMMIGRATION FORMS

6. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

7. Section 299.1 is amended in the table by adding, in proper alpha/numeric sequence, the entry for ✖Form I–901'' to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
	* * * * *	
I–901	.....	Fee Remittance for Certain F, J, and M Nonimmigrants.
	* * * * *	

8. Section 299.5 is amended in the table heading by revising the term ''INS form No.'' to read ''Form No,'' and in the table by adding, in proper alpha/numeric sequence, the entry for Form ''I–901'' to read as follows:

§ 299.5 Display of control numbers.

* * * * *

Form No.	Form title	Currently assigned OMB control No.
*	*	*
I–901	Fee Remittance For Centain F, J, and M Non-immigrants.	1115–
*	*	*

Dated: October 21, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–26970 Filed 10–24–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–40–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–524 series turbofan engines, with certain part number (P/N) intermediate pressure (IP) compressor stage 5 discs installed. This proposed AD would establish new reduced IP compressor stage 5 disc cyclic limits. This action would also require removing from service, affected discs that already exceed the new reduced cyclic limit, and removing other affected discs before exceeding their cyclic limits, using a drawdown schedule. This action would also allow optional inspections at each shop visit or a one-time on-wing eddy current inspection (ECI) to extend the disc life beyond the lives specified. This proposed AD is prompted by the discovery of cracks in the cooling air hole areas of the disc front spacer arm. We are proposing this AD to prevent IP compressor stage 5 disc failure, which could result in uncontained engine failure and possible damage to the airplane.

DATES: We must receive any comments on this proposed AD by December 26, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Rolls-Royce plc, P.O. Box 31 Derby, DE248BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2002–NE–40–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the FAA that an unsafe condition may exist on certain RR model RB211–524 series turbofan engines. The CAA reports that cracks were found, during overhaul, in the cooling air hole areas of the disc front spacer arm. The engine manufacturer has performed a reassessment of the safe cyclic limits of certain IP compressor stage 5 discs. The cyclic limits of these discs are reduced based on that reassessment. This condition, if not corrected, could result in uncontained engine failure and possible damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of mandatory service bulletin (MSB) RB.211–72–D428, Revision 3, dated June 30, 2003, that specifies a drawdown schedule for removing from service affected IP compressor stage 5 discs, using new Time Limits Manual (TLM) cyclic limits. The MSB also describes procedures for optional inspections at each shop visit to extend the disc life beyond the lives specified. The CAA has classified this service bulletin as mandatory and issued AD 006–04–2002 in order to ensure the airworthiness of these RR plc turbofan engines in the U.K. We have also reviewed and approved the technical contents of Service Bulletin (SB) RB.211–72–E148, dated March 13, 2003 and SB RB.211–72–E150, dated April 17, 2003 that provide an optional on-wing ECI of the affected discs, to extend the disc life beyond the lives specified.

Differences Between This Proposed AD and the Manufacturer's Service Information

The compliance time is added, to remove or inspect discs not later than 30 days after the effective date of this AD.

FAA's Determination and Requirements of the Proposed AD

These engine models, manufactured in the U.K., are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above. We have examined the CAA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require:

- Establishing new reduced IP compressor stage 5 disc cyclic limits.
- Removing from service affected discs that already exceed the new reduced cyclic limit.
- Removing other affected discs before exceeding their cyclic limits, using a drawdown schedule.
- Allowing optional inspections at each shop visit or a one-time on-wing ECI to extend the disc life beyond the specified life.

The proposed AD would require you to use the service information described previously to perform these actions.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are about 939 RR RB211–524 series turbofan engines of the affected design in the worldwide fleet. We estimate that 35 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 8 work hours per engine to perform an inspection, and 300 work hours per engine to replace an IP compressor stage 5 disc. The average labor rate is $65 per work hour. Required parts would cost about $49,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $2,397,500.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2002–NE–40–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Rolls-Royce plc: Docket No. 2002–NE–40–AD.

Comments Due Date

(a) The FAA must receive comments on this airworthiness directive (AD) action by December 26, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Rolls-Royce plc RB211–524 series turbofan engines listed in the following Table 1, with intermediate pressure (IP) compressor stage 5 disc part numbers (P/Ns) listed in Table 2 of this AD, installed.

TABLE 1.—ENGINE MODELS AFFECTED

–524B–02	–524B–B–02	–524B3–02	–524B4–02	–524B4–D–02
–524B2–19	–524B2–B–19	–524C2–19	–524C2–B–19	–524D4–19
–524D4–B–19	–524D4X–19	524D4X–B–19	–524D4–39	–524D4–B–39
–524G2–19	–524G2–T–19	–524G3–19	–524G3–T–19	–524H2–19
–524H2–T–19	–524H–36	–524H–T–36		

These engines are installed on, but not limited to, Boeing 747, 767, and Lockheed L–1011 airplanes.

TABLE 2.—IP COMPRESSOR STAGE 5 DISC P/NS AFFECTED

LK60130	LK65932	LK69021	LK81269	LK83282
LK83283	UL12290	UL15743	UL15744	UL15745
UL19132	UL20785	UL20832	UL23291	UL25011
UL36821	UL36977	UL36978	UL36979	UL36980
UL36981	UL36982	UL36983	UL37078	UL37079
UL37080	UL37081	UL37082	UL37083	UL37084

Unsafe Condition

(d) This AD is prompted by the discovery of cracks in the cooling air hole areas of the IP compressor stage 5 disc front spacer arm. We are issuing this AD to prevent IP compressor stage 5 disc failure, which could result in uncontained engine failure and possible damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Cycle Limits

(f) Change the service cyclic limits for the IP compressor stage 5 discs installed in the engine models listed in the following Table 3, within 30 days after the effective date of this AD.

TABLE 3.—CYCLIC LIFE LIMITS WITHOUT QUALIFYING MAGNETIC PARTICLE INSPECTION (MPI) OR EDDY CURRENT INSPECTION (ECI)

Date of reduced life limit	Engine models			
	–524G2, G2–T, G3, G3–T, H2, H2–T, H–36,H–T–36	–524D4, D4–B, D4–B–39, D4X, D4X–B, D4–39	–524B2, B2–B, C2, C2–B	–524B–02, B–B–02, B3–02, B4–02, B4–D–02
November 30, 2002	[1] 13,500 CIS	16,150 CIS	16,000 CIS	16,200 CIS
April 1, 2003	13,500 CIS	13,500 CIS	13,500 CIS	14,000 CIS
December 1, 2003	12,000 CIS	13,500 CIS	13,500 CIS	14,000 CIS
December 1, 2004	11,000 CIS	13,500 CIS	12,000 CIS	12,000 CIS
December 1, 2005	11,000 CIS	12,000 CIS	12,000 CIS	12,000 CIS
December 1, 2008	7,830 CIS	8,700 CIS	12,000 CIS	12,000 CIS

[1] Cycles-in-service.

Optional Inspections

(g) Before December 1, 2008, optional inspections are allowed at each shop visit or a one-time on-wing ECI is allowed to extend the disc life. Guidance for these inspections is provided in paragraphs (h) or (i) of this AD.

Optional Inspections at Shop Visit

(h) Perform optional inspections at shop visit, as follows:

(1) Remove corrosion protection from IP stage 5 disc. Information on corrosion protection removal can be found in the Engine Manual.

(2) Visual-inspect and binocular-inspect the IP stage 5 disc for corrosion pitting at the cooling air holes and defender holes in the disc front spacer arm. Follow paragraph 3.C. of the Accomplishment Instructions of RR MSB No. RB.211–72–D428, Revision 3, dated June 30, 2003.

(3) Discs with corrosion pitting in excess of limits must be removed from service. Information on disc corrosion pitting limits can be found in the Engine Manual.

(4) If the disc is free from corrosion pitting, MPI entire disc. Inspection on MPI can be found in the Engine Manual.

(5) If the disc has corrosion pitting within limits, ECI all disc cooling air holes, defender holes, and inner and outer faces. Follow paragraph 3.D. of the Accomplishment Instructions of RR MSB No. RB.211–72–D428, Revision 3, dated June 30, 2003. Information on corrosion pitting limits can be found in the Engine Manual.

(6) If the disc passes ECI and no cracks are found, MPI entire disc. Information on MPI can be found in the Engine Manual.

(7) If the disc passes MPI and no cracks are found, re-apply corrosion protection to disc, and return the disc to service in accordance with the cyclic limits allowed by paragraph (l) of this AD. Information on MPI limits can be found in the Engine Manual. Information on re-applying corrosion protection can be found in RR Repair FRS5900.

Optional One-Time On-Wing EC Inspection

(i) For RB211–524B2/C2 and RB211–524B4/D4 engine models, a one-time on-wing ECI of the IP compressor stage 5 disc may be performed in lieu of a shop visit inspection. Follow RR paragraph 3.A. through 3.F. of Accomplishment Instructions of SB No. RB.211–72–E148, and RR SB No. RB.211–72–E150, respectively, to do the ECI. If the disc passes the ECI and no cracks are found, an extension is allowed as specified in paragraph (l) of this AD.

Definition of Shop Visit

(k) For the purposes of this AD, a shop visit is defined as the separation of an engine major case flange. This definition excludes shop visits when only field maintenance type activities are performed in lieu of performing them on-wing. (*i.e.*, for purposes such as to perform an on-wing inspection of a tail engine installation on an L1011 airplane).

Cyclic Life Extension

(l) Discs that pass an optional inspection may remain in service after that inspection for the additional cycles listed in the following Table 4, or until the next inspection, or until the December 1, 2008 life limit in Table 3 is reached, whichever occurs first.

Note 1: Discs may remain in service for additional periods if repeat optional inspections are conducted and associated AD criteria are met.

TABLE 4.—CYCLIC LIFE EXTENSION

	Engine models			
	–524G2, G2–T, G3, G3–T, H2, H2–T, H–36, H–T–36	–524D4, D4–B, D4–B–39, D4X, D4X–B, D4–39	–524B2, B2–B, C2, C2–B	–524B–02, B–B–02, B3–02, B4–0-2, B4–D–02
Extension after passing MPI	1,600 cycles	2,000 cycles	2,000 cycles	2,000 cycles.
Extension after passing In-Shop ECI	3,800 cycles	4,500 cycles	4,500 cycles	4,500 cycles.
Extension after passing On-Wing ECI	1,000 cycles	1,200 cycles	1,200 cycles	1,200 cycles.

Discs That Have Been Intermixed Between Engine Models

(m) Information on intermixing discs between engine models can be found in the RR Time Limits Manual, 05–00–01.

Alternative Methods of Compliance

(n) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(o) You must use the service information specified in the following Table 5 to perform the inspections and drawdown required by this AD. Approval of incorporation by reference from the Office of the Federal Register is pending.

TABLE 5.—INCORPORATION BY REFERENCE

Service bulletin No.	Page	Revision	Date
Mandatory Service Bulletin No. RB.211–72–D428 Total Pages: 27	All	3	June 30, 2003.
Service Bulletin No. RB.211–72–E148 Total Pages: 83	All	Original	March 13, 2003.
Service Bulletin No. RB.211–72–E150 Total pages: 72	All	1	June 4, 2003.

Related Information

(p) CAA airworthiness directive 006–04–2002, dated April 2002, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 21, 2003.

Robert J. Ganley,

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

[FR Doc. 03–26980 Filed 10–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14594]

14 CFR Part 121

Operating Requirements: Domestic, Flag, and Supplemental Operations; Petition for Rulemaking

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a petition for rulemaking.

SUMMARY: This document contains a summary of a petition for rulemaking from the Air Transport Association of America, Inc. to change certain specified requirements of 14 CFR. The purpose of this document is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this document nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition. Although 14 CFR part 11 does not require the publication of a summary for a petition to amend a regulation, we have determined that the public should be afforded the opportunity to comment on this issue.

DATES: Comments on the petition received must identify the petition docket number involved and must be received on or before December 26, 2003.

ADDRESSES: You may submit comments to DMS Docket Number FAA–2003–14594 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Petition

Docket No.: FAA–2003–14594.

Petitioner: Air Transport Association of America, Inc.

Section of 14 CFR Affected: 14 CFR 121.391(a) and 121.393(b)

Description of Change Sought: The proposed amendment would permit a flight attendant to communicate with company or airport personnel via the jet bridge telephone located adjacent to the aircraft door while passengers are boarding, deplaning, or are on board, in order to perform safety, security, and/or passenger service duties. The amendment would reduce the number of required flight attendants onboard the aircraft while the aircraft is on the ground and stationary.

Section 121.391 states:

(a) Each certificate holder shall provide at least the following flight attendants on each passenger-carrying airplane used:

(1) For airplaines having a maximum payload capacity of more than 7,500 pounds and having a seating capacity of more than 9 but less than 51 passengers—one flight attendant.

(2) For airplanes having a maximum payload capacity of 7,500 pounds or less and having a seating capacity of more than 19 but less than 51 passengers—one flight attendant.

(3) For airplanes having a seating capacity of more than 50 but less than 101 passengers—two flight attendants.

(4) For airplanes having a seating capacity of more than 100 passengers—two flight attendants plus one additional flight attendant for each unit (or part of a unit) of 50 passenger seats above a seating capacity of 100 passengers

Section 121.393 states:

(b) On each airplane for which flight attendants are required by § 121.391(a), but the number of flight attendants remaining on board is fewer than required by § 121.391(a), the certificate holder must meet the following requirements:

(1) The certificate holder shall ensure that:

(i) The airplane engines are shut down;

(ii) At least one floor level exit remains open to provide for the deplaning of passengers; and

(iii) The number of flight attendants on board is at least half the number required by § 121.391(a), rounded down to the next lower number in the case of fractions, but never fewer than one.

(2) The certificate holder may substitute for the required flight attendants other persons qualified in the emergency evacuation procedures for that aircraft as required in § 121.417, if these persons are identified to the passengers.

(3) If only one flight attendant or other qualified person is on board during a stop, that flight attendant or other qualified person shall be located in accordance with the certificate holder's FAA-approved operating procedures. If more than one flight attendant or other qualified person is on board, the flight attendants or other qualified persons shall be spaced throughout the cabin to provide the most effective assistance for the evacuation in case of an emergency.

The FAA invites interested persons to participate in this rulemaking by submitting comments, data, or views. We specifically invite comments relating to how a reduced number of flight attendants onboard: (1) will provide adequate passenger supervision and safety while the airplane is on the ground and stationary; and (2) Will allow for the effective deplaning of passengers should an emergency situation arise.

Before acting on this petition for rulemaking, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay.

Issued in Washington, DC, on October 20, 2003.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 03–27055 Filed 10–22–03; 5:01 pm]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AF21

Reinstatement of Entitlement to Disability Benefits

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Social Security Administration is proposing rules regarding the Reinstatement of Entitlement (Expedited Reinstatement) provision in section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999. This provision allows former Social Security disability and Supplemental Security Income (SSI) disability or blindness beneficiaries, whose entitlement or eligibility had been terminated due to their work activity, to have their entitlement or eligibility reinstated in a timely fashion if they become unable to do substantial gainful work due to their medical condition. These rules provide beneficiaries an additional incentive to return to work.

DATES: To be sure your comments are considered we must receive them no later than December 26, 2003.

ADDRESSES: You may give us your comments by using: our Internet site facility (*i.e.*, Social Security Online) at *http://www.socialsecurity.gov/regulations/*; by e-mail to *regulations@socialsecurity.gov*; by telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, Social Security Online at *socialsecurity.gov* for your review, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *socialsecurity.gov.*

FOR FURTHER INFORMATION CONTACT: John Nelson, Team Leader, Employment Policy Team, Office of Employment Support Programs, Social Security Administration, 6401 Security Boulevard, Room 107 Altmeyer Building, Baltimore, Maryland 21235–6401, (410) 966–5114 or TTY 410–966–5609. For information on eligibility or filing for benefits: Call our national toll-free number, 1–(800) 772–1213 or TTY 1–(800) 325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov/regulations/*.

SUPPLEMENTARY INFORMATION:

Background

The expedited reinstatement provision, along with other work incentives and the Ticket to Work program contained in the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170) is intended to expand your options as a Social Security disability beneficiary or a disabled or blind Supplementary Security Income recipient. We expect that the expedited reinstatement provision along with other provisions in the Ticket to Work and Work Incentives Improvement Act of 1999 will remove some of the disincentives that may discourage you from either attempting to work or increasing your work activity. If more beneficiaries with disabilities engage in self-supporting work, the net result will be a reduction in the Social Security and Supplemental Security Income disability rolls and savings to the Social Security Trust Fund and general revenues.

General Goals of the Expedited Reinstatement Provision

The expedited reinstatement provision is intended to relieve some concerns you may have about returning to work. If we terminate your entitlement or eligibility for benefits due to your work activity, this provision provides you an easier way to have your entitlement or eligibility reinstated and to be placed back into payment status. This process should ease some concerns you may have about what will happen if your attempt to return to work is unsuccessful.

Advice of the Ticket to Work and Work Incentives Advisory Panel

During the preparation of these proposed rules, we consulted with the Ticket to Work and Work Incentives Advisory Panel.

Section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999

Congress indicated that the purpose of section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999 (the expedited reinstatement provision) was to encourage disability beneficiaries to return to work by reassuring them that benefits would be restored in a timely fashion should they become unable to continue working and continue to meet disability standards set by SSA.

Section 112 of Public Law 106–170 amended §§ 223 and 1631 of the Social Security Act (the Act). Section 112(a) added subsection (i) to § 223 of the Act and re-designated the prior subsection

(i) as subsection (j). Section 112(b)(1) added paragraph (p) to § 1631 of the Act. The expedited reinstatement provision provides a method for you to have your disability benefits reinstated without filing an application if you have had your entitlement to, or eligibility for, benefits terminated due to your work activity during the previous 5 years, and you can no longer do substantial gainful activity.

Effect of the Expedited Reinstatement Provision

The expedited reinstatement provision provides you another option for regaining entitlement to benefits under title II and eligibility under title XVI of the Act after we have terminated your entitlement to or eligibility for disability benefits due to your work activity. If you file a request for expedited reinstatement you can still file a new application for benefits under existing initial claim rules.

Prior to the effective date of this provision, when we terminated your entitlement or eligibility due to work activity, you were required to file a new application to become entitled to or eligible for benefits again. We processed your application under rules that required a new disability determination using our initial claim medical requirements. You generally were entitled to receive benefits only after we processed your entitlement or eligibility determination. If we determined that you again qualified for benefits, you became eligible for work incentives such as the trial work period, the reentitlement period, and special SSI eligibility status under your new period of disability.

The expedited reinstatement provision provides you the option of requesting that your prior entitlement to or eligibility for disability benefits be reinstated, rather than filing a new application for a new period of entitlement or eligibility. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful activity within 60 months of your prior termination. You must have stopped doing substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard (MIRS) that we use in our continuing disability review process. The advantage of using MIRS is that we will generally find that you are disabled unless your impairment has improved so that you are able to work or unless an exception under the MIRS process applies.

When you request reinstatement you can be paid up to 6 months of provisional benefits, and may be entitled to Medicare benefits and/or Medicaid, while we are deciding whether you qualify for reinstatement. Provisional benefits, or payments, are cash benefits that can be paid to you on a temporary basis when you were previously a Social Security (title II) disability beneficiary or a disabled or blind Supplemental Security Income (title XVI) recipient and you are now requesting reinstatement. The period during which you can receive provisional benefits is your provisional benefit period. This period begins with the first month you can receive provisional benefits and can never extend beyond six consecutive months. Your provisional benefit period will end earlier than the sixth consecutive month if we make our determination on your request for reinstatement before that month. Your title II provisional benefit period will also end if you attain retirement age or if you do substantial gainful work activity.

You can receive title II provisional benefits beginning with the month you file your request for reinstatement. We will base your provisional benefit amount, the amount of the monthly cash benefit you receive during the provisional benefit period, on the prior benefit amount that was actually payable to you under title II. We will terminate your title II provisional benefits when your provisional benefit period ends, such as if you do substantial gainful activity. You can receive title XVI provisional payments beginning with the month after you file your request for reinstatement. We will base your title XVI provisional benefit amount, the amount of the monthly cash payment you receive during the provisional benefit period, on the federal Supplemental Security Income benefit that is actually payable to you, depending on your income. We will terminate your title XVI provisional payments when your provisional benefit period ends.

We are proposing to amend §§ 404.903 and 416.1403 to indicate that a determination we make regarding your right to receive provisional benefits is not an initial determination and it is, therefore, not subject to administrative review under §§ 404.900ff and 416.1400ff.

If we deny your request for reinstatement, we generally will not consider the provisional benefits you received as an overpayment. If your reinstatement request is denied, we will treat that request as your intent to file an initial application for benefits. If your request for reinstatement is approved, we will reinstate your prior disability entitlement or eligibility and reestablish your Medicare/Medicaid entitlement, as appropriate, if you are not already entitled to Medicare/Medicaid. We will pay you reinstated benefits under title XVI beginning with the month after the month you filed your request. We will pay you reinstated benefits for title II beginning no later than the month you filed your request. We can pay you title II reinstated benefits for any of the 12 months preceding your request for reinstatement if you would have met all of the requirements for reinstatement if your request for reinstatement had been timely filed for the claimed month. We will reduce reinstated benefits payable for a month by the amount of any provisional benefits already received for that month.

When we reinstate your entitlement under this provision you are then entitled to a 24-month initial reinstatement period. Your 24-month initial reinstatement period begins with the month your benefits are reinstated and ends with the 24th month that you have a benefit payable. For title II purposes, we consider a benefit to be payable in a month when you do not do substantial gainful activity and the non-payment provisions in § 404.401ff do not apply. For title XVI purposes, we consider a benefit to be payable in a month when, using normal payment calculation procedures in § 416.101ff, we determine you are due a monthly payment. After the 24-month initial reinstatement period is completed you are eligible for additional work incentives under title II (such as a trial work period and a reentitlement period), as well as possible future reinstatement through the expedited reinstatement provision under title II and title XVI.

Proposed Regulations

We are proposing to amend our rules to provide the rules for expedited reinstatement. These proposed rules add §§ 404.1592b through 404.1592g to part 404 and §§ 416.999 through 416.999e to part 416.

Part 404

Proposed § 404.1592b provides a general overview of expedited reinstatement and summarizes the basic requirements for expedited reinstatement, as discussed in §§ 404.1592c through 404.1592g.

Proposed § 404.1592c describes the requirements for reinstatement to title II

benefits. Section 223(i)(1) of the Act lists the requirements you must meet to be reinstated through the authority of the title II expedited reinstatement provision. These proposed rules explain that you must have previously been entitled as a disabled insured individual, a disabled child, a disabled widow or widower, or a disabled Medicare qualified government employee. We must have terminated your prior entitlement due to your doing substantial gainful activity. You must have become unable to continue doing substantial gainful activity due to your medical condition. Your current impairment must be the same as or related to the impairment on which we based your prior period of disability, and you must currently be disabled. Section 223(i)(3) of the Act requires us to use the medical improvement review standard in Section 223(f) of the Act when we determine if you are disabled for the purposes of this provision. We are proposing that we will not reinstate your entitlement under the expedited reinstatement provision if you previously requested expedited reinstatement, or we conducted a continuing disability review on a title II disability or Medicare entitlement, and we determined you were not disabled under the medical improvement review standard. We will also not reinstate your entitlement under this provision if you previously requested expedited reinstatement for a benefit and we determined you did not have a current impairment(s) that was the same as or related to the impairment that was the basis for your prior entitlement to that benefit. If you are reinstated, an auxiliary beneficiary who was previously entitled on your record can also be reinstated. The auxiliary beneficiary must apply for reinstatement and must meet the current entitlement factors for the benefit.

Proposed § 404.1592d describes what you must do to request reinstatement of benefits under the expedited reinstatement provision. Your request must be made in writing. Section 223(i)(2)(A) of the Act lists what you must include in your request for reinstatement and authorizes us to determine the form of the request and the information it must contain. You must file your request within the consecutive 60-month period that begins with the month that your prior entitlement to disability benefits terminated due to the performance of substantial gainful activity. However, we may extend this time period if we determine that you had good cause for failing to file your request within the 60-month time period. Your request must state that you are disabled, that your current impairment is the same as or related to the impairment that was used as the basis for your prior disability entitlement, and that you cannot do substantial gainful activity because of your medical condition. The request must also include the information we need to help us determine whether you meet the non-medical factors of entitlement and the information we need to make the medical determination. Your request for reinstatement must be filed on or after January 1, 2001.

Proposed § 404.1592e describes how we will determine whether you are unable to do substantial gainful activity because of your medical condition. We are proposing that you must meet one of two requirements. The first requirement is that you are unable to continue working, or you reduce your work and earnings below the substantial gainful activity level, because of your impairment. The second requirement is that you were forced to stop work due to the removal of special circumstances that had permitted you to work despite your impairment. Under our proposed rules if you stop work for reasons beyond your control, such as your employer having terminated you due to a general downsizing, and there were special circumstances that allowed you to work at that job despite your impairment, we will consider you to meet this requirement. For the purposes of this section we consider special circumstances to be those in which you have special conditions, subsidy, or have some other special need that must be met in order for you to be able to work despite your impairment, such as the availability of special transportation.

Proposed § 404.1592f provides information on when your title II provisional benefits start, how they are computed, when they are paid, and when they end. Section 223(i)(7) of the Act lists the requirements for us to pay provisional benefits while we are determining whether to approve your request for reinstatement. Consistent with the law, the proposed rules explain that we can pay you up to 6 months of provisional benefits during your provisional benefit period. In addition, if you are not already entitled to Medicare, we can reestablish your Medicare entitlement during your provisional benefit period. Your entitlement to provisional benefits begins with the month your reinstatement request is filed. We will base your provisional benefit amount on your monthly insurance benefit that was actually payable to you at the time we terminated your prior entitlement. We will increase your prior benefit amount payable by any intervening cost of living increases that would have been applicable to the prior benefit amount under section 215(i) of the Act. If you are entitled to another title II benefit or another provisional benefit, the maximum benefit amount we will pay you when all benefits are combined will be the amount of your highest computed benefit. If you request reinstatement as a disabled widow or widower or a disabled child we will not adjust your provisional benefit or the benefits of other beneficiaries entitled at that time on the same record when the total benefit amount exceeds the family maximum.

We will not pay you a provisional benefit for a month if you are not entitled to payment for the month under our usual rules, such as if you are a prisoner. We also will not pay you provisional benefits for any month that is after the earliest of the following months: the month we send you notice of our determination on your request for reinstatement; the first month you do substantial gainful activity; the month before you attain retirement age; or the fifth month following the month you filed your request for reinstatement. We will not pay provisional benefits when, prior to starting your provisional benefits, we determine that you do not meet the requirements for reinstatement, such as, since your prior termination because of work activity we have determined that you are not disabled under the medical improvement review standard, or we determine that you did not file your request for reinstatement timely, or your prior entitlement did not terminate because of your doing substantial gainful activity. Our determinations on provisional benefit amounts, when they are payable, and when they terminate, are final and are not subject to formal administrative review. We will not recover a previously existing overpayment from your provisional payments unless you give us permission to do so. If we determine you are not entitled to reinstated benefits, usually we will not consider the provisional benefits you received as an overpayment unless we determine you knew or should have known that you did not qualify for reinstatement and therefore you should not have received the provisional benefits.

Proposed § 404.1592g discusses how we determine your reinstated benefits consistent with the requirements regarding paying reinstated benefits in section 223(i). The proposed rules explain that if we have determined we can reinstate you in the month you filed

your reinstatement request, we will then consider whether we can pay you retroactive reinstated benefits. We will reinstate your benefits beginning with the earliest month in the 12-month period immediately preceding the month you requested reinstatement in which you would have met all of the reinstatement requirements if you had filed your request for reinstatement in that month. We will also reinstate your Medicare entitlement. Your entitlement to title II disability benefits and Medicare, under the expedited reinstatement provision, cannot be reinstated for a month prior to January 2001.

We will determine and pay your reinstated monthly benefits under our normal payment provisions of title II of the Act, with some exceptions. We will withhold from your reinstated benefits due for a month the amount of any provisional payments we already paid for that month. If the provisional benefits we paid you for a month exceed the amount of reinstated benefits due you for that month, we will consider the difference as an overpayment. We will use the same date of onset to calculate your new primary insurance amount as a reinstated individual that we used in your most recent period of disability. When you are reinstated, you are entitled to a 24-month initial reinstatement period. Your initial reinstatement period begins with the month your reinstated benefits begin and ends when you have had 24 months of payable benefits. We propose to consider a month a payable month when you do not do substantial gainful activity and the non-payment provisions in § 404.401ff do not apply. During the initial reinstatement period, in addition to normal non-payment events, a benefit is not payable for any month in which you do substantial gainful activity. We will not use our unsuccessful work attempt or averaging of earnings provisions when we determine if you have done substantial gainful activity in a month during your initial reinstatement period. After you complete your initial reinstatement period, we will consider your future work under the work incentive provisions of title II of the Act. Your trial work period begins the month after you complete your initial reinstatement period. Your reinstated benefits end with the earliest month that precedes the third month following the month in which we determine your disability ceases, the month we terminate your benefits for another reason, the month you reach retirement age, or the month you die.

We are proposing that determinations we make regarding your title II reinstated benefits will be initial determinations subject to administrative and judicial review. If we determine you are not entitled to reinstated benefits, we will consider your request for reinstatement as your intent to file a new initial claim for the benefit.

Part 416

Proposed § 416.999 provides a general overview of expedited reinstatement and a summary of the basic requirements for expedited reinstatement, as discussed in §§ 416.999a through 416.999e.

Proposed § 416.999a describes the requirements for reinstatement to title XVI benefits. Section 1631(p)(1) of the Act lists the requirements to be reinstated through the authority of the expedited reinstatement provision. The proposed rules explain that you must have previously been eligible based on disability or blindness. We must have terminated your prior eligibility due to earned income or a combination of earned and unearned income. You must have become unable to do substantial gainful activity due to your medical condition. Your current impairment must be the same as or related to the impairment on which we based your prior eligibility. Also, you must currently be disabled. Section 1631(p)(3) of the Act requires we use the medical improvement review standard in section 1614(a)(4) of the Act when we determine if you are disabled for the purposes of this provision. We are proposing that we will not reinstate your eligibility under this provision if you previously requested expedited reinstatement, or we conducted a continuing disability review for title XVI eligibility, and we determined you were not disabled under the medical improvement review standard. We will also not reinstate your eligibility under this provision if you previously requested expedited reinstatement of your title XVI eligibility and we determined you did not have a current impairment that was the same as or related to the impairment that was the basis for your prior eligibility. When you are reinstated, your spouse can be reinstated if your spouse was previously eligible, your spouse meets the current eligibility factors for title XVI benefits, and your spouse requests reinstatement.

Proposed § 416.999b describes how to request reinstatement of benefits under the expedited reinstatement provision. Your request must be in writing. Section 1631(p)(2)(A) of the Act lists what you must include in your request for reinstatement and authorizes us to determine the form of the request and the information it must contain. You must file your request within the consecutive 60-month period that begins with the month that we terminated your prior eligibility to title XVI disability benefits. However, we may extend this time period if we determine that you had good cause for failing to file your request within the 60-month period. Your request must include your statement that you are disabled, that your current impairment is the same as or related to the impairment that we used as the basis for your prior disability eligibility, that you cannot do substantial gainful activity because of your medical condition, and that you meet all of the non-medical requirements for eligibility. Your request must also include the information we need to determine whether you meet the non-medical factors of eligibility for the benefit and the information we need to make the medical determination. Your request for reinstatement must be filed on or after January 1, 2001.

Proposed § 416.999c describes how we will determine whether you are unable to do substantial gainful activity because of your medical condition. We are proposing that you must meet one of two requirements. The first requirement is that you are unable to continue working, or you reduced your work and earnings below the substantial gainful activity level, because of your impairment. The second requirement is that you were forced to stop work due to the removal of special circumstances that had permitted you to work despite your impairment. Under our proposed rules if you stop work for reasons beyond your control, such as your employer having terminated you due to a general downsizing, and there were special circumstances that allowed you to work at that job despite your impairment, we will consider you to meet this requirement. For the purposes of this section we consider special circumstances to be those when you have been provided special conditions or subsidy, or have some other special need that must be met in order for you to be able to work despite your impairment, such as the availability of special transportation.

Proposed § 416.999d provides information on when your title XVI provisional benefits start, how they are computed, when they are paid, and when they end. Section 1631(p)(7) of the Act lists the requirements for us to pay you provisional benefits while we are determining whether to approve your request for reinstatement. Consistent with the law, the proposed

rules explain that we can pay you up to six months of provisional benefits during the provisional benefit period. Your provisional benefits will begin with the month after you request reinstatement. We will base your provisional benefit amount on normal computational methods for an individual receiving SSI benefits under title XVI of the Act with the same amounts and kind of income. If your spouse also requests reinstatement, we can pay provisional payments to your spouse. Your spouse must meet SSI eligibility requirements, except those relating to the filing of an application, before we can pay provisional payments. We will use the same computation method used for you and your spouse's provisional benefit that we would use to figure an eligible individual and eligible spouse receiving non-provisional benefits under title XVI of the Act with the same kind and amount of income. As required by section 1631(p)(8) of the Act, you are not eligible for state supplementary payments during the provisional benefit period.

We will not pay provisional benefits for any month where a suspension or terminating event occurs under our usual rules, such as when you are in an institution or if you die. We also will not pay provisional benefits for any month after the earliest month either of the following events occur: the month we send you our notice of our determination on your request for reinstatement or the sixth month following the month you filed your request for reinstatement. We will not pay provisional benefits when, prior to starting your provisional benefits, we determine you do not meet the requirements for reinstatement, such as, since your prior termination due to your earned income we have determined that you are not disabled under the medical improvement review standard, or we determine that you did not file your request for reinstatement timely, or we determine that your prior eligibility terminated for a reason unrelated to income. Our determinations on your provisional benefit amounts, when they are payable, and when they terminate, are final and are not subject to formal administrative review. We will not recover previously existing overpayments from your provisional payments unless you give us permission to do so. If we determine that you are not eligible for reinstated benefits, usually we will not consider the provisional payments you received as an overpayment unless you knew or should have known that you did not qualify for reinstatement and you should not have received provisional payments.

Proposed § 416.999e discusses how we determine your reinstated SSI benefits consistent with the requirements in section 1631(p)(4). The proposed rules explain that we will reinstate your eligibility, and your spouse's eligibility, with the month following the month you filed your request for reinstatement. Your eligibility cannot be reinstated for a month prior to February 2001.

We will determine and pay your reinstated benefits under the normal payment provisions of title XVI of the Act, with one exception. We will withhold from your reinstated benefits due in a month the amount of any provisional payments you were already paid for that month. If we pay you a provisional benefit for a month that exceeds the amount of your reinstated benefit due, we will consider the difference an overpayment. When your request for reinstatement is approved, you are eligible for a 24-month initial reinstatement period. Your initial reinstatement period begins with the month your reinstated benefits begin and ends when you have had 24 months of payable benefits. We propose to consider a month a payable month when, considering the normal payment rules, you are due a benefit payment for the month. After you complete the initial reinstatement period, you are again eligible for expedited reinstatement if we terminate your eligibility due to income. Your reinstated benefits end with the earliest month that precedes the third month following the month in which we determine your disability ceases, the month before we terminate your eligibility for another reason, or the month you die.

We are proposing that we will consider determinations we make regarding your title XVI reinstated benefits to be initial determinations subject to administrative and judicial review. If we determine you are not eligible for reinstated benefits we will consider your request for reinstatement your intent to file a new initial claim for benefits.

Regulatory Procedures

Clarity of These Proposed Rules

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

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

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

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the following table.

Section	Annual number of responses	Frequency of response	Average burden per response (Mins.)	Estimated total burden (Hrs.)
404.1592c & 404.1592d	10,000	One time	85	14,167
416.999a & 416.999b	100	One time	79	132

Section	Annual number of responses	Frequency of response	Average burden per response (Mins.)	Estimated total burden (Hrs.)
Total	10,100			14,299

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Office of Management and Budget and to the Social Security Administration at the following addresses/fax numbers: Office of Management and Budget, Attn: Desk Officer for SSA, Room 10235, New Executive Office Bldg., 725 17th St., NW., Washington, DC 20503, Fax No. 202–395–6974. Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax No. 410–965–6400.

Comments can be received between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

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

Dated: July 22, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set forth in the preamble, we propose to amend part 404, subparts J and P, and part 416, subparts I and N of title 20 of the Code of Federal Regulations to read as follows:

PART 404—FEDERAL OLD-AGE, SURVIVOR AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

1. The authority citation for subpart J is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423 (i), 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5 Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Amend § 404.903 to revise paragraphs (t) and (u) and add paragraph (v) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(t) Determining whether we will refer information about your overpayment to a consumer reporting agency (see § 404.527 and § 422.305 of this chapter);

(u) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see §§ 404.527 and 422.310 of this chapter); and

(v) Determining whether provisional benefits are payable, the amount of the provisional benefits, and when provisional benefits terminate (see § 404.1592f).

Subpart P—[Amended]

3. The authority citation for subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

4. Add new §§ 404.1592b through 404.1592g to read as follows:

§ 404.1592b What is expedited reinstatement?

The expedited reinstatement provision provides you another option for regaining entitlement to benefits when we previously terminated your entitlement to disability benefits due to your work activity. The expedited reinstatement provision provides you the option of requesting that your prior entitlement to disability benefits be reinstated, rather than filing a new application for a new period of entitlement. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful activity within 60 months of your prior termination. You must have stopped doing substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard (MIRS) that we use in our continuing disability review process. The advantage of using MIRS is that we will generally find that you are disabled unless your impairment has improved so that you are able to work or unless an exception under the MIRS process applies. We explain the rules for expedited reinstatement in §§ 404.1592c through 404.1592g.

§ 404.1592c Who is entitled to expedited reinstatement?

(a) You can have your entitlement to benefits reinstated under expedited reinstatement if—

(1) You were previously entitled to a disability benefit on your own record of earnings as indicated in § 404.315, or as a disabled widow or widower as indicated in § 404.335, or as a disabled child as indicated in § 404.350, or to Medicare entitlement based on disability and Medicare qualified government employment as indicated in 42 CFR 406.15;

(2) Your disability entitlement referred to in paragraph (a)(1) of this section was terminated because you did substantial gainful activity;

(3) You file your request for reinstatement timely under § 404.1592d; and

(4) In the month you file your request for reinstatement—

(i) You are not able to do substantial gainful activity because of your medical condition;

(ii) Your current impairment is the same as or related to the impairment that we used as the basis for your previous entitlement referred to in paragraph (a)(2) of this section; and

(iii) You are disabled, as determined under the medical improvement review standard in §§ 404.1594(a) through 404.1594(f).

(b) You can not be reinstated under paragraph (a) of this section if—

(1) You previously filed a request for expedited reinstatement and we denied that request because we determined that you were not disabled under the medical improvement review standard or that you did not have a current impairment(s) that was the same as or related to the impairment(s) that we used as the basis for your prior entitlement to that benefit; or

(2) We previously determined you were no longer disabled based upon the medical improvement review standard in § 404.1594 because—

(i) We conducted a continuing disability review on a disability entitlement, such as a disability benefit, a disabled child benefit, a disabled widow(er) benefit, or Medicare entitlement based on Medicare qualified government employment, or

(ii) We conducted a medical review on your Medicare entitlement that had previously been continued under 42 CFR 406.12(e).

(c) You are entitled to reinstatement on the record of an insured person who is or has been reinstated if—

(1) You were previously entitled to one of the following benefits on the record of the insured person—

(i) A spouse or divorced spouse benefit under §§ 404.330 and 404.331;

(ii) A child's benefit under § 404.350; or

(iii) A parent's benefit under § 404.370;

(2) You were entitled to benefits on the record when we terminated the insured person's entitlement;

(3) You meet the requirements for entitlement to the benefit described in the applicable paragraph (c)(1)(i) through (c)(1)(iii) of this section; and

(4) You request to be reinstated.

§ 404.1592d How do I request reinstatement?

(a) You must make your request for reinstatement in writing;

(b) You must have filed your request on or after January 1, 2001; and

(c) You must provide the information we request so that we can determine whether you meet the requirements for reinstatement as indicated in § 404.1592c.

(d) If you request reinstatement under § 404.1592c(a)—

(1) We must receive your request within the consecutive 60-month period that begins with the month in which your entitlement terminated due to doing substantial gainful activity. If we receive your request after the 60-month period we can grant you an extension if we determine you had good cause under the standards explained in § 404.911 for not filing the request timely; and

(2) You must certify that you are disabled, that your current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit you are requesting to be reinstated, and that you became unable to continue to do substantial gainful activity because of your medical condition.

§ 404.1592e How do we determine whether you are unable to do substantial gainful activity because of your medical condition?

(a) You are unable to do substantial gainful activity because of your medical condition when you become unable to continue working, or you reduce your work and earnings below the substantial gainful activity earnings level, due to your impairment or because special circumstances that permitted you to work despite your impairment are removed. We will consider special circumstances that permitted you to work despite your impairment to have been removed, for instance, when your employer terminates you during a general layoff from a job that you performed under special circumstances or you must stop that work due to a natural disaster.

(b) We will not consider you unable to do substantial gainful activity because of your medical condition when you stop work, or reduce your work and earnings below the substantial gainful level, for reasons unrelated to your medical condition. We will not consider you unable to do substantial gainful activity because of your medical condition when, for instance, you are not working because you work in seasonal employment and you are now in the normal off-season or you stop work for personal reasons not related to your medical condition.

(c) *Examples:*

Example 1. Mr. K is laid-off from his job because the business owners close the plant where he is working. Mr. K was able to work at this plant because it was located close to the bus line located near his house. Mr. K must work near a bus line because of his medical condition. Mr. K is considered to have stopped work due to his medical condition under paragraph (a) of this section. Mr. K had special transportation accommodations that allowed him to work in that job as indicated in paragraph (d) of this section.

Example 2. Mr. L is laid-off from his job because the owners are retooling the plant where he is working. Mr. L had no special circumstances under paragraph (d) of this section that enabled him to work. Under paragraph (b) of this section, Mr. L is not considered to have stopped work due to his medical condition because he stopped work for reasons unrelated to his medical condition and he had no special circumstances related to his employment.

Example 3. Ms. M works as a teacher. Her contract requires her to work from September of one year through June of the next year. Ms. M contacts us in July and indicates she last worked in June. She indicates she is in her normal off-work period and plans to return to work in September when her next contract begins. She indicates the reason she stopped work is her contract is over. She has nothing else preventing her from working in July. Under paragraph (b) of this section, Ms. M is not considered to have stopped work because of her medical condition.

(d) When we consider whether you had special circumstances in your work for purposes of this section, we will consider how well you did your work as discussed in § 404.1573(b), whether your work was done under special conditions as discussed in § 404.1573(c), and whether you were able to work because you had a special need that was being accommodated, such as special transportation requirements.

§ 404.1592f How do we determine provisional benefits?

(a) You may receive up to 6 consecutive months of provisional cash benefits and Medicare during the provisional benefit period, while we determine whether we can reinstate your disability benefit entitlement under § 404.1592c—

(1) We will pay you provisional benefits, and reinstate your Medicare if you are not already entitled to Medicare, beginning with the month you file your request for reinstatement under § 404.1592c(a);

(2) We will pay you a monthly provisional benefit amount equal to the last monthly benefit payable to you during your prior entitlement, increased by any cost of living increases that would have been applicable to the prior benefit amount under § 404.270. The last monthly benefit payable is the amount of the monthly insurance benefit we determined that was actually paid to you for the month before the month in which your entitlement was terminated, after we applied the reduction, deduction and nonpayment provisions in § 404.401 through § 404.480;

(3) If you are entitled to another monthly benefit payable under the provisions of title II of the Act for the same month you can be paid a provisional benefit, we will pay you an amount equal to the higher of the benefits payable;

(4) If you request reinstatement for more than one benefit entitlement, we will pay you an amount equal to the higher of the provisional benefits payable;

(5) If you are eligible for Supplementary Security Income payments under §§ 416.200 through 416.269 of this chapter, including provisional payments, we will reduce your provisional benefits under § 404.408b if applicable; and

(6) We will not reduce your provisional benefit, or the payable benefit to other individuals entitled on an earnings record, under § 404.403, when your provisional benefit causes the total benefits payable on the earnings record to exceed the family maximum.

(b) We will not pay you a provisional benefit for a month when an applicable nonpayment rule applies. Examples of when we will not pay a benefit include, but are not limited to—

(1) If you are a prisoner under § 404.468;

(2) If you have been removed/deported under § 404.464; or

(3) If you are an alien outside the United States under § 404.460.

(c) We will not pay you a provisional benefit for any month that is after the earliest of the following months—

(1) The month we send you a notice of our determination on your request for reinstatement;

(2) The month you do substantial gainful activity;

(3) The month before the month you attain full retirement age; or

(4) The fifth month following the month you requested expedited reinstatement.

(d) You are not entitled to provisional benefits if, prior to starting your provisional benefits—

(1) We determine that you do not meet the requirements for reinstatement under §§ 404.1592c(a)(1) through 404.1592c(a)(3);

(2) We determine that you are not entitled to reinstatement under § 404.1592c(b); or

(3) We determine that your statements on your request for reinstatement, made under § 404.1592d(d)(2), are false.

(e) Determinations we make regarding your provisional benefits under paragraphs (a) through (d) of this section are final and are not subject to administrative and judicial review under §§ 404.900 through 404.999d.

(f) If you were previously overpaid benefits under title II or title XVI of the Act, we will not recover the overpayment from your provisional benefits unless you give us permission. We can recover Medicare premiums you owe from your provisional benefits.

(g) If we determine you are not entitled to reinstated benefits, provisional benefits we have already paid you under this section that were made prior to the termination month under paragraph (c) of this section, will not be subject to recovery as an overpayment unless we determine that you knew, or should have known, you did not meet the requirements for reinstatement in § 404.1592c.

§ 404.1592g How do we determine reinstated benefits?

(a) If you meet the requirements for reinstatement under § 404.1592c(a), we will then consider in which month to reinstate your entitlement. We will reinstate your entitlement with the earliest month, in the 12-month period that ends with the month before you filed your request for reinstatement, that you would have met all of the requirements under § 404.1592c(a) if you had filed your request for reinstatement in that month. Otherwise, you will be entitled to reinstated benefits beginning with the month in which you filed your request for such benefits. We cannot reinstate your entitlement for any month prior to January 2001.

(b) When your entitlement is reinstated, you are also entitled to Medicare benefits under the provisions of 42 CFR part 406.

(c) We will compute your reinstated benefit amount and determine benefits payable under the applicable paragraphs of §§ 404.201 through 404.480 with certain exceptions—

(1) We will reduce your reinstated benefit due in a month by a provisional benefit we already paid you for that month. If your provisional benefit paid for a month exceeds the reinstated benefit, we will treat the difference as an overpayment under §§ 404.501 through 404.527.

(2) If you are reinstated on your own earnings record, we will compute your primary insurance amount with the same date of onset we used in your most recent period of disability on your earnings record.

(d) We will not pay you reinstated benefits for any months of substantial gainful activity during your initial reinstatement period. During the initial reinstatement period the trial work period provisions of § 404.1592 and the reentitlement period provisions of § 404.1592a do not apply. The initial reinstatement period begins with the month your reinstated benefits begin under paragraph (a) of this section and ends when you have had 24 payable months of reinstated benefits. We consider you to have a payable month for the purposes of this paragraph when you do not do substantial gainful activity in that month and the non-payment provisions in § 404.401 through 404.480 also do not apply. When we determine if you have done substantial gainful activity in a month during the initial reinstatement period, we will consider only your work in, or earnings for, that month. We will not apply the unsuccessful work attempt provisions of §§ 404.1574(c) and 404.1575(d) or the averaging of earnings provisions in § 404.1574a.

(e) After you complete the 24-month initial reinstatement period as indicated in paragraph (d) of this section, your subsequent work will be evaluated under the trial work provisions in § 404.1592 and then the reentitlement period in § 404.1592a.

(f) Your entitlement to reinstated benefits ends with the month before the earliest of the following months—

(1) The month an applicable terminating event in § 404.301 through 404.392 occurs;

(2) The month in which you reach retirement age;

(3) The third month following the month in which your disability ceases; or

(4) The month in which you die.

(g) Determinations we make under §§ 404.1592g are initial determinations under § 404.902 and subject to review under §§ 404.900 through 404.999d.

(h) If we determine you are not entitled to reinstated benefits we will consider your request filed under § 404.1592c(a) your intent to claim benefits under § 404.630.

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

Subpart I—[Amended]

5. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p) and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

6. Add new §§ 416.999 through 416.999e to read as follows:

§ 416.999 What is expedited reinstatement?

The expedited reinstatement provision provides you another option for regaining eligibility for benefits when we previously terminated your eligibility to disability benefits due to your work activity. The expedited

reinstatement provision provides you the option of requesting that your prior eligibility for disability benefits be reinstated, rather than filing a new application for a new period of eligibility. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful activity within 60 months of your prior termination. You must have stopped doing substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard (MIRS) that we use in our continuing disability review process. The advantage of using MIRS is that we will generally find that you are disabled unless your impairment has improved so that you are able to work or unless an exception under the MIRS process applies. We explain the rules for expedited reinstatement in §§ 416.999a through 416.999e.

§ 416.999a Who is eligible for expedited reinstatement?

(a) You can have your eligibility to benefits reinstated under expedited reinstatement if—

(1) You were previously eligible for a benefit based on disability or blindness as explained in § 416.202;

(2) Your disability or blindness eligibility referred to in paragraph (a)(1) of this section was terminated because of earned income or a combination of earned and unearned income;

(3) You file your request for reinstatement timely under § 416.999b; and

(4) In the month you file your request for reinstatement—

(i) You are not able to do substantial gainful activity because of your medical condition,

(ii) Your current impairment is the same as or related to the impairment that we used as the basis for your previous eligibility referred to in paragraph (a)(2) of this section,

(iii) You are disabled or blind, as determined under the medical improvement review standard in §§ 416.994 or 416.994a, and

(iv) You meet the non-medical requirements for eligibility as explained in § 416.202.

(b) You cannot be reinstated under paragraph (a) of this section if—

(1) You previously filed a request for expedited reinstatement and we denied that request because we determined that you were not disabled under the medical improvement review standard or that you did not have a current impairment(s) that was the same as or related to the impairment(s) that we used as the basis for your prior entitlement to that benefit; or

(2) We previously determined you were not disabled or blind based upon the medical improvement review standard in §§ 416.994 or 416.994a.

(c) You are eligible for reinstatement if you are the spouse of an individual who can be reinstated under § 416.999a if—

(1) You were previously an eligible spouse of the individual;

(2) You meet the requirements for eligibility as explained in § 416.202 except the requirement that you must file an application; and

(3) You request reinstatement.

§ 416.999b How do I request reinstatement?

(a) You must make your request for reinstatement in writing;

(b) You must have filed your request on or after January 1, 2001;

(c) You must provide the information we request so that we can determine whether you meet the eligibility requirements listed in § 416.999a;

(d) We must receive your request within the consecutive 60-month period that begins with the month in which your eligibility terminated due to earned income, or a combination of earned and unearned income. If we receive your request after the 60-month period, we can grant you an extension if we determine you had good cause, under the standards explained in § 416.1411, for not filing the request timely; and

(e) You must certify that you are disabled, that your current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the eligibility you are requesting to be reinstated, that you became unable to continue to do substantial gainful activity because of your medical condition, and that you meet the non-medical requirements for eligibility for benefits.

§ 416.999c How do we determine whether you are unable to do substantial gainful activity because of your medical condition?

(a) You are unable to do substantial gainful activity because of your medical condition when you become unable to continue working, or you reduce your work and earnings below the substantial gainful activity earnings level, due to your impairment or because special circumstances that permitted you to work despite your impairment are removed. We will consider special circumstances that permitted you to work despite your impairment to have been removed, for instance, when your employer terminates you during a general layoff from a job that you performed under special circumstances or you must stop that work due to a natural disaster.

(b) We will not consider you unable to do substantial gainful activity because of your medical condition when you stop work, or reduce your work and earnings below the substantial gainful level, for reasons unrelated to your medical condition. We will not consider you unable to do substantial gainful activity because of your medical condition when, for instance, you are not working because you work in seasonal employment and you are now in the normal off-season or you stop work for personal reasons not related to your medical condition.

(c) *Examples*:

Example 1. Mr. K is laid-off from his job because the business owners close the plant where he is working. Mr. K was able to work at this plant because it was located close to the bus line located near his house. Mr. K must work near a bus line because of his medical condition. Mr. K is considered to have stopped work due to his medical condition under paragraph (a) of this section. Mr. K had special transportation accommodations that allowed him to work in that job as indicated in paragraph (d) of this section.

Example 2. Mr. L is laid-off from his job because the owners are retooling the plant where he is working. Mr. L had no special circumstances under paragraph (d) of this section that enabled him to work. Under paragraphs (a) and (b) of this section, Mr. L is not considered to have stopped work due to his medical condition because he stopped work for reasons unrelated to his medical condition and he had no special circumstances related to his employment.

Example 3. Ms. M works as a teacher. Her contract requires her to work from September of one year through June of the next year. Ms. M contacts us in July and indicates she last worked in June. She indicates she is in her normal off-work period and plans to return to work in September when her next contract begins. She indicates the reason she stopped work is her contract is over. She has nothing else preventing her from working in July. Under paragraph (b) of this section, Ms. M is not considered to have stopped work because of her medical condition.

(d) When we consider whether you had special circumstances in your work for purposes of this section, we will consider how well you did your work as discussed in § 416.973(b), whether your work was done under special conditions as discussed in § 416.973(c), and whether you were able to work because you had a special need that was being accommodated, such as special transportation requirements.

§ 416.999d How do we determine provisional benefits?

(a) You may receive up to 6 consecutive months of provisional cash

benefits and Medicaid during the provisional benefit period, while we determine whether we can reinstate your disability benefit eligibility under § 416.999a—

(1) We will pay you provisional benefits beginning with the month after you file your request for reinstatement under § 416.999a(a);

(2) If you are an eligible spouse, you can receive provisional benefits with the month your spouse's provisional benefits begin;

(3) We will pay you a monthly provisional benefit amount equal to the monthly amount that would be payable to an eligible individual under §§ 416.401 through 416.435 with the same kind and amount of income as you have;

(4) If you have an eligible spouse, we will pay you and your spouse a monthly provisional benefit amount equal to the monthly amount that would be payable to an eligible individual and eligible spouse under § 416.401 through 416.435 with the same kind and amount of income as you and your spouse have; and

(5) Your provisional benefits will not include state supplementary payments payable under §§ 416.2001 through 416.2176.

(b) We will not pay you a provisional benefit for a month where you are not eligible for a payment under §§ 416.1322, 416.1323, 416.1325, 416.1327, 416.1329, 416.1330, 416.1334, and 416.1339.

(c) We will not pay you a provisional benefit for any month that is after the earliest of: The month we send you notice of our determination on your request for reinstatement; or, the sixth month following the month you requested expedited reinstatement.

(d) You are not eligible for provisional benefits if, prior to starting your provisional benefits—

(1) We determine that you do not meet the requirements for reinstatement under §§ 416.999a(a)(1) through 416.999a(a)(3);

(2) We determine that you are not eligible for reinstatement under § 416.999a(b); or

(3) We determine that your statements on your request for reinstatement, made under § 416.999b(d)(2), are false.

(e) Determinations we make regarding your provisional benefits under paragraphs (a) through (d) of this section are final and are not subject to administrative and judicial review under §§ 416.1400 through 416.1499.

(f) If you were previously overpaid benefits under title II or title XVI of the Act, we will not recover the overpayment from your provisional benefits unless you give us permission.

(g) If we determine you are not eligible to receive reinstated benefits, provisional benefits we have already paid you under this section that were made prior to the termination month under paragraph (c) of this section, will not be subject to recovery as an overpayment unless we determine that you knew, or should have known, you did not meet the requirements for reinstatement in § 416.999a.

§ 416.999e How do we determine reinstated benefits?

(a) If you meet the requirements for reinstatement under § 416.999a(a), we will reinstate your benefits with the month after the month you filed your request for reinstatement. We cannot reinstate your eligibility for any month prior to February 2001.

(b) We will compute your reinstated benefit amount and determine benefits payable under the applicable paragraphs in §§ 416.401 through 416.435. We will reduce your reinstated benefit due in a month by a provisional benefit we already paid you for that month. If your provisional benefit paid for a month exceeds the reinstated benefit due, we will treat the difference as an overpayment under § 416.536.

(c) Once you have been reinstated under § 416.999a you cannot be reinstated again until you have completed a 24-month initial reinstatement period. Your initial reinstatement period begins with the month your reinstated benefits begin under paragraph (a) of this section and ends when you have had 24 payable months of reinstated benefits. We consider you to have a payable month for the purposes of this paragraph when you are due a cash benefit of any amount for the month based upon our normal computation and payment rules in § 416.401 through § 416.435. If your entire benefit payment due you for a month is adjusted for recovery of an overpayment under § 416.570 and § 416.571 or if the amount of the provisional benefit already paid you for a month exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider the month a payable month.

(d) Your eligibility to reinstated benefits ends with the month preceding the earliest of the following months—

(1) The month an applicable terminating event in §§ 416.1331 through 416.1339 occurs;

(2) The third month following the month in which your disability ceases; or

(3) The month in which you die.

(e) Determinations we make under this section are initial determinations under § 416.1402 and are subject to review under § 416.1400 through 416.1499.

(f) If we determine you are not eligible for reinstated benefits, we will consider your request filed under § 416.999a(a) your intent to claim benefits under § 416.340.

Subpart N—[Amended]

7. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); 31 U.S.C. 3720A.

8. Amend § 416.1403 by revising paragraphs (a) (18) and (19), adding paragraph (a) (20), and revising paragraphs (b)(1) and (2) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(18) Determining whether we will refer information about your overpayment to a consumer reporting agency (see §§ 416.590 and 422.305 of this chapter);

(19) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see §§ 416.590 and 422.310 of this chapter); and

(20) Determining when provisional benefits are payable, the amount of the provisional benefit payable, and when provisional benefits terminate. (See § 416.999d).

(b) * * *

(1) If you receive an emergency advance payment; presumptive disability or presumptive blindness payment, or provisional payment, we will provide a notice explaining the nature and conditions of the payments.

(2) If you receive presumptive disability or presumptive blindness payments, or provisional payments, we shall send you a notice when those payments are exhausted.

* * * * *

[FR Doc. 03–26951 Filed 10–24–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 606

[Docket No. 2003N–0211]

Revisions to Labeling and Storage Requirements for Blood and Blood Components, Including Source Plasma; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that proposed to revise the labeling and storage requirements for certain human blood and blood components, including Source Plasma (proposed labeling and storage rule). The proposed rule appeared in the **Federal Register** of July 30, 2003 (68 FR 44678). The proposed regulation included a paragraph that FDA did not intend to publish. This document corrects that error by removing the incorrect paragraph from the proposed rule.

DATES: Submit written or electronic comments on the proposed rule by October 28, 2003.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD, 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Sharon Carayiannis, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: The proposed rule that published in the **Federal Register** of July 30, 2003, inadvertently included § 606.121(c)(13) in the proposed text of the regulation (68 FR 44678 at 44686). As discussed in the proposed labeling and storage rule (68 FR 44678 at 44682), FDA issued a related proposed rule entitled ''Bar Code Label Requirements for Human Drug Products and Blood'' (proposed bar code rule) in the **Federal Register** of March 14, 2003 (68 FR 12499). The proposed bar code rule would amend § 606.121(c)(13) to require certain human drug and biological product labels to bear bar codes and also would require the use of machine-readable information on container labels for blood and blood components intended for transfusion. FDA did not intend to propose to revise § 606.121(c)(13) in the proposed labeling and storage rule, and the agency is removing that paragraph to eliminate any confusion that might occur.

In FR Doc. 03–19289, appearing on page 44678, in the **Federal Register** of July 30, 2003, the following correction is made:

§ 606.121 [Corrected]

1. On page 44686, in the third column, § 606.121 *Container label* is corrected by removing paragraph (c)(13).

Dated: October 20, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–27012 Filed 10–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–051–FOR]

Maryland Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: We are announcing receipt of a proposed amendment to the Maryland regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of Maryland Regulations (COMAR) to incorporate various changes related to: augering, lands eligible for remining, required written findings, and topsoil handling.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on November 26, 2003. If requested, we will hold a public hearing on the amendment on November 21, 2003. We will accept requests to speak at a hearing until 4 p.m. (local time), on November 12, 2003.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Mr. George Rieger, at the address listed below.

You may review copies of the Maryland program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Appalachian Regional Coordinating Center.

Mr. George Rieger, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220, (412) 937–2153.

Mr. C. Edmon Larrimore, Program Manager, Mining Program, 1800 Washington Boulevard, Baltimore, Maryland 21230, (410) 537–3000, or 1–800–633–6101.

FOR FURTHER INFORMATION CONTACT: Mr. George Rieger, Telephone: (412) 937–2153. Internet: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Maryland Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79431). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15 and 920.16.

II. Description of the Proposed Amendment

By letter dated September 16, 2003, Maryland sent us a proposed amendment to its program (Administrative Record Number MD–585–00) under SMCRA (30 U.S.C. 1201 *et seq.*). Maryland sent the amendment to include changes made at its own initiative.

The provisions of COMAR that Maryland proposes to revise are as follows: COMAR, 26.20.03.07 Augering, A. and B., 26.20.03.11 Lands Eligible for Remining, A., B., (1), (2), C., and D., 26.20.05.01 Required Written Findings, A., B., C., L., (1), (2), and (3), and 26.20.25.02 Topsoil Handling D. The specific amendments to COMAR are identified below.

26.20.03.07 Augering.

Maryland proposes to recode the first section A. and add section B. which states ''No permit shall be issued for any augering operations unless the Bureau finds, in writing, that the operation meets all other requirements of this subtitle and will be conducted in compliance with COMAR 26.20.24.01''.

26.20.03.11 Lands Eligible for Remining.

Maryland proposes to add sections which state:

A. This regulation applies to any person who conducts or intends to conduct a surface coal mining operation on lands eligible for remining.

B. Any application for a permit under this regulation shall be made according to all requirements of this subtitle applicable to surface coal mining and reclamation operations. In addition, the application shall:

(1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activities at the site that could be reasonably anticipated to occur; and

(2) With regard to potential environmental and safety problems referred to in section B(1) of this regulation, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the Regulatory Program can be met.

C. The identification of the environmental and safety problems required under section B(1) of this regulation shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

D. The requirements of the regulation shall not apply after September 30, 2004.

26.20.05.01 Required Written Findings.

''A, and may not'' are deleted and this section is revised to read, ''No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the Bureau finds, in writing, on the basis of information set forth in the application, or information otherwise available and documented in the approval under COMAR 26.20.04.11 A., the following:''

A. ''Complies'' is deleted and this section now reads, ''The permit application is complete and accurate and the applicant has complied with all requirements of the Regulatory Program;''

B. The words ''Surface coal mining and'' as well as ''mining and'' are deleted and the section is revised to read, ''The applicant has demonstrated that reclamation operations, as required by the Regulatory Program, can be feasibly accomplished under the reclamation plan contained in the application;''

C. The phrases ''has been made an'' and ''have been made'' have been deleted and the section now reads, ''The Bureau has made an assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance and has determined that the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area;''

D.–K. (text unchanged)

L. The sentence, ''The activities are conducted so as to reasonably maximize the use of coal, while using the best appropriate technology currently available to maintain environmental integrity, so that the probability of re-affecting the land in the future by strip or underground mining operations is minimized.'' is deleted and the section is revised to read, ''For permits issued under COMAR 26.20.03.11, the permit application must contain:''

(1) Land eligible for remining;

(2) An identification of the potential environmental and safety problems related to the prior mining activities which could reasonably be anticipated to occur at the site; and

(3) Mitigation plans to sufficiently address these potential environmental safety problems so that reclamation as required by the applicable requirements of the Regulatory Program can be accomplished.

26.20.25.02 Topsoil Handling.

A.–C. (text unchanged)

D. The word ''Topsoil'', the phrase ''in the amounts determined by soil tests'', and the fragment and sentence ''surface soil layer so that it supports the approved post mining land use and meets the revegetative requirements. All soil tests shall be performed by a qualified laboratory or person using standard methods approved by the bureau.'' all have been deleted. The section now reads as follows:

Nutrients and Soil Amendments.

Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Maryland program.

Written Comments

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

Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS NO. MD–051–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Appalachian Regional Coordinating Center at (412) 937–2153.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under

FOR FURTHER INFORMATION CONTACT by 4 p.m. (local time), on November 12, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or

tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 2, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–27044 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[MT–024–FOR]

Montana Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposes to make editorial and substantive revisions to the Montana Strip and Underground Mine Reclamation Act (MSUMRA) provisions in the Montana Code Annotated (MCA) that pertain to: State policy and findings concerning mining and reclamation; definitions; the time required to approve or disapprove minor permit revisions; permit application requirements, including determinations of probable hydrologic consequences and land use; requirements to protect the hydrologic balance; area mining, post-mine land use, and wildlife enhancement; revegetating disturbed areas; timing of reclamation; standards for successful revegetation; making vegetation the landowner's property after bond release; jurisdictional venue in right-of-entry actions; transfer of revoked permit; and mandamus. The State also proposes to add new provisions to the MSUMRA for: Revising applications for permits, permit amendments, and permit revisions; codifying the changes proposed in the amendment; clauses for severability, saving, and contingent voidness; and a delayed effective date for the proposed changes. Montana intends to revise its program to incorporate the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended, to provide additional clarification, and to improve operational efficiency.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., mountain daylight time November 26, 2003. If requested, we will hold a public hearing on the amendment on November 21, 2003. We will accept requests to speak until 4 p.m., mountain daylight time, on November 12, 2003.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

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

Guy Padgett, Director, Casper Field Office, Office of Surface Mining, Federal Building, 100 East B Street, Casper, Wyoming 82601–1918, Telephone: (307) 261–6550, e-mail: *gpadgett@osmre.gov.*

Neil Harrington, Chief, Industrial and Energy Minerals Bureau, Coal and Uranium Program, Department of Environmental Quality, Phoenix Building, 2209 Phoenix Avenue, P.O. Box 200902, Helena, Montana 59620–0902, Telephone: (406) 444–4973, e-mail: *neharrington@state.mt.us.*

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Casper Field Office Director; telephone: (307) 261–6550; e-mail: *gpadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Description of the Proposed Amendment

By letter dated July 29, 2003, Montana sent us a proposed amendment to its program (SATS MT–024-FOR; Administrative Record No. MT–21–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

The provisions of the Montana Strip and Underground Mine Reclamation Act that Montana proposes to add and/or revise are as follows.

82–4–202, Policy—Findings

Making editorial changes to State policy and findings concerning the environment, mining and reclamation and adding new policy and findings statements.

82–4–203, Definitions

Adding or revising the terms ''adjacent area,'' ''approximate original contour,'' ''cropland,'' ''developed water resources,'' ''ephemeral drainageway,'' ''fish and wildlife habitat,'' ''forestry,'' ''grazing land,'' ''higher or better uses,'' ''hydrologic balance,'' ''industrial or commercial,'' ''intermittent stream,'' ''land use,'' ''material damage,'' ''pastureland,'' ''perennial stream,'' ''reclamation,'' ''recreation,'' ''reference area,'' ''residential,'' ''restore or restoration,'' ''surface owner,'' and ''wildlife habitat enhancement feature''; and recodifying defined terms and making editorial changes in the wording of several terms.

82–4–221, Mining Permit Required

Decreasing the time during which the Department of Environmental Quality (DEQ) must approve or disapprove an application for a minor permit revision.

82–4–222, Permit Application

Adding specific requirements for a determination of probable hydrologic consequences, a water monitoring plan, a postmining topography map, and a description of the permit area's premining condition, and recodifying parts of the section and making editorial changes throughout it.

82–4–231, Submission of and Action on Reclamation Plan

Revising the requirement to minimize disturbances to the prevailing hydrologic balance and making editorial changes throughout the section.

82–4–232, Area Mining Required—Bond—Alternative Plan

Revising the highwall reduction, approximate original contour, and alternate postmining land use provisions; defining the term ''landowner'' in context of this section, adding provisions for timely reclamation, wildlife habitat enhancement features, and for replacing pre-existing facilities, and recodifying parts of the section and making editorial changes throughout it.

82–4–233, Planting of Vegetation Following Grading of Disturbed Area

Revising provisions for establishing a vegetative cover, for reestablished plant species, and for reestablished vegetation, and recodifying parts of the section and making editorial changes throughout it.

82–4–234, Commencement of Reclamation

Removing the prohibition against disturbing an area seeded as required by 82–4–233 without DEQ approval and making editorial changes to the section.

82–4–235, [Renamed ''Determination of Successful Revegetation—Final Bond Release'']

Adding new provisions for revegetation success, including new success standards, and recodifying parts of the section and making editorial changes throughout it.

82–4–236, Vegetation as Property of Landowner

Making editorial changes.

82–4–239, Reclamation

Establishing jurisdictional venue for right-of-entry actions and making editorial changes.

82–4–250, Operating Permit Revocation—Permit Transfer

Deleting the expiration on this provision.

82–4–252, Mondamus

Making editorial changes.

Montana also proposes to add new sections for: (1) Allowing permit and reclamation plan application revisions based on the proposed statutory changes; (2) codification instructions for making the provisions for revising permit applications part of the MSUMRA; (3) severability, to ensure that, if some of the new provisions are found to be invalid, other parts that are severable from them remain in effect; (4) a savings clause that keeps these statutory changes from affecting rights and duties that matured, penalties that were incurred, or proceedings begun before the effective date of these changes; (5) contingent voidness to void any of these statutory changes if the Secretary of the Interior disapproves them and for certifying such disapproval; and for making January 1, 2004, the effective date of these changes.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

Written Comments

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

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. MT–024–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office (307) 261–6550.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., mountain daylight time on November 12, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make

a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

The Office of Management and Budget (OMB) exempted this rule from review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that this proposed rule does not have substantial direct effects 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. The proposed rule solicits public input but does not make any decisions or determinations. The State of Montana, under a Memorandum of Understanding with the Secretary of the Interior (the validity of which was upheld by the U.S. District Court for the District of Columbia), does have the authority to apply the provisions of the Montana regulatory program to mining of some coal minerals held in trust for the Crow Tribe. OSM is in the process of consulting with the Crow Tribe on this proposed program amendment.

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 2, 2003.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–27045 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket # OR–02–003b; FRL–7275–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Oregon; Grants Pass PM–10 Nonattainment Area Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 4, 2002, the State of Oregon submitted a PM–10 maintenance plan for Grants Pass to EPA for approval and concurrently requested that EPA redesignate the Grants Pass nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than ten micrometers (PM–10). In this action, EPA is proposing to approve the maintenance plan and to redesignate the Grants Pass PM–10 nonattainment area to attainment.

DATES: Comments on this proposed rule must be received in writing by November 26, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Ave., Seattle, Washington 98101. Electronic comments should be sent either to *r10aircomm@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 the Direct Final Rule, **SUPPLEMENTARY INFORMATION** section, Part VII, General Information.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Ave., Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101, (206) 553–0782, or *body.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

For additional information see the direct final rule, of the same title, published in the rules section of this **Federal Register**.

Dated: October 2, 2003.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 03–26918 Filed 10–24–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 031017264–3264–01; I.D. 100103C]

RIN 0648–AR48

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Red Snapper Individual Fishing Quota Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to provide potential participants information about the schedule, procedures, and eligibility requirements for participating in referendums to determine whether an individual fishing quota (IFQ) program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether it subsequently should be submitted to the Secretary of Commerce (Secretary) for review. The intended effect of this proposed rule is to implement the referendums consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received no later than 5 p.m., eastern time, on November 12, 2003.

ADDRESSES: Written comments on the proposed rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA), are available from NMFS at the address above.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *phil.steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Background

During the early to mid–1990s, the Council began development of an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. Development of this program involved extensive interaction with the fishing industry, other stakeholders, and the public through numerous workshops, public hearings, and Council meetings. The program was approved by NMFS and scheduled for implementation in 1996. However, Congressional action in late 1995 prohibited implementation of any new IFQ programs in any U.S. fishery before October 2000. Subsequent Congressional actions incorporated this prohibition and related provisions into the 1996 amendments to the Magnuson-Stevens Act and ultimately extended the prohibition until October 1, 2002.

Under § 407(c) of the Magnuson-Stevens Act, the Council is now authorized to prepare and submit a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery under certain conditions. First, the preparation of such a plan amendment and implementing regulations must be approved in a referendum. If the referendum is approved by a majority of the votes cast, the Council would be responsible for preparing any such plan amendment and regulations through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings and public hearings and during public comment periods on the plan amendment and regulations. Second, the submission of the plan amendment and regulations to the Secretary for review, approval/disapproval, and implementation must be approved in a subsequent referendum. Both referendums must be conducted in accordance with § 407(c)(2) of the Magnuson-Stevens Act. Section 407(c)(2) of the Magnuson-Stevens Act also specifies that, ''Prior to each referendum, the Secretary, in consultation with the Council, shall: (A) Identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and (B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.''

Purpose of This Proposed Rule and the Referendums

NMFS, in accordance with the provisions of § 407(c) of the Magnuson-Stevens Act, will conduct referendums to determine, based on the majority vote of eligible voters, whether a plan amendment and regulations to implement an IFQ program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether any subsequently prepared plan amendment and implementing regulations should be submitted to the Secretary for review, approval/disapproval, and implementation. The primary purpose of this proposed rule is to notify potential participants in the referendums, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendums. The procedures and eligibility criteria used for purposes of conducting the referendums have no bearing on the procedures and eligibility requirements that might be applied in any future IFQ program that may be developed by the Council. The provisions of any proposed IFQ program would be developed independently by the Council through the normal plan amendment and rulemaking processes that would involve extensive opportunities for public review and comment during Council meetings, public hearings, and public comment on any proposed rule. There is no relation between eligibility to vote in the referendums, as described in this proposed rule, and any eligibility regarding a subsequent IFQ program.

Referendum Processes

Who Would Be Eligible To Vote in the Referendums?

Section 407(c)(2) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons to vote in the referendums. Those criteria are subject to various interpretations. After careful consideration of those criteria and the practicality and fairness of several possible interpretations, NMFS has determined that the following persons would be eligible to vote in the referendums.

(I) For the initial referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996, through the date of publication in the **Federal Register** of the final rule implementing these referendum procedures;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person who according to NMFS' permit records holds such Class 1 license as of the date of publication in the **Federal Register** of the final rule implementing these referendum procedures;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of the date of publication in the **Federal Register** of the final rule implementing these referendum procedures, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

(II) For the second referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996, through the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NMFS' permit records holds such Class 1 license as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

A person who was simultaneously the holder of an endorsement/Class 1 license and a vessel captain operating under that endorsement/Class 1 license would not be granted dual eligibility. Such person may only receive eligibility under one of the eligibility criteria.

NMFS will have sufficient information in the Southeast Regional Office fisheries permit database to identify those persons eligible to vote in the referendums based on their having held a red snapper endorsement/Class 1 license during the required periods. However, NMFS did not have sufficient information to identify vessel captains whose eligibility would be based on the harvest of red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996. To obtain that information, NMFS prepared and distributed a fishery bulletin that described the general referendum procedures and provided a 20–day period (ending August 18, 2003) for submittal of detailed information by those vessel captains. That fishery bulletin was widely distributed to all Gulf reef fish permitees, including dealers, and to major fishing organizations, state fisheries directors, and others. Information received from that solicitation would be used to identify vessel captains whose eligibility to vote in the referendums is based on the red snapper harvest criterion.

How Would Votes Be Weighted?

Section 407(c)(2) of the Magnuson-Stevens Act requires that NMFS develop a formula to weight votes based on the proportional harvests under each

eligible endorsement and by each eligible captain during the period January 1, 1993, and September 1, 1996. NMFS would obtain applicable red snapper landings data from the Southeast Fisheries Science Center reef fish logbook database. Information from NMFS' Southeast Regional Office permit database would be used to assign total applicable landings to each eligible voter (red snapper endorsement/Class 1 license holder, lessee/lessor, or vessel captain).

The weighting procedure is complicated somewhat by requirements to protect the confidentiality of landings data, when the applicable landings history involves landings by different entities. To address confidentiality concerns, NMFS would establish a series of categories (ranges) of red snapper landings, e.g., 1,000–1,500 lb (454–680 kg); 1501–2000 lb (681–907 kg); etc.. Each eligible voter's total landings during the period January 1, 1993, and September 1, 1996, would be attributed to the appropriate category. The overall average landings attributed to each category would be determined. That average number of pounds would be the vote weighting factor, i.e., one vote for each such pound, for each eligible voter whose landings fall within that category. For example, if the overall average number of pounds attributed to the 1,000–1,500–lb (454–689–kg) category is 1,328 lb (602 kg), each eligible voter within that category would receive 1328 votes.

How Would the Vote Be Conducted?

On or about November 1, 2003, NMFS would mail each eligible voter a ballot that would specify the number of votes (weighting) that that voter is assigned. NMFS would mail the ballots and associated explanatory information, via certified mail return receipt requested, to the address of record indicated in NMFS' permit database for endorsement/Class I license holders and, for vessel captains, to the address provided to NMFS by the captains during the prior information solicitation that ended August 18, 2003. All votes assigned to an eligible voter must be cast for the same decision, i.e., either all to approve or all to disapprove the applicable referendum question. The ballot must be signed by the eligible voter. Ballots must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Ballots for the initial referendum must be received at that address by 4:30 p.m., eastern time, December 15, 2003; ballots received after that deadline would not be considered in determining the outcome of the initial referendum. Although it would not be required, voters may want to consider submitting their ballots by registered mail.

How Would the Outcome of the Referendums Be Determined?

Vote counting would be conducted by NMFS. Approval or disapproval of the referendums would be determined by a majority of the votes cast. NMFS would prepare a fishery bulletin announcing the results of each referendum that is conducted and would distribute the bulletin to all Gulf reef fish permitees, including dealers, and to other interested parties. The results would also be posted on NMFS' Southeast Regional Office's website at *http://caldera.sero.nmfs.gov*.

What Would Happen After the Initial Referendum?

NMFS would present the results of the initial referendum at the January 13–16, 2004, Council meeting in San Antonio, TX. If the initial referendum fails, the Council cannot proceed with preparation of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. If the initial referendum is approved, the Council would be authorized, if it so decides, to proceed with development of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. The proposed IFQ program would be developed through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings and public hearings and during public comment periods on the plan amendment and regulations. The plan amendment and regulations could only by submitted to the Secretary for review, approval/disapproval, and implementation if in a second referendum approval of the submission was passed by a majority of the votes cast by the eligible voters as described in this proposed rule. NMFS would announce any required second referendum by publishing a notice in the **Federal Register** that would provide all pertinent information regarding the referendum. Any second referendum would be conducted in conformance with § 407(c)(2) of the Magnuson-Stevens Act and the provisions outlined in this proposed rule.

Background Information About a Potential IFQ Program

In anticipation of the October 2002 expiration of the Congressional moratorium on development of IFQ programs, some members of the commercial red snapper fishery requested that the Council develop an IFQ profile for the fishery. Based on that request, the Council convened an Ad Hoc Red Snapper Advisory Panel (AHRSAP), comprised of participants in the commercial red snapper fishery and other individuals knowledgeable about the fishery and/or IFQ programs, to develop a profile. This profile, later referred to as an Individual Transferable Quota (ITQ) Options Paper for the Problems Identified in the Gulf of Mexico Red Snapper Fishery, provides background information about historical management of the red snapper fishery, problems in the fishery, management goals, and issues and management alternatives associated with a potential IFQ/ITQ program. The profile addresses such issues as: ITQ units of measurement (percentage of quota or pounds of red snapper); duration of ITQ rights; set-aside for non-ITQ catches under current commercial quota; actions to be taken if the quota increases or decreases; types of ITQ share certificates; initial allocation of ITQ shares and annual coupons (including eligibility, apportionment, transferability of landings histories, etc.); possible controls on ownership and transfer of ITQ shares; whether to include a ''use it or lose it'' provision; disposition of unused or sanctioned ITQ shares and coupons; possible landings restrictions; monitoring of ITQ share certificates and annual coupons; quota tracking; an appeals process; and size limit changes.

This profile represents an outline of an IFQ program as envisioned by the AHRSAP, with input from the Council—it does not reflect any final decisions by the Council regarding the structure of a proposed IFQ program for the red snapper commercial fishery. The Council may consider the options in the profile, and perhaps a variety of other options, if it chooses to pursue development of an IFQ program for the fishery. However, for purposes of the initial referendum, the Council intentionally refrained from adopting the profile. Any subsequent development of a proposed IFQ program for the red snapper commercial fishery would be conducted through the normal Council and Federal rulemaking processes that ensure numerous opportunities for review and comment by industry participants and members of the public.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

The Magnuson-Stevens Act, as amended, provides the statutory basis for the proposed rule. The proposed rule would implement up to two referendums on a potential IFQ program for the commercial red snapper fishery in the Gulf of Mexico, consistent with the requirements of the Magnuson-Stevens Act. The primary purpose of this proposed rule is to notify potential participants in the referendums, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendums.

One hundred and thirty-seven entities have been identified as having a vessel permit with a red snapper Class 1 License during the specified eligibility time frame and, therefore, qualify for participation in the referendums. Approximately 35 of these licenses are currently being fished on vessels operated by other entities through lease arrangements. An additional four vessel captains have been identified as referendum qualifiers. Although the number of Class 1 Licenses and vessel captains is known with certainty, lease arrangements may be subject to cancellation prior to a referendum such that the total number of eligible entities due to lease arrangements is not known with certainty. Although new lease arrangements are also a possibility, such that the number of lease arrangements could increase from the current total, increased leasing is not expected since this would dilute the voting power of the Class 1 License holder, absent control over the subsequent vote by the lessee. Thus, it is expected that the number of lease qualifiers will decline by some unknown amount. Assuming, however, that all current qualifiers maintain their status, the total number of entities that qualify for participation in the referendum is 176. The total red snapper fishery is valued at approximately $10 million in ex-vessel revenue on an annual basis. Although participants in this fishery do not harvest red snapper exclusively, among those vessels that target red snapper (as determined by whether the revenues from red snapper on an individual trip were greater than the revenues from any other individual species), approximately 57 percent of annual revenues for these vessels came as red snapper sales. If all qualifiers target red snapper and all red snapper ex-vessel revenues are attributed to these participants, and assuming red snapper revenues equal 57 percent of total commercial revenues for these participants, the average ex-vessel revenue per entity is approximately $100,000 ([($10 million/0.57]/176). If evaluated over the number of Class 1 licenses (137), the appropriate average revenue is approximately $128,000. Although it is logical to assume that the qualifiers target red snapper, these estimates are biased high because all red snapper revenues cannot be attributed to either category of entities. Thus, the average ex-vessel revenue per entity is less than either figure.

All referendum qualifiers that would be directly affected by the proposed rule are commercial fishing operations. The Small Business Administration defines a small business that engages in commercial fishing as a firm with receipts up to $3.5 million. Based on the revenue profile provided above, all commercial entities that would qualify for participation in the referendums are considered small entities. Because all qualifying entities would be affected by the proposed rule, it is concluded that the proposed rule would affect a substantial number of small entities.

The outcome of ''significant economic impact'' can be ascertained by examining two issues: Disproportionality and profitability. The disproportionality question is, do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? Because all the entities that would be affected by the proposed rule are considered small entities, the issue of disproportionality does not arise in the present case.

The profitability question is, do the regulations significantly reduce profit for a substantial number of small entities? Since the proposed rule simply defines the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendums, there are no implementing regulations associated with the proposed rule and, therefore, there would be no direct effects on current fishery participation, effort, harvests, or other use of the resource. All current entities can continue to participate in the fishery in the manner in which they currently operate. Therefore, all current harvests, costs, and profits would remain unchanged. Any effects, adverse or otherwise, on small entities that participate in the fishery would only occur in the future, should an IFQ program be implemented. The likelihood of this occurring in either the near or distant future is unknown. Further, the resultant impacts of such a program are unknown because the specific program has not been designed. These impacts, however, would be determined should an IFQ program be proposed. Because the proposed rule would not directly affect fishery participation or harvest in any way, the rule would not reduce business profit for any fishery participants or related businesses. Profits are therefore not expected to be significantly reduced by the proposed rule. On this basis, the proposed rule may be adjudged not to have a significant economic impact on a substantial number of small entities.

Accordingly, an initial regulatory flexibility analysis was not required or prepared. Copies of the RIR and Regulatory Flexibility Act Analysis are available (see **ADDRESSES**).

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

Dated: October 22, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–27035 Filed 10–24–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 207

Monday, October 27, 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

Food Safety and Inspection Service

[Docket No. 03–037N]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Notice of public meeting.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on November 5–6, 2003, to review and discuss the following issues: ''Procedures for Conducting Inspection in Talmadge Aiken Plants;'' ''What is the best use of data to support risk-based inspection?'' and ''How can FSIS better associate food safety activities with public health surveillance data?'' Three subcommittees will also meet on November 5, 2003, to work on the issues discussed during the full committee session.

DATES: The full Committee will hold a public meeting on Wednesday, November 5, and Thursday, November 6, 2003, from 8:30 a.m. to 5 p.m. Subcommittees will hold open meetings on Wednesday, November 5, 2003, from 7 p.m. to 9 p.m.

ADDRESSES: All Committee meetings will take place at the Washington Plaza Hotel, #10 Thomas Circle, NW., Washington, DC 20005. A meeting agenda is available on the Internet at *http://frwebgate.access.gpo.gov/cgi-bin/leavi* which is a Sub-web page of the FSIS Home page at *http://frwebgate.access.gpo.gov/cgi*. FSIS welcomes comments on the topics to be discussed at the public meeting. Comments should be sent to the FSIS Docket Room and reference docket 03–037N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. Comments may be sent by facsimile (202) 205–0381.

FOR FURTHER INFORMATION CONTACT: Robert Tynan for technical information at (202) 720–2982 or e-mail *Robert.Tynan@fsis.usda.gov* and Sonya L. West for meeting information at (202) 720–2561, FAX (202) 205–0157, or e-mail *sonya.west@ fsis.usda.gov*. Persons requiring a sign language interpreter or other special accommodations should notify Ms. West no later than October 31, 2003, at the above numbers or by e-mail. Information is also available on the Internet at *http://frwebgate.access.gpo.gov/cgi*.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2003, the Secretary of Agriculture renewed the charter for the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the Federal and State meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, 301(a)(3), 301(a)(4), and 301(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3), 661(a)(4)), and 661(c)) and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(a)(4), 454(c), 457(b), and 460(e)).

The Administrator of FSIS is the chairperson of the Committee. Membership of the Committee is drawn from representatives of consumer groups, producers, processors, and marketers from the meat and poultry industry, state government officials, and academia. The current members of the NACMPI are: Ms. Deanna Baldwin, Maryland Department of Agriculture; Dr. Gladys Bayse, Spelman College; Dr. David Carpenter, Southern Illinois University; Dr. James Denton, University of Arkansas; Dr. Kevin Elfering, Minnesota Department of Agriculture; Ms. Sandra Eskin, American Association of Retired Persons; Mr. Michael Govro, Oregon Department of Agriculture; Dr. Joseph Harris, Southwest Meat Association; Dr. Jill Hollingsworth, Food Marketing Institute; Dr. Alice Johnson, National Turkey Federation; Mr. Michael Kowalcyk, Safe Tables Our Priority; Dr. Irene Leech, Virginia Citizens Consumer Council; Mr. Charles Link, Cargill Meat Solutions; Dr. Catherine Logue, North Dakota State University; and Mr. Mark Schad, Schad Meats.

The Committee has three subcommittees to deliberate on specific issues and make recommendations to the Committee.

All interested parties are welcome to attend the meetings and to submit written comments and suggestions concerning issues the Committee will review and discuss. The comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Members of the public will be required to register before entering the meeting.

Additional Public Notification

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

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

Done in Washington, DC on: October 21, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–26968 Filed 10–24–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–032N]

Public Meeting on Risk Analysis; Notice and Request for Comments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments on risk analysis standard operating procedures.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a public meeting on risk analysis on November 13, 2003. The meeting will provide a forum for experts from government, academia, industry and consumer organizations to discuss current government thinking and activities regarding how the three components of the risk analysis framework—risk assessment, risk management, and risk communication—are used to inform and implement risk management decisions.

DATES: The public meeting is scheduled for Thursday, November 13, 2003. The meeting will be held from 8:30 a.m. to 4 p.m.

ADDRESSES: The public meeting will be held at the Washington Plaza Hotel, #10 Thomas Circle, NW., Washington, DC 20005, Conference Room: National Hall. An agenda is available in the FSIS Docket Room and on the Internet at *http://www.fsis.usda.gov*. FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original to the FSIS Docket Room, Reference Docket #03–032N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Schwartz at (202) 205–0032. Registration for the meeting will be onsite. FSIS encourages attendees to pre-register as soon as possible by contacting Ms. Mary Harris of the FSIS Planning Staff at (202) 690–6497 or by e-mail to *mary.harris@fsis.usda.gov*. If a sign language interpreter or other special accommodations are necessary, contact Ms. Harris at the above numbers no later than November 6, 2003.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2003, USDA Under Secretary for Food Safety Dr. Elsa Murano released a food safety vision document to guide continuing efforts by FSIS to fulfill its mission of protecting public health by improving the safety of meat, poultry, and egg products. The document is available at *http://www.fsis.usda.gov/oa/programs/vision071003.htm*. This document sets out five core goals and describes several initiatives FSIS is undertaking. One of the core goals is to ensure that FSIS policy decisions are based on sound science.

Risk analysis includes three elements—risk assessment, risk management, and risk communication. Risk assessment is a scientifically based process of evaluating hazards and the likelihood of exposure to those hazards, and then estimating the resulting public health impact. Risk management involves using all of the information gathered during the assessment to evaluate policy options and then selecting and implementing measures that can be applied to reduce the risk. Risk communication involves communication of the process and results of the risk assessment to the general public, as well as the ongoing communication among risk assessors, managers, and stakeholders during the entire process.

FSIS has completed several risk assessments, including those for Salmonella Enteritidis in eggs, Escherichia coli O157:H7 in ground beef, and Listeria monocytogenes in ready-to-eat meat and poultry products. USDA (including FSIS) contracted with Harvard University's School of Public Health for a risk assessment on bovine spongiform encephalopathy (BSE). The results of these risk assessments have been used to develop food safety risk management strategies.

In order to direct its food safety risk assessment activities, USDA has established a Food Safety Risk Assessment Committee. The Committee's purpose is to enhance coordination and communication among various USDA agencies to promote scientifically sound risk assessments and to foster research to support risk assessments. Because risk analysis is playing a significant role in the Agency's regulatory decision-making, FSIS has developed a standard operating procedures document (SOP) to outline the process of risk analysis at FSIS and to define clearly the role of various participants. The risk analysis SOP has been posted on the FSIS Web site at *http://www.fsis.usda.gov/OPPDE/rdad/default.htm*. FSIS is requesting comments on the SOP until December 26, 2003. Send your written comments on the SOP to the FSIS Docket Room, Reference Docket #03–032N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. Any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m. Monday through Friday except Federal holidays.

Public Meeting

The Agency is providing a forum to inform the public about the risk analysis process at FSIS. FSIS is seeking input on the process as outlined in the risk analysis SOP.

The meeting will consist of sessions on the elements of risk analysis and the process of risk analysis at FSIS. Examples of risk assessments that have been conducted will be used to illustrate the process. Following these sessions, a panel of experts will provide their perspectives on key issues of concern to FSIS regarding the conduct of risk analysis.

FSIS has developed a list of questions for which it seeks input.

- How can FSIS improve the transparency of the risk analysis process?
- How can FSIS balance the need for transparency, stakeholder involvement, and peer review with the need for timely scientific guidance?
- How can FSIS ensure that it has the necessary data to conduct risk assessments and that the data are of sufficient quality?
- How should FSIS determine what type of peer review is appropriate for a particular risk assessment?
- How can risk assessments better inform policy development and decision-making?

Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice and informed about the mechanism for providing their comments, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which

is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on line through the Internet at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

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

Done in Washington, DC, on: October 21, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–26967 Filed 10–24–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, November 6, 2003, in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting November 6, 2003 begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Updates on Chico Flat and Pine Creek Projects; and Diamond Mountain and Fredonyer Road Projects; Report on proposals received; Review monitoring reports by project and Merchantable Materials Projects. Time will also be set aside for public comments at the beginning and end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Jack T. Walton,

Acting Forest Supervisor.

[FR Doc. 03–26976 Filed 10–24–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resources Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss projects for 2003 and monitoring of 2002 projects. Agenda topics will include contracts for projects that have been accepted, presentation on other subjects and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on October 28, 2003, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: October 20, 2003.

David T. Bull,

Forest Supervisor.

[FR Doc. 03–26984 Filed 10–24–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon Province Advisory Committee will meet on November 19, 2003 in Reedsport, Oregon in the Umpqua Discovery Center at 409 Riverfront Way. The meeting will begin at (9 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) Development of Work Plan; (2) Public Comment; (3) Settlement Agreement with AFRC; (4) BLM Resource Management Plan revision process; and (5) Future Agenda Items.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jim Hays, Province Advisory Committee Coordinator, USDA Forest Service, Prospect Ranger District, 47201 Highway 62, Prospect, Oregon 97536, phone (541) 560–3432.

Dated: October 21, 2003.

Scott D. Conroy,

Designated Federal Official.

[FR Doc. 03–26978 Filed 10–24-03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Low Enriched Uranium From France: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Carol Henninger at (202) 482–1756 or (202) 482–3003, respectively; Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day

of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

Eurodif S.A. (Eurodif), a French producer of subject merchandise, and United States Enrichment Corporation and USEC, Inc., a domestic producer of subject merchandise, requested an administrative review of the antidumping duty order on low enriched uranium from France on February 3, 2003, and February 28, 2003, respectively. On March 25, 2003, the Department published a notice of initiation of the administrative review, covering the period July 13, 2001, through January 31, 2003, (Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 68 FR 14394). The preliminary results are currently due no later than October 31, 2003.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit due to the complex issues that have been raised. Specifically, the Department has issued three supplemental sales questionnaires and delayed verification in order to obtain additional explanation regarding the respondent's entries during the POR. In addition, the Department is investigating major inputs the respondent purchased from affiliated parties and has issued two supplemental cost questionnaires. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than December 18, 2003. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 21, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 03–27043 Filed 10–24–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351–824]

Silicomanganese From Brazil: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on silicomanganese from Brazil in response to a request from one manufacturer/exporter, SIBRA Electro-Siderurgica Brasileira S.A. (''SIBRA'') and Companhia Paulista de Ferroligas (''CPFL'') (collectively ''SIBRA/CPFL'').[1] This review covers the period December 1, 2001, through November 30, 2002.

We have preliminarily determined that SIBRA/CPFL made sales to the United States at prices below normal value during the period of review. If these preliminary results are adopted in our final results of administrative review, we will instruct Customs and Border Protection to assess antidumping duties on all appropriate entries. We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Ellman at (202) 482–4852 or Katja Kravetsky at (202) 482–0108, 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.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1994, the Department of Commerce (''the Department'') published in the **Federal Register** the antidumping duty order on silicomanganese from Brazil. See *Notice of Antidumping Duty Order: Silicomanganese from Brazil*, 59 FR 66003. On December 2, 2002, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicomanganese from Brazil covering the period December 1, 2001, through November 30, 2002. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 71533. On December 30, 2002, SIBRA/CPFL requested that the Department conduct an administrative review of its sales. On January 22, 2003, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009.

On August 29, 2003, the Department postponed the preliminary results of this review until no later than October 17, 2003. See *Silicomanganese From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 52895 (September 8, 2003).

The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act'').

Scope of Review

The merchandise covered by this review is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous, and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorous. All compositions, forms, and sizes of silicomanganese are included within the scope of this review, including silicomanganese slag, fines, and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese.

Silicomanganese is currently classifiable under subheading 7202.30.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. This scope

[1] We have collapsed another affiliated Brazilian producer of silicomanganese, Urucum Mineracao (''Urucum''), with SIBRA/CPFL for purposes of this proceeding and have calculated a single dumping margin for them.

covers all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope remains dispositive.

Verification

From August 4 through August 8, 2003, and from August 18, 2003, through August 22, 2003, in accordance with section 782(i) of the Act, the Department verified the sales and cost information provided by SIBRA/CPFL using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public and proprietary versions of the verification reports (''Sales Verification Report: Administrative Review of the Antidumping Duty Order on Silicomanganese from Brazil (December 1, 2001, through November 30, 2002)'' dated October 14, 2003, (''Sales Verification Report'') and ''Verification Report on the Cost of Production and Constructed Value Data Submitted by SIBRA Electrosiderurgica Brasileira S.A. (''SIBRA''), Companhia Paulista de Ferro-Ligas (''CPFL'') and Urucum Mineracao S.A (''Urucum'')(collectively ''SIBRA/CPFL'')'' dated October 2, 2003, (''Cost Verification Report'') on file in the Central Records Unit (''CRU''), Room B-099 of the main Department of Commerce building.

Collapsing

The Department's regulations under 19 CFR 351.401(f) outline the criteria for collapsing (*i.e.* treating as a single entity) affiliated producers for purposes of calculating a dumping margin. The regulations state that we will treat two or more affiliated producers as a single entity where (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) we conclude that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the Department may consider the following factors: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and, (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See 19 CFR 351.401(f)(2).

Urucum is a wholly-owned subsidiary of Companhia Vale de Rio Doce (''CVRD''); therefore, SIBRA/CPFL and Urucum are affiliated under section 771(33)(F) of the Act, which provides that persons directly or indirectly under common control of any person are affiliates. As for the first criterion of 19 CFR 351.401(f), the information currently on the record indicates that Urucum is also a producer of silicomanganese and that SIBRA/CPFL and Urucum use similar production facilities to produce silicomanganese. There is no evidence on the record to indicate that substantial retooling would be required for SIBRA, CPFL, or Urucum to restructure their manufacturing priorities.

As to whether there is significant potential for manipulation, we find that their operations are intertwined, in that a centralized office provides administrative and sales services in connection with sales of silicomanganese produced by SIBRA, CPFL, and Urucum, and all financial data for these three companies are maintained in a single accounting system. In addition, they share directors (the president of Urucum serves as a director at both SIBRA and CPFL), which is a clear indication that significant potential for manipulating price and production exists in this case. Therefore, we find that they are affiliated for the purposes of this administrative review and that Urucum should be collapsed with SIBRA/CPFL and considered one entity pursuant to section 771(33) of the Act and 19 CFR 351.401(f).

Affiliation of Parties

Pursuant to section 771(33)(F) of the Act, the Department has preliminarily determined that certain customers to whom SIBRA/CPFL sold silicomanganese during the period of review (''POR'') and whom SIBRA/CPFL identified as unaffiliated parties are, in fact, affiliated with SIBRA/CPFL. Specifically, the Department has determined that SIBRA/CPFL and some of its home market customers are under the common control of ''CVRD'', SIBRA's parent company. According to section 771(33)(F) of the Act, two or more persons under common control with any other person shall be considered affiliated. Thus, we have preliminarily found these companies to be affiliated with SIBRA/CPFL. For a complete discussion of this issue, see the October 17, 2003, memorandum entitled ''Analysis of the Affiliation of SIBRA/CPFL with its Customers'' which is on file in CRU.

Comparisons to Normal Value

Based on a request by the respondent in which it claimed to have made one U.S. sale during the POR, we allowed SIBRA/CPFL to limit its home-market sales response to the six-month period from August 2002 through January 2003. In its May 7, 2003, questionnaire response, however, SIBRA/CPFL clarified that that it had actually made two sales to unaffiliated U.S. customers that had a date of sale in the POR and that it had reported sales information for only the sale with an entry date during the POR. In accordance with 19 CFR 351.213(e)(1)(i), we requested complete sales information with respect to both sales made to the United States during the POR.

To determine whether sales of silicomanganese from Brazil were made in the United States at less than normal value (''NV''), we compared the export price (''EP'') to the NV. Because Brazil's economy experienced significant inflation during the POR, as is Department practice, we limited our comparisons to home-market sales made during the same month in which the U.S. sale occurred. See ''Cost of Production Analysis'' section below. This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and the home-market sales.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade (*i.e.*, sales within the same month which passed the cost test) for purposes of determining appropriate product comparisons to U.S. sales. As there were no appropriate home market sales of comparable merchandise, we compared the merchandise sold to the United States to constructed value (''CV'').

Merchandise

In its questionnaire responses and at the sales verification, SIBRA/CPFL stated that it sold three grades of silicomanganese in the home market during the home-market sales reporting period: 12/16, 15/20, and 16/20. According to SIBRA/CPFL's description of these grades of silicomanganese, 12/16 has a silicon content between 12% and 16% (by weight), 15/20 has a

silicon content between 15% and 20%, and 16/20 has a silicon content between 16% and 20%.

We have preliminarily determined that there is no significant difference between the products reported as 15/20 and 16/20 and have treated merchandise reported by SIBRA/CPFL as grade 15/20 to be grade 16/20. As such, we weight-averaged the reported manufacturing costs for these two grades. For more information on this topic, see ''Antidumping Administrative Review of Silicomanganese from Brazil: Preliminary Results Analysis Memorandum of SIBRA/CPFL'' dated October 17, 2003, (''Preliminary Results Analysis Memo'') at page 5 and the Sales Verification Report at pages 7–8.

Export Price

For sales to the United States, we used EP, as defined in section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to the date of importation. We based EP on the price to the first unaffiliated purchaser in the United States. We made deductions, where appropriate, consistent with section 772(c)(2)(a) of the Act, for movement expense.

Normal Value

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared SIBRA/CPFL's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since SIBRA/CPFL's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market is viable. Therefore, we examined home-market sales for purposes of calculating NV

B. Arm's-Length Sales

SIBRA/CPFL made sales in the home market to affiliated and unaffiliated customers. To test whether the sales to affiliates were made at arm's length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all direct selling expenses, movement expenses, and taxes. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. See *Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (November 15, 2002). In accordance with the Department's practice, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

C. Cost of Production Analysis

Because the Department disregarded all of SIBRA/CPFL's home-market sales that failed the cost test in the most recently completed administrative review, pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales in this POR were made at prices below the cost of production (''COP''). Therefore, the Department initiated a COP investigation for SIBRA/CPFL.Based on the respondent's request, we adjusted the cost-reporting period to correspond with the 2002 calendar year. See letter from Laurie Parkhill, Office Director to SIBRA/CPFL dated March 21, 2003. Upon initial evaluation of inflation in Brazil during the POR, we determined that we would use a high-inflation methodology to calculate COP and issued to the respondent a high-inflation questionnaire.

Before making any fair-value comparisons, we conducted the COP analysis described below.

1. Calculation of COP

We calculated COP, in accordance with section 773(b)(3) of the Act, based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus amounts for home-market selling, general, and administrative (''SG&A'') expenses. As specified above, we determined that the Brazilian economy experienced significant inflation during the POR. Therefore, in order to avoid the distortive effect of inflation in our comparison of costs and prices, we requested that SIBRA/CPFL submit the product-specific cost of manufacturing (''COM'') incurred during each month of the period for which it reported home-market sales. We then calculated an average COM for each product after indexing the reported monthly costs to an equivalent currency level using the Brazilian IGP-M inflation index. We then restated the average COM in the currency value of each respective month.

For the preliminary results of review, we relied on COP information submitted by SIBRA/CPFL in its questionnaire responses, except, as noted below, in specific instances where the submitted costs were not appropriately quantified or valued:

a. We weight-averaged the reported manufacturing costs for grade 16/20 silicomanganese and grade 15/20 silicomanganese in accordance with the revised grade classifications described in the ''Merchandise'' section above.

b. We adjusted SIBRA/CPFL's reported COM to account for purchases of manganese ore from affiliated parties at non-arm's length prices. See ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results'' dated October 17, 2003, (''Calculation Memo'') on file in CRU.

c. We adjusted SIBRA/CPFL's reported COM to reflect the actual depreciation costs recorded in the financial accounting system. See Calculation Memo.

d. We adjusted SIBRA/CPFL's submitted general and administrative expenses to exclude double-counted depreciation expenses and income and expense items related to ICMS taxes, PIS/COFINS taxes, and investments. We also redistributed charcoal forest exhaustion costs in order to properly index these costs for inflation. See Calculation Memo.

e. We recalculated SIBRA/CPFL's submitted financial expense ratio based on CVRD's 2002 consolidated financial statements prepared in accordance with Brazilian GAAP. Due to the significant devaluation of the Brazilian Real during the fiscal year, CVRD experienced a large net foreign exchange loss in 2002. We therefore adjusted the financial expense ratio to reflect a normalized net foreign exchange loss based on CVRD's average experience over the five-year period from 1998 to 2002. In addition, we adjusted SIBRA/CPFL's financial income offset to exclude interest income from accounts receivable and interest income from long-term interest sources. See Calculation Memo.

2.Test of Home Market Prices

In determining whether to disregard home-market sales made at prices below the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted recovery of all costs within a reasonable period of time in accordance with section 773(b)(1)(A) and (B) of the Act. We compared model-specific COPs to the reported home-

market prices less any applicable movement charges and selling expense.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where 20 percent or more of the respondent's sales of a given product during the six-month period surrounding the U.S. sales were at prices less than the COP, in accordance with sections 773(b)(2)(B) and (C) of the Act, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in ''substantial quantities.'' In such cases, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales in our analysis.

D. Calculation of NV based on CV

Because we were unable to find a home-market sale made in the ordinary course of trade for a comparison to EP, in accordance with section 773(a)(4) of the Act, we based NV on CV. We calculated CV based on SIBRA/CPFL's cost of materials, fabrication employed in producing the subject merchandise, and SG&A, including interest expenses and profit. We calculated the COP component of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(B)(iii) of the Act, we calculated CV profit using the information contained in the 2002 financial statements of Maringa S.A. Cimento e Ferro-Liga, another Brazilian producer of silicomanganese. See Calculation Memo. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. We made the same adjustments to CV as described in the COP section above.

During the POR, SIBRA/CPFL did not recover all of the ICMS/IPI taxes that it paid on material purchases through its home-market sales. We therefore calculated a weighted-average per-unit ICMS/IPI tax cost for unrecovered taxes paid during the POR. Section 773(e) of the Act states, ''the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials.'' We verified that the Brazilian government gave SIBRA/CPFL a credit for the amount of PIS/COFINS taxes paid on inputs used to produce exported merchandise. Additionally, indicates that SIBRA/CPFL was able to use the entire amount of its PIS/COFINS credit due to the high volume of home-market sales in the month subsequent to the month of the U.S. sales. In accordance with the Act, we therefore calculated a weighted-average per-unit PIS/COFINS export rebate and deducted the amount of this rebate from CV. See Calculation Memo.

Currency Conversions

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and home-market sales to those occurring in the same month and only used daily exchange rates.

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Brazilian Real. Therefore, we made currency conversions based on the daily exchange rates from Factiva, a Dow Jones & Reuters Retrieval Service.

Preliminary Results of Review

As a result of our review, we preliminarily determine that a margin of 2.12 percent exists for SIBRA/CPFL/Urucum for the period December 1, 2001, through November 30, 2002. Pursuant to 19 CFR 351.224(b), the Department will disclose to parties calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be held at the main Commerce Department building three business days after submission of rebuttal briefs.

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties may be filed no later than 30 days after publication of this notice. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs. Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument with an electronic version included.

The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the CBP.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of silicomanganese from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in the original less-than-fair-value (''LTFV'') investigation, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the producer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previous review, the cash deposit rate shall be 17.60 percent, the all-others rate established in the LTFV investigation. See *Notice of Final Determination of Sales at Less than Fair Value: Silicomanganese from Brazil*, 59 FR 55432 (November 7, 1994). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary 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.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 17, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–27042 Filed 10–24–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, San Diego; Notice of Withdrawal of Application for Duty-Free Entry of Scientific Instruments

The University of California, San Diego has withdrawn Docket Number 03–047 an application for duty-free entry of Wave Measurement Instrumentation/Equipment. We have discontinued processing in accordance with section 301.5(g) of 15 CFR part 301.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–27041 Filed 10–24–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–048. *Applicant*: Whitehead Institute for Biomedical Research, 9 Cambridge Center, Cambridge, MA 02142.

Instrument: Electron Microscope, Model JEM–2200FS.

Manufacturer: JEOL Ltd., Japan. *Intended Use*: The instrument is intended to be used to study supramolecular protein structures such as the assembly and structure of prions, a causative agent in brain disease, and the acrosomal process, a protein machine that powers movements. Acrosome reaction will be studied to learn how the initial state stores energy and the conformation changes that release energy. Application accepted by Commissioner of Customs: September 26, 2003.

Docket Number: 03–049. *Applicant*: National Institutes of Health, National Cancer Institute, 50 South Drive, Building 50, Room 4306, Bethesda, MD 20892–8008. *Instrument*: Electron Microscope, Model Tecni G2 Polara. *Manufacturer*: FEI Company, The Netherlands. *Intended Use*: The instrument is intended to be used to study the following: (1) Structural determination of membrane proteins and membrane protein complexes at atomic resolution, (2) structural determination of macromolecular assemblies from single particle imaging studies, and (3) electron tomographic studies to visualize the 3-dimensional architecture of cells at molecular resolution. Application accepted by Commissioner of Customs: September 30, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–27040 Filed 10–24–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Thursday, November 13, from 9 a.m. to 3:45 p.m. The Advanced Technology Program Advisory Committee is composed of ten members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a briefing by Department of Homeland Security, a Manufacturing Panel, an update on Competition, an update by the Economic Analysis Office and an open discussion. Discussions scheduled to begin at 9 a.m. and to end at 10 a.m. and to begin at 3:05 p.m. and to end at 3:45 p.m. on November 13, 2003, on ATP budget issues will be closed. Agenda may change to accommodate Committee business. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Friday, November 7, 2003, and she will provide you with instructions for admittance. Ms. Peters's e-mail address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene Thursday, November 13, 2003, at 9 a.m. and will adjourn at 3:45 p.m. on Thursday, November 13, 2003.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Employees' Lounge, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 19, 2003, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions.

Dated: October 20, 2003.

Arden L. Bement,

Director.

[FR Doc. 03–26950 Filed 10–24–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Tuesday, November 18, 2003, 8 a.m. to 5:30 p.m.; Wednesday, November 19, 2003, 8 a.m. to 5:30 p.m.; Thursday, November 20, 2003, 8 a.m. to 5:30 p.m.; Friday, November 21, 2003, 8 a.m. to 3 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the site visit process, review the final judging process and meeting procedures, review of feedback discussion approach with site visit team leaders, final judging of the 2003 applicants, learnings and improvements for 2004 judging cycle, update on the 2004 program and review 2004 judges calendar. The review process involves examination of records and discussions of applicant data, and will be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

DATES: The meeting will convene November 18, 2003 at 8 a.m. and adjourn at 3 p.m. on November 21, 2003. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 3, 2002, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: October 20, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–26949 Filed 10–24–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Technology Administration

National Medal of Technology Nomination Evaluation Committee (NMTNEC)

AGENCY: Technology Administration, U.S. Department of Commerce.

ACTION: Notice of Recruitment for Additional Members for NMTNEC.

SUMMARY: The Department of Commerce, Technology Administration (TA), requests nominations of individuals for appointment to the National Medal of Technology Nomination Evaluation Committee (NMTNEC). The Committee provides advice to the Secretary on the implementation of Public Law 96–480 (15 U.S.C. 3711) under the Federal Advisory Committee Act, 5 U.S.C. app. 2. Public Law 105–309; 15 U.S.C. 3711, Section 10, approved by the 105th Congress in 1998, added the National Technology Medal for Environmental Technology.

DATES: Please submit nominations within 30 days of the publication of this notice.

ADDRESSES: Submit nominations to the National Medal of Technology Program Office, Technology Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 4226, Washington, DC 20230. Materials may be faxed to 202–482–5107.

FOR FURTHER INFORMATION CONTACT: Mildred Porter, Director, 202–482–5572.

SUPPLEMENTARY INFORMATION: The National Medal of Technology Nomination Evaluation Committee will be re-chartered for a period of two years to provide advice to the Secretary on the implementation of Public Law 96–480 (15 U.S.C. 3711) under the Federal Advisory Committee Act, 5 U.S.C. app. 2. The Committee serves as an advisory body to the Under Secretary. Members are responsible for reviewing nominations and making recommendations for the Nation's highest honor for technological innovation, awarded annually by the President of the United States. Members of the Committee have an understanding of, and experience in, developing and utilizing technological innovation and/or they are familiar with the education, training, employment and management of technological human resources.

Under the Federal Advisory Committee Act, membership in a committee constituted under the Act must be balanced. To achieve balance, the Department is seeking additional nominations of candidates from small, medium-sized, and large businesses or with special expertise in the following subsectors of the technology enterprise:

- Human Resources/education/technology management/technology manpower
- Chemistry, product development
- Industry analysts (including manufacturing, environmental technology, transportation, telecommunications, advanced materials, and microelectronics)

Typically, Committee members are present or former Chief Executive Officers, former winners of the National Medal of Technology; presidents or distinguished faculty of universities; or senior executives of non-profit organizations. As such, they not only offer the stature of their positions but also possess intimate knowledge of the forces determining future directions for their organizations and industries. The Committee as a whole is balanced in representing geographical, professional, and diversity interests. Nominees must be U.S. citizens, must be able to fully participate in meetings pertaining to the review and selection of finalists for the National Medal of Technology, and must uphold the confidential nature of an independent peer review and competitive selection process.

The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

Benjamin H. Wu,

Deputy Under Secretary of Commerce for Technology, Technology Administration.

[FR Doc. 03–26875 Filed 10–24–03; 8:45 am]

BILLING CODE 3510–18–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Emergency Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget

(OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Corporation has requested OMB to review and approve its emergency request for reinstatement, with change, of a previously approved collection for which approval has expired, by November 7, 2003. A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Corporation for National and Community Service, National Senior Service Corps, Attn: Ms. Angela Roberts, (202) 606–5000, Ext. 111, or by e-mail at *Aroberts@cns.gov.*

The Corporation requests that all public comments be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Fumie Yokota, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–3147. Comments should be received by the OMB Desk Officer no later than November 3, 2003.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Emergency request for reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Corporation for National and Community Service.

Title: National Senior Services Corps Project Progress Report.

OMB Number: 3045–0033.

Agency Number: CNCS Form 1020.

Affected Public: Sponsors of National Senior Service Corps grants.

Total Respondents: 1,350.

Frequency: Semi-annual. It is estimated that 1,350 will respond semi-annually and 50 quarterly.

Average Time Per Response: 8.7 hours.

Estimated Total Burden Hours: 11,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $2,000.

The Corporation is soliciting comments concerning a revised version of its National Senior Service Corps Project Progress Report. The previously approved Progress Report (OMB Control Number 3045–0033) expired on August 31, 2003. This emergency request for reinstatement with changes reflects the Corporation's intention to modify selected sections of the collection instrument to reflect changes in data considered ''ore reporting'' information to meet a variety of needs, including:

- Removing data elements no longer required after January 2004; and
- Adding new data elements as needed to ensure information collection captures appropriate data for the Corporation's required performance measurement and other reporting.

Background

The Progress Report (PPR) was designed to assure that National Service Corps (NSSC) grantees address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward work plan objectives agreed upon in the granting of the award.

Current Action

The Corporation seeks OMB approval to reinstate the previously used PPR to: (a) Enhance data elements collected via this information collection tool; (b) migrate the paper version of the form to the Corporation's electronic grants management system, eGrants; and (c) establish reporting periods consistent with the Corporation's integrated grants management and reporting policies.

The Corporation anticipates making available to all NSSC grantees an OMB approved revised PPR by April of 2004.

The revised PPR will be used by NSSC grantees to report progress toward accomplishing work plan goals and objectives, reporting actual outcomes related to self-nominated performance measures meeting challenges encountered, describing significant activities, and requesting technical assistance. Submission requirements are proposed to be revised as follows:

- Established multi-year NSSC grantees will submit the complete report semi-annually within 30 days of the end of their annual budget cycle.
- New projects in their first year, new components of statewide projects, demonstrations, and projects experiencing problems or with substantial project revisions may, upon review and recommendations of project managers, submit the PPR quarterly.

Dated: October 20, 2003.

Tess Scannell,

Director, National Senior Service Corps.

[FR Doc. 03–26952 Filed 10–24–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for a Permit Application for the Berths 136–147 Terminal Improvement Project, Also Known as the TraPac Container Terminal in the Port of Los Angeles, Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent (NOI).

SUMMARY: The U.S. Army Corps of Engineers (Corps) Los Angeles District in conjunction with the Los Angeles Harbor Department (Port) is examining the feasibility of waterside, terminal and transportation improvements at Berths 136–147 in the Port of Los Angeles. The Corps is considering the Port's application for a Department of the Army permit under Clean Water Act section 404 and River and Harbor Act section 10 to conduct dredge and fill activities and construct one new wharf approximately 705 feet and seismically upgrade two wharves approximately 3,022 feet in length associated with the proposed project.

Major project elements to be covered in the Draft EIS/EIR include: Wharf construction and landside improvements. The landside developments will include expansion, redevelopment and construction of marine terminal facilities, and transportation infrastructure improvements including construction of grade separations, and potential realignment of road and railways.

The primary Federal involvement is the discharge of dredge and/or fill materials within waters of the United States, work (*e.g.* dredging) and structures in or affecting navigable waters of the United States, and potential impacts on the human environment from such activities. Therefore, in accordance with the National Environmental Policy Act (NEPA), the Corps is requiring the

preparation of an Environmental Impact Statement (EIS) prior to rendering a final decision on the Port's permit application. The Corps may ultimately make a determination to permit or deny the above project or permit or deny modified versions of the above project.

Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as Lead Agency for the Preparation of an Environmental Impact Report (EIR). The Corps and the Port have agreed to jointly prepare a Draft EIS/EIR for the improvements at Berth 136–147 in order to optimize efficiency and avoid duplication. The Draft EIS/EIR is intended to be sufficient in scope to address both the Federal and the state and local requirements and environmental issues concerning the proposed activities and permit approvals.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS/EIR can be answered by Mr. Joshua Burnam, Corps Project Manager, at (213) 452–3294. Comments shall be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch. ATTN: File Number 2003–0–1142–JLB PO Box 532711, Los Angeles, CA 90053–2325, and Dr. Ralph Appy, Director of Environmental Management, Port of Los Angeles, 425 S. Palos Verdes St., San Pedro, CA 90731.

SUPPLEMENTARY INFORMATION: 1. *Project Site and Background Information.* The proposed project is located in the northwestern portion of the Port of Los Angeles, adjacent to the San Pedro District of the City of Los Angeles, CA. The proposed project involves dredge and fill operations, new wharf construction, coupled with terminal expansion on adjacent areas of existing land, and improvement of transportation infrastructure at and adjacent to Berths 136–147.

The project's overall goals are to upgrade the container cargo handling efficiency at the Berths 136–147 Terminal, increase its cargo handling capacity, and to improve transportation infrastructure in order to accommodate forecasted and planned increases in the volume of containerized goods shipped through the Port. In order to meet these goals, the following objectives must be met:

- Establish needed container facilities that would maximize the use of existing waterways and integrate into the Port's overall utilization of available shoreline, while maintaining opportunities for the future integration with adjacent terminals;
- Construct sufficient container berthing and infrastructure capacity to accommodate foreseeable increases in containerized cargo volumes entering the Port;
- Create sufficient backland area for optimal container terminal operations including, storage, transport, and on/offloading of container ships in a safe and efficient manner;
- Provide access to rail and truck infrastructure locations in order to minimize surface transportation congestion or delays and promote transport to both local and distant cargo destinations; and
- Provide needed container terminal accessory buildings and structures to support containerized cargo handling requirements.

2. *Proposed Action.* The first phase of construction would consolidate most of this area into a single terminal and upgrade its operations by increasing backland capacity, constructing approximately 705 feet of new wharf, upgrading wharves to handle modern container terminal ships, adding an on-dock rail yard to reduce container truck traffic, constructing two grade separations to facilitate rail and truck shipments, and constructing a noise barrier (with landscaping and recreational facilities) along Harry Bridges Boulevard. The Harry Bridges Boulevard realignment would move the existing roadway approximately 580 feet north toward ''C'' Street. As a result of these improvements, the gross terminal area would increase in size from 176 acres to 238 acres with a corresponding increase in throughput capacity. The improvements would make the facility more efficient. The proposed project elements for the Phase I construction period include:

Phase I Berth 136–147

- Construction Stage I (completed by 2005)

(1) Construction and operation of a new 705-foot wharf (78,135 square feet) at Berths 145–147. There would be no loss of waters of the U.S.

(2) Dredging of 265,000 cubic yards (cy) of material along the waterfront at Berths 145–147 to match approved-53 MLLW channel depths, with material to be placed at confined disposal site(s) (CDF) at either the Port of Los Angeles or the Port of Long Beach or at an appropriate upland site.

(3) Construction of 179,500 cy of rock dike, placement of 24,000 cy of fill behind the dike, and placement of 699 concrete piles at Berths 145–147.

(4) Construction and development of 62 acres of additional backland area for container storage.

(5) Construct a 3,200-foot long noise barrier between the realigned Harry Bridges Boulevard and residences along ''C'' Street between Figueroa Street and Lagoon Avenue.

(6) Two existing 50-gauge cranes would be removed and one new 100-gauge crane would be erected. The other four 100-gauge cranes on Berths 142–146 would remain.

(7) Construction of an on-dock intermodal container terminal facility (ICTF) rail yard within the former location of the Pier A rail yard.

(8) Construction and operation of two grade separations at Neptune Avenue and Avalon Boulevard to eliminate potential traffic delays that would otherwise be caused by trains.

(9) Construction of additional terminal gate facilities and accessory buildings.

Phase II Berth 136–147

Proposed improvements in this area would expand backlands for container terminal use and improve wharves to efficiently handle increased cargo throughput and deep draft container ships. The backland expansion would increase the terminal size from 238 acres to approximately 250 acres. The proposed projects elements for the Phase II construction period include:

- Construction Stage II (2005–2010)

(1) Improvements and upgrades to approximately 2,000 feet of wharves at Berths 136–139 including dredging to handle the planned −53-foot channel depth.

(2) Redevelopment of the vacated area at the Westway and Water Street sites into approximately 14 acres of additional backland.

(3) The existing seven 100-gauge cranes on Berths 136–139 would remain.

3. *Issues.* There are several potential environmental issues that will be addressed in the EIS/EIR. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

(a) Geological issues, including dredging and stabilization of fill areas in an area of known seismic activity;

(b) Impacts to hydrology;

(c) Impacts to air quality;

(d) Impacts to traffic, including marine navigation and ground transportation;

(e) Potential for noise impacts;

(f) Impacts to public utilities and services;

(g) Potential impacts to aesthetic resources, including light and glare;

(h) Potential impacts on public health and safety;

(i) Cumulative impacts; and

(j) Disposal of dredged materials.

4. *Alternatives.* Alternatives initially being considered for the proposed improvement project include the following:

(a) Alternate location(s) for the Terminal Improvements (within the State or within the Ports of Los Angeles/Long Beach).

(b) Development of new landfills for a container terminal.

(c) Non-containerized use of terminal (*i.e.*, lumber, autos).

(d) Non-shipping use *i.e.*, park, cruise terminal, commercial development, empty container storage, etc.

(e) No Federal action (No wharf construction or dredging—construction of only backlands developments for Phases I and II) with and without Harry Bridges being relocated.

(f) Larger facility (14-acre fill for more storage area).

(g) Reduce Wharf (reduced fill'reduction in rip-rap, pilings, and dredging).

(h) Proposed project without Harry Bridges Boulevard being relocated.

(i) No Project (no physical changes).

5. *Scoping Process.* The Corps and the Port will conduct separate, simultaneous English and Spanish language public scoping meeting on November 5, 2003 at 6 p.m., to receive public comment and assess public concerns regarding the appropriate scope and preparation of the Draft EIS/EIR. The meeting will be held at the Wilmington Recreational Center at 325 North Neptune Avenue. Parties interested in being added to the Corps' electronic mail notification list for the Port of Los Angeles can register at: *http://www.spl.usace.army.mil/regulatory/register.html.* This list will be used in the future to notify the public about scheduled hearings and availability of future public notices. Participation in the public meeting by federal, state and local agencies and other interested organizations and persons are encouraged.

6. *Availability of the Draft EIS/EIR.* The joint lead agencies expect the Draft EIS/EIR to be made available to the public in July 2004. A public hearing will be held during the public comment period for the Draft EIS/EIR.

Dated: October 9, 2003.

Richard G. Thompson,

Colonel, U.S. Army, District Engineer.

[FR Doc. 03–26969 Filed 10–24–03; 8:45 am]

BILLING CODE 3710–92–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. 6,097,785: Cone Penetrometer Utilizing an X-Ray Fluorescence Metals Sensor, Navy Case No. 77,638.

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: October 21, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–26981 Filed 10–24–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 26, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 21, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Written Request for Assistance or Application for Client Assistance Program.

Frequency: 3-year cycle for CAP assurances.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 9.

Abstract: This document is used by States to request funds to establish and carry out Client Assistance Programs (CAP). CAP is mandated by the Rehabilitation Act of 1973, as amended (Act), to assist vocational rehabilitation clients and applicants in their relationships with projects, programs, and services provided under the Act.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and

by clicking on link number 2320. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@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. 03–26971 Filed 10–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129W]

Rehabilitation Training: Rehabilitation Long-Term Training—Comprehensive System of Personnel Development; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for projects that provide basic or advanced training leading to an academic degree, provide a specified series of courses or program of study leading to award of a certificate, or provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation. The Rehabilitation Long-Term Training program is designed to provide academic training in identified areas of personnel shortages.

For FY 2004 the competition for new awards focuses on projects designed to meet the priority we describe in the PRIORITY section of this application notice.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training: Rehabilitation Long-Term Training program.

Applications Available: October 31, 2003.

Deadline for Transmittal of Applications: January 6, 2004.

Deadline for Intergovernmental Review: March 6, 2004.

Estimated Available Funds: $1,600,000.

Estimated Range of Awards: $100,000–$200,000.

Estimated Average Size of Awards: $150,000.

Maximum Award: We will reject any application that proposes a budget exceeding $200,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

- A page is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86. (b) The regulations for this program in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

This competition focuses on projects designed to meet the priority in the notice of final priority for this program, published in the **Federal Register** on October 16, 1998 (63 FR 55764).

For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105 (c)(3) we consider only applications that meet the priority:

Projects must—

(1) Provide training leading to academic degrees or academic certificates to current vocational rehabilitation counselors, including counselors with disabilities, ethnic minorities, and those from diverse backgrounds, toward meeting designated State unit (DSU) personnel standards required under section 101(a)(7) of the Rehabilitation Act of 1973, as amended, commonly referred to as the Comprehensive System of Personnel Development (CSPD);

(2) Address the academic degree and academic certificate needs specified in the CSPD plans of those States with which the project will be working; and

(3) Develop innovative approaches (*e.g.*, distance learning, competency-based programs, and other methods) that would maximize participation in, and the effectiveness of, project training.

Multi-State projects and projects that involve consortia of institutions and agencies are also authorized, although other projects will be considered.

The regulations in 34 CFR 386.31(b) require that a minimum of 75 percent of project funds be used to support student scholarships and stipends. The regulations also provide that the Secretary may waive this requirement under certain circumstances, including new training programs.

Finally, the Secretary intends to approve a wide range of approaches for providing training and different levels of funding, based on the quality of individual projects. The Secretary takes these factors into account in making grants under this priority.

Performance Measures: The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all of their grant programs to assess their performance and effectiveness. The Rehabilitation Services Administration (RSA) has established a set of indicators to assess the effectiveness of the Rehabilitation Training program and

will use the following indicator for the Rehabilitation Long-Term Training program projects:

• The percentage of graduates fulfilling their payback requirement through acceptable employment.

Each grantee must report annually on this indicator using the electronic grantee reporting system administered by RSA for this purpose.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2004 under Rehabilitation Training: Rehabilitation Long-Term Training—Comprehensive System of Personnel Development be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov*.

An applicant who is unable to submit an application through the e-Grants system may submit a written request for a waiver of the electronic submission requirement. In the request, the applicant should explain the reason or reasons that prevent the applicant from using the Internet to submit the application. The request should be addressed to: Beverly Steburg, U.S. Department of Education, Rehabilitation Services Administration, 61 Forsyth Street, room 18T91, Atlanta, GA, 30303. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, an applicant is unable to submit an application electronically, the applicant must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

Pilot Project for Electronic Submission of Applications

In FY 2004, the Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Rehabilitation Training: Rehabilitation Long-Term Training—Comprehensive System of Personnel Development, CFDA number 84.129W, is one of the programs included in the pilot project. If you are an applicant under Rehabilitation Training: Rehabilitation Long-Term Training—Comprehensive System of Personnel Development, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

• When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.

• You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on other forms at a later date.

• *Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for Rehabilitation Training: Rehabilitation Long-Term Training—Comprehensive System of Personnel Development at: *http://e-grants.ed.gov.*

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf

(TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129W.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Beverly Steburg, Rehabilitation Services Administration, 61 Forsyth Street, SW., room 18T91, Atlanta, GA 30303. Telephone (404) 562–6336 or via Internet: *Beverly.Steburg@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 29 U.S.C. 772.

Dated: October 21, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–26990 Filed 10–24–03; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 03–46–NG, 03–42–NG, 03–48–NG, 03–50–NG, 03–53–NG, 03–51–NG]

Western Gas Resources, Inc., ConocoPhillips Energy Marketing Corp., Tenaska Marketing Ventures, Murphy Gas Gathering, Inc., NUI Energy Brokers, Inc., Cinergy Marketing & Trading, LP; Orders Granting Authority To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during September 2003, it issued Orders granting authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on October 7, 2003.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE AUTHORITY]

Order No.	Date issued	Importer/Exporter FE Docket No.	Import Volume	Export Volume	Comments
1893	9–9–03	Western Gas Resources, Inc.; 03–46–NG.	73 Bcf	73 Bcf	Import and export natural gas from and to Canada, beginning on November 26, 2003, and extending through November 25, 2005.
1894	9–9–03	ConocoPhillips Energy Marketing Corp.; 03–42–NG.	200 Bcf		Import and export a combined total of natural gas from Canada, beginning on July 12, 2003, and extending through July 11, 2005.
1895	9–11–03	Tenaska Marketing Ventures; 03–48–NG.	1,600 Bcf		Import and export a combined total of natural gas from and to Canada, and Mexico, beginning on December 1, 2003, and extending through November 30, 2005.
1896	9–25–03	Murphy Gas Gathering, Inc.; 03–50–NG.	75 Bcf		Import natural gas from Canada, beginning on December 1, 2003, and extending through November 30, 2005.
1897	9–25–03	NUI Energy Brokers, Inc.; 03–53–NG.	250 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on October 1, 2003, and extending through September 30, 2005.
1898	9–30–03	Cinergy Marketing & Trading, LP; 03–51–NG.	500 Bcf		Import and export a combined total of natural gas from and to Mexico, beginning on November 31, 2003, and extending through October 31, 2005.

[FR Doc. 03–27020 Filed 10–24–03; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Funding Opportunity Announcement

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a funding opportunity announcement.

SUMMARY: Notice is hereby given of the intent to issue Funding Opportunity Announcement No. DE–PS26–04NT42031 entitled ''Support of Advanced Fossil Resource Conversion and Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions.'' The Department of Energy announces that it intends to conduct a competitive Funding Opportunity Announcement and award Financial Assistance (Grants) to U.S. Historically Black Colleges and Universities (HBCU) and Other Minority Institutions (OMI) in support of innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. Applications will be subjected to a comprehensive technical review and awards will be made to a select number of applicants based on the scientific merit of the application, relevant program policy factors, and the availability of funds. Collaboration with private industry is encouraged.

DATES: The Funding Opportunity Announcement will be available on the ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* in the first quarter of Fiscal Year 2004. Applicants can obtain access to the Funding Opportunity Announcement from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Sue Miltenberger, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507–0880, E-mail Address: *Susan.Miltenberger@netl.doe.gov*, Telephone Number: (304) 285–4083.

SUPPLEMENTARY INFORMATION: Approximately $1.0 million of DOE funding is planned to award between 5 to 7 projects from this Financial Opportunity Assistance. Awards are expected to be made in the third quarter of Fiscal Year 2004.

The intent of the Fossil Energy HBCU/OMI Program is to establish a mechanism for cooperative HBCU/OMI research and development projects; to provide faculty and student support at the institutions; to foster private sector participation and interaction with HBCU/OMIs in fossil energy research and development; to provide for the exchange of technical information; to raise the overall level of competitiveness by the HBCU/OMIs with other institutions in the field of fossil research; and to increase the number of opportunities in the areas of science, engineering and technical management for HBCU/OMIs. The collaborative involvement of HBCU/OMIs and the private sector help to ensure a future supply of technically competent managers, scientists, engineers, and technicians. The Program will also serve to maintain and upgrade the educational, training, and research capabilities of our HBCU/OMIs in the fields of science, engineering, and technical management, and provide the talent for an improved utilization of the nation's fossil fuel resources.

Therefore, the DOE's National Energy Technology Laboratory (NETL) invites HBCU/OMIs, in collaboration with the private sector, to submit applications for innovative research and development of advanced concepts related to fossil energy utilization and conversion. The overall purpose of this collaborative effort is to improve prospective U.S. commercial capabilities, and to increase scientific and technical understanding of the chemical and physical processes involved in the conversion and utilization of fossil fuels, thereby broadening fossil resource and technology benefits to our commerce and the consumer. Thus, HBCU/OMI faculty members and their institutions, in collaboration with the private sector, are strongly encouraged to undertake fossil energy-related research and development. Pursuant to 10 CFR 600.6(b), eligibility for award under the subject Solicitation is restricted to HBCU/OMIs. HBCU/OMIs are defined by the Office of Civil Rights (OCR), U.S. Department of Education. The Web site address for the OCR list is *http://www.ed.gov/about/offices/list/ocr/edlite-minorityinst.html.* Statutory authority for this Program is provided by Public Law 95–224, as amended by 97–258.

Grant applications are sought in innovative research and development of advanced concepts pertinent to fossil fuel conversion and utilization in the eight (8) technical topics specified below. The Technical Topics have undergone revision from previous Solicitations due to recent changes in the energy industry and the realignment of the Office of Fossil Energy. Technical Topics 1 through 7 are considered to be in the HBCU/OMI Core Program. The Core Program is intended to maintain and upgrade educational, training, and research capabilities. Private section collaboration is strongly encouraged in the Core Program. Technical Topic No. 8 is considered to be in the Faculty/Student Exploratory Research Training Grant Program.

While all Technical Topics are of importance to the Fossil Energy programs, areas which are emerging as higher priority include the following: (a) Problems related to Global Climate Change and Greenhouse gases (especially carbon dioxide); (b) Materials (as related to advanced power system components and advanced separations); (c) Catalysis (for improved reaction chemistry, higher efficiencies, short residence times, etc.); (d) Computer Modeling (especially related to Advanced Power System scenarios for fossil energy, and advanced Coal Characterization related to fossil and biomass carbon as a feedstock, solid fuels, and co-processing); (e) Control and Characterization of Mercury and fine particulate ($PM_{2.5}$); (f) Computer Enhancements and Reservoir Modeling as related to oil and gas recovery; (g) Continued Emphasis on flooding issues and geoscience as related to improved oil and gas recovery technologies; and (h) Optimization for Oil Well Completions and Stimulations. Prospective applicants should be aware of the technical issues that NETL considers a higher priority to the HBCU/OMI Program at this time as they may be used in guiding the selection of products for award.

Technical Topic 1—Advanced Environmental Control Technologies for Coal
Technical Topic 2—Advanced Coal Utilization
Technical Topic 3—Clean Fuels Technology
Technical Topic 4a—Heavy Oil Upgrading and Processing
Technical Topic 4b—Oil Sands
Technical Topic 5—Advanced Recovery, Completion/Stimulation, and Geoscience Technologies for Oil
Technical Topic 6—Natural Gas Supply, Storage and Processing
Technical Topic 7—Fuel Cells
Technical Topic 8—Faculty/Student Exploratory Research Training Grants

This is the only topic [Topic eight (8)] under this Program Solicitation that does not have private sector collaboration as a goal in consideration of an application.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Morgantown, WV on October 17, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–27019 Filed 10–24–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Continuation of Solicitation for the Office of Science Financial Assistance Program—Notice DE–FG01–04ER04–01

AGENCY: U.S. Department of Energy.

ACTION: Annual notice of continuation of availability of grants and cooperative agreements.

SUMMARY: The Office of Science (SC) of the Department of Energy (DOE) hereby announces its continuing interest in receiving grant applications for support of work in the following program areas: Basic Energy Sciences, High Energy Physics, Nuclear Physics, Advanced Scientific Computing Research, Fusion Energy Sciences, Biological and Environmental Research, and Energy Research Analyses. On September 3, 1992, DOE published in the **Federal Register** the Office of Energy Research Financial Assistance Program (now called the Office of Science Financial Assistance Program), 10 CFR part 605, Final Rule, which contained a solicitation for this program. Information about submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures are specified in 10 CFR part 605.

DATES: Applications may be submitted at any time in response to this Notice of Availability.

ADDRESSES: Formal applications referencing Program Notice DE–FG01–04ER04–01 must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov* (see also *http://www.sc.doe.gov/production/grants/grants.html*). 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 Web site. IIPS offers the option of using multiple files; please limit submissions to one volume and one file 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 application 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).*

If you are unable to submit the application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 or (301) 903–3604, in order to gain assistance for submission through IIPS or to receive special approval and instruction on how to submit printed applications.

SUPPLEMENTARY INFORMATION: This Notice is published annually and remains in effect until it is succeeded by another issuance by the Office of Science. This annual Notice DE–FG01–04ER04–01 succeeds Notice 03–01, which was published October 17, 2002.

It is anticipated that approximately $400 million will be available for grant and cooperative agreement awards in Fiscal Year 2004. The DOE is under no obligation to pay for any costs associated with the preparation or submission of an application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this Notice.

The following program descriptions are offered to provide more in-depth information on scientific and technical areas of interest to the Office of Science:

1. Basic Energy Sciences

The Basic Energy Sciences (BES) program supports fundamental research in the natural sciences and engineering leading to new and improved energy technologies and to understanding and mitigating the environmental impacts of energy technologies. The four long-term measures of the program are:

- Design, model, fabricate, characterize, analyze, assemble, and use a variety of new materials and structures, including metals, alloys, ceramics, polymers, biomaterials and more—particularly at the nanoscale—for energy-related applications.
- Understand, model, and control chemical reactivity and energy transfer processes in the gas phase, in solutions, at interfaces, and on surfaces for energy-related applications, employing lessons from inorganic, organic, self-assembling, and biological systems.
- Develop new concepts and improve existing methods for solar energy conversion and other major energy research needs identified in the 2003 Basic Energy Sciences Advisory Committee workshop report, Basic Research Needs to Assure a Secure Energy Future.
- Conceive, design, fabricate, and use new instruments to characterize and ultimately control materials.

The science areas and their objectives are as follows:

(a) Materials Sciences and Engineering

The objective of this program is to increase the fundamental understanding of phenomena, properties, and behavior important to materials that will contribute to improving current energy technologies and developing new energy technologies. Disciplinary areas where basic research is supported include materials physics, condensed matter physics, materials chemistry, engineering physics, and related disciplines where the emphasis is on the science of materials. Product development, demonstration, and surveys and process optimization studies for existing commercial materials are not within the scope of this solicitation.

Program Contact: Phone—(301) 903–3427; Web site: *http://www.sc.doe.gov/bes/dms/index.htm.*

(b) Chemical Sciences

The objective of this program is to develop and enhance fundamental understanding in the chemical sciences that contributes to the overall goal of developing new sources of energy and

improving processes for using existing energy resources in an efficient and environmentally sound manner. Disciplinary areas where basic research is supported include atomic, molecular, and optical sciences; physical, inorganic, and organic chemistry; chemical physics; photochemistry; radiation chemistry; analytical chemistry; separations science; actinide chemistry; and chemical engineering sciences.

Program Contact: Phone—(301) 903–5804; Web site: *http://www.sc.doe.gov/bes/chm/chmhome.html.*

(c) Geosciences

The objective of this program is to develop a quantitative and predictive understanding of geologic processes related to energy and environmental quality. The program emphasizes cross-cutting basic research that will improve understanding of reactive geochemical transport and other subsurface processes and properties and how to image them using techniques ranging from electrons, x-rays or neutrons to electromagnetic and seismic waves. Applications of this fundamental understanding might include transport of contaminant fluids, hydrocarbons, sequestered carbon dioxide, or performance prediction for repository sites. The emphasis is on the disciplinary areas of geochemistry, geophysics, geomechanics, and hydrogeology with a focus on the upper levels of the earth's crust. Particular emphasis is on processes taking place at the atomic and molecular scale. Specific topical areas receiving emphasis include: high resolution geophysical imaging; rock physics, physics of fluid transport, and fundamental properties and interactions of rocks, minerals, and fluids. Program Contact: Phone—(301) 903–4061; Web site: *http://www.sc.doe.gov/bes/geo/geohome.html.*

(d) Energy Biosciences

The objective of this program is to generate an understanding of fundamental biological mechanisms in plants and microorganisms. The emphasis is on understanding biological processes that will be the foundation for technology developments related to DOE's mission to achieve environmentally responsible production and conversion of renewable resources for fuels, chemicals, and other energy-enriched products. This program has special requirements for the submission of preapplications, when to submit, and the length of the applications. Applicants are encouraged to contact the program regarding these requirements. Program Contact: Phone—(301) 903–2873; E-mail—*energy.biosciences@science.doe.gov;* Web site: *http://www.science.doe.gov/bes/eb/ebhome.html.*

2. High Energy Physics

The primary objectives of this program are to explore the fundamental interactions of matter and energy, including the unseen forms of matter and energy that dominate the universe; to understand the ultimate unification of fundamental forces and particles; to search for possible new dimensions of space; and to investigate the nature of time itself. The research falls into three broad categories: experimental research, theoretical research, and a program of advanced R&D in accelerator and particle detector science and technology. The goal of the R&D program is to enable the design and fabrication of the instrumentation needed for the physics research.

In support of these broad scientific objectives, the High-Energy Physics program has established specific long-term goals that correspond very roughly to current research priorities, and are representative of the program:

- Measure the properties and interactions of the heaviest known particle (the top quark) in order to understand its particular role in the Standard Model.
- Measure the matter-antimatter asymmetry in many particle decay modes with high precision.
- Discover or rule out the Standard Model Higgs particle, thought to be responsible for generating mass of elementary particles.
- Determine the pattern of the neutrino masses and the details of their mixing parameters.
- Confirm the existence of new supersymmetric (SUSY) particles, or rule out the minimal SUSY ''Standard Model'' of new physics.
- Directly discover, or rule out, new particles which could explain the cosmological ''dark matter''.

All grant proposals should address one or more of these goals, or else explain how the proposed research supports the broad scientific objectives outlined above. More information on the program and the scientific research it supports can be found at our Web site: *http://doe-hep.hep.net/.*

Program Contact: (301) 903–3624.

3. Nuclear Physics

The Nuclear Physics program supports basic research, technical developments and world-class accelerator facilities to expand our fundamental understanding of the interactions and structures of atomic nuclei and nuclear matter, and an understanding of the forces of nature as manifested in nuclear matter. Today, the reach of nuclear physics extends from the quarks and gluons that form the substructure of the once-elementary protons and neutrons, to the most dramatic of cosmic events—supernovae. These and many other diverse activities are driven by five broad questions articulated recently by the Nuclear Science Advisory Committee (NSAC) in the Opportunities in Nuclear Science: A Long-Range Plan for the Next Decade. The four subprogram areas and their objectives are organized around answering these five key questions. Research activities supported by the Office of Nuclear Physics are aligned with and contribute to the overall progress of the following long term performance measures:

- Make precision measurements of fundamental properties of the proton, neutron and simple nuclei for comparison with theoretical calculations to provide a quantitative understanding of their quark substructure.
- Recreate brief, tiny samples of hot, dense nuclear matter to search for the quark-gluon plasma and characterize its properties.
- Investigate new regions of nuclear structure, study interactions in nuclear matter like those occurring in neutron stars, and determine the reactions that created the nuclei of atomic elements inside stars and supernovae.
- Measure fundamental properties of neutrinos and fundamental symmetries by using neutrinos from the sun and nuclear reactors and by using radioactive decay measurements.

The program is organized into the following four subprograms:

(a) Medium Energy Nuclear Physics

This subprogram supports experimental research primarily at the Thomas Jefferson National Accelerator Facility and with the polarized proton collision program at the Relativistic Heavy Ion Collider (RHIC-Spin), directed at answering the first key question: What is the structure of the nucleon? Detailed investigations of the structure of the nucleon are aimed at understanding how these basic building blocks of matter are constructed from the elementary quarks and gluons of Quantum Chromo-Dynamics (QCD) and how complex interactions among them generate all the properties of the nucleon, including its electromagnetic and spin properties. New knowledge in this area would also allow the nuclear binding force to be described in terms of QCD, thus providing a path for

understanding the structure of atomic nuclei from first principles.

Program Contact: (301) 903–3904.

(b) Heavy Ion Nuclear Physics

This subprogram supports experimental research primarily at the Relativistic Heavy Ion Collider (RHIC) directed at answering the second question: What are the properties of hot nuclear matter? At extremely high temperatures, such as those that existed in the early universe immediately after the ''Big Bang,'' normal nuclear matter is believed to revert to its primeval state called the quark-gluon plasma. This research program aims to recreate extremely small and brief samples of this high energy density phase of matter in the laboratory by colliding heavy nuclei at relativistic energies. At much lower temperatures, nuclear matter passes through another phase transition from a Fermi liquid to a Fermi gas of free roaming nucleons; understanding this phase transition is also a goal of the subprogram.

Program Contact: (301) 903–4702.

(c) Low Energy Nuclear Physics

This subprogram supports experimental research directed at understanding the remaining three questions: What is the structure of nucleonic matter? Forefront nuclear structure research lies in studies of nuclei at the limits of excitation energy, deformation, angular momentum, and isotopic stability. The properties of nuclei at these extremes are not known and such knowledge is needed to test and drive improvement in nuclear models and theories about the nuclear many-body system. What is the nuclear microphysics of the universe? Knowledge of the detailed nuclear structure, nuclear reaction rates, half-lives of specific nuclei, and the limits of nuclear existence at both the proton and neutron drip lines is crucial for understanding the nuclear astrophysics processes responsible for the production of the chemical elements in the universe, and the explosive dynamics of supernovae. Is there new physics beyond the Standard Model? Studies of fundamental interactions and symmetries, including those of neutrino oscillations, are indicating that our current ''Standard Model'' theory which explains what the universe is and what holds it together is incomplete, opening up possibilities for new discoveries by precision experiments.

Program Contact: (301) 903–6093.

(d) Nuclear Theory (Including the Nuclear Data Subprogram)

Progress in nuclear physics, as in any science, depends critically on improvements in the theoretical techniques and on new insights that will lead to new models and theories that can be applied to interpret experimental data and predict new behavior. The Nuclear Theory program supports theoretical research directed at understanding all five of the central questions identified in the NSAC 2002 Long Range Plan.

Included in the theory program are the activities that are aimed at providing information services on critical nuclear data and have as a goal the compilation and dissemination of an accurate and complete nuclear data information base that is readily accessible and user oriented.

Program Contact: (301) 903–7878.

4. Advanced Scientific Computing Research (ASCR)

The mission of the Advanced Scientific Computing Research Program is to deliver forefront computational and networking capabilities to scientists nationwide that enable them to extend the frontiers of science, answering critical questions that range from the function of living cells to the power of fusion energy.

In order to accomplish this mission, this program fosters and supports fundamental research in advanced computing research (applied mathematics, computer science and networking), and operates supercomputer, networking, and related facilities to enable the analysis, modeling, simulation, and prediction of complex phenomena important to the Department of Energy.

The following long-term goals will be indicators of ASCR's success in meeting its mission.

- Develop mathematics, algorithms, and software that enable effective models of complex systems, including highly nonlinear or uncertain phenomena, or processes that interact on vastly different scales or contain both discrete and continuous elements.
- Develop, through the GTL partnership with BER, the computational science capability to model a complete microbe and a simple microbial community.

Mathematical, Information, and Computational Sciences Subprogram

This subprogram is responsible for carrying out the primary mission of the ASCR program: discovering, developing, and deploying advanced scientific computing and communications tools and operating the high performance computing and network facilities that researchers need to analyze, model, simulate, and—most importantly—predict the behavior of complex natural and engineered systems of importance to the Office of Science and to the Department of Energy.

The computing, networking middleware required to meet Office of Science needs exceed the state-of-the-art by a wide margin. Furthermore, the algorithms, software tools, the software libraries and the distributed software environments needed to accelerate scientific discovery through modeling and simulation are beyond the realm of commercial interest. To establish and maintain DOE's modeling and simulation leadership in scientific areas that are important to its mission, the MICS subprogram employs a broad, but integrated research strategy. The basic research portfolio in applied mathematics and computer science provides the foundation for enabling research activities, which includes efforts to advance high-performance networking, to develop software tools, software libraries and software environments. Results from enabling research supported by the MICS subprogram are used by computational scientists supported by other Office of Science and other DOE programs. Research areas include:

(a) Applied Mathematics

Research on the underlying mathematical understanding and numerical algorithms to enable effective description and prediction of physical systems, such as fluids, magnetized plasmas, or protein molecules. This includes, for example, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

(b) Computer Science

Research in computer science to enable large scientific applications through advances in massively parallel computing such as scalable and fault tolerant operating systems for parallel computers, programming models such as development of the Message Passing Interface (MPI) model that has become an industry standard, performance modeling and assessment tools, interoperability and infrastructure

methodology, and large scale data management and visualization. The development of new computer and computational science techniques will allow scientists to use the most advanced computers without being overwhelmed by the complexity of rewriting their codes with each new generation of high performance architectures.

(c) Network Environment Research

Research to develop and deploy high-performance network and collaborative technologies to support distributed high-end science applications and large-scale scientific collaborations. The current focus areas include but are not limited to ultra high-speed transport protocols, dynamic bandwidth allocation services, network measurement and analysis, cyber security systems, and advanced application layer services that make easy for scientists to effectively and efficiently access and use distributed resources, such as advanced services for group collaboration, secure services for remote access of distributed resources, and innovative technologies for sharing, controlling, and managing distributed computing resources. Program Contact: (301) 903–5800.

5. Fusion Energy Sciences

The Fusion Energy Sciences (FES) program supports the Department's Energy Security and World-Class Scientific Research Capacity goals. The FES program goal is to advance plasma science, fusion science, and fusion technology—the knowledge base needed for an economically and environmentally attractive fusion energy source. FES supports basic and applied research, encourages technical cross-fertilization with the broader U.S. science community, and uses international collaboration to accomplish this goal.

The FES program contributes to the Energy Security goal through participation in ITER, an experiment to study and demonstrate the sustained burning of fusion fuel. This proposed international collaboration will provide an unparalleled scientific research opportunity and will test the scientific and technical feasibility of fusion power; ITER is also the penultimate step before a demonstration fusion power plant. Assuming a successful outcome of ongoing ITER negotiations, in Fiscal Year 2005, FES scientists and engineers will be supporting the technical R&D and preparations to start project construction in Fiscal Year 2006.

The FES program contributes to the World-Class Scientific Research Capacity goal by managing a program of fundamental research into the nature of fusion plasmas and the means for confining plasma to yield energy. This includes: (1) Exploring basic issues in plasma science; (2) developing the scientific basis and computational tools to predict the behavior of magnetically confined plasmas; (3) using the advances in tokamak research to enable the initiation of the burning plasma physics phase of the FES program; (4) exploring innovative confinement options that offer the potential of more attractive fusion energy sources in the long term; (5) developing the cutting edge technologies that enable fusion facilities to achieve their scientific goals; and (6) advancing the science base for innovative materials to establish the economic feasibility and environmental quality of fusion energy.

The overall effort requires operation of a set of unique and diversified experimental facilities, ranging from smaller-scale university programs to large national facilities that require extensive collaboration. These facilities provide scientists with the means to test and extend theoretical understanding and computer models—leading ultimately to an improved predictive capability for fusion science.

In Fiscal Year 2005, operation of fusion facilities will be increased to create greater opportunity for scientists to address the large backlog of proposed experiments, many of them relevant to ITER design and operation. Fabrication of the National Compact Stellarator will also continue with a target of Fiscal Year 2007, for the initial operation of this innovative new confinement system which is the product of advances in physics understanding and computer modeling. In addition, work will be initiated on the Fusion Simulation Project—a joint effort with the Office of Advanced Scientific Computing Research—to provide an integrated simulation and modeling capability for magnetic fusion energy confinement systems over a 15-year development period.

There will be three performance measures, for 10 years out, that will demonstrate that progress is being made towards meeting the overall program goal. These measures are:

1. Predictive Capability for Burning Plasmas: Develop a predictive capability for key aspects of burning plasmas using advances in theory and simulation benchmarked against a comprehensive experimental database of stability, transport, wave-particle interaction, and edge effects.

2. Configuration Optimization: Demonstrate enhanced fundamental understanding of magnetic confinement and improved basis for future burning plasma experiments through research on magnetic confinement configuration optimization.

3. Inertial Fusion Energy and High Energy Density Physics: Develop the fundamental understanding and predictability of high energy density plasmas for potential energy applications.

Research Division

This Division is responsible for overseeing the Science and Technology subprograms as well as most of the facility operations subprogram (not including ITER) within the FES. The Science subprogram seeks to develop the physics knowledge base needed to advance the FES program. Research is conducted on medium to large-scale confinement devices to study physics issues relevant to fusion and plasma physics and to the production of fusion energy. Experiments on these devices are used to explore the limits of specific confinement concepts, as well as study associated physical phenomena. Specific areas of interest include: (1) Reducing plasma energy and particle transport at high densities and temperatures; (2) understanding the physical laws governing stability of high pressure plasmas; (3) investigating plasma wave interactions; (4) studying and controlling impurity particle transport and exhaust in plasmas; and (5) understanding the interaction and coupling among these four issues in a fusion experiment.

Research is also carried out in the following areas: (1) Basic plasma science directed at furthering the understanding of fundamental processes in plasmas; (2) theory and modeling to provide the understanding of fusion plasmas necessary for interpreting results from present experiments, planning future experiments, and designing future confinement devices; (3) atomic physics and the development of new diagnostic techniques for support of confinement experiments; (4) innovative confinement concepts; and (5) high energy density physics and issues that support the development of Inertial Fusion Energy (IFE). The high energy density physics necessary for IFE target development is carried out by the Office of Defense Programs in the Department of Energy's National Nuclear Security Agency.

The Technology subprogram supports the advancement of fusion science in the nearer-term by carrying out research on technological topics that: (1) Enable domestic experiments to achieve their full performance potential and scientific

research goals; (2) permit scientific exploitation of the performance gains being sought from physics concept improvements; (3) allow the U.S. to enter into international collaborations gaining access to experimental conditions not available domestically; and (4) explore the science underlying these technological advances.

The Technology subprogram supports pursuit of fusion energy science for the longer-term by conducting research aimed at innovative technologies, designs and materials to point toward an attractive fusion energy vision and affordable pathways for optimized fusion development. Program Contact: (301) 903–4095 N. Anne Davies.

6. Biological and Environmental Research Program

For more than 50 years the Biological and Environmental Research (BER) Program has been investing to advance environmental and biomedical knowledge connected to energy. The BER program provides fundamental science to underpin the business thrusts of the Department's strategic plan. Through its support of peer-reviewed research at national laboratories, universities, and private institutions, the program develops the knowledge needed: (1) To identify, understand, and anticipate the long-term health and environmental consequences of energy production, development, and use; and (2) to develop biology based solutions that address DOE and National needs.

The following indicators establish specific long term goals in Scientific Advancement that the BER program is committed to, and progress can be measured against.

- Life Sciences: Characterize the multi protein complexes (or the lack thereof) involving a scientifically significant fraction of a microbe's proteins. Develop computational models to direct the use and design of microbial communities to clean up waste, sequester carbon, or produce hydrogen.
- Climate Change Research: Deliver improved climate data & models for policy makers to determine safe levels of greenhouse gases for the Earth system. By 2013, substantially reduce differences between observed temperature and model simulations at subcontinental scales using several decades of recent data.
- Environmental Remediation: Develop science-based solutions for cleanup and long-term monitoring of DOE contaminated sites. By 2013, a significant fraction of DOE's long-term stewardship sites will employ advanced biology-based clean up solutions and science-based monitors.
- Medical Applications and Measurement Science: Develop intelligent biomimetic electronics that can both sense and correctly stimulate the nervous system and new radiopharmaceuticals for disease diagnosis.

All grant proposals should address one or more of these measures and/or explain how the proposed research supports the broad scientific objectives outlined above. More information on the program and the scientific research it supports can be found at our Web site: *http://www.sc.doe.gov/ober/.*

(a) Life Sciences Research

Research is focused on using DOE's unique resources and facilities to develop fundamental knowledge of biological systems that can be used to address DOE needs in clean energy, carbon sequestration, and environmental cleanup and that will underpin biotechnology based solutions to energy challenges. The objectives are: (1) To develop the experimental and, together with the Advanced Scientific Computing Research program, the computational resources, tools, and technologies needed to understand and predict the complex behavior of complete biological systems, principally microbes and microbial communities; (2) to take advantage of the remarkable high throughput and cost-effective DNA sequencing capacity at the Joint Genome Institute to meet the DNA sequencing needs of the scientific community through competitive, peer-reviewed nominations for DNA sequencing; (3) to develop and support DOE national user facilities for structural biology at synchrotron and neutron sources; (4) to develop novel research and computational tools that provide the basis for understanding and predicting the responses of complex biological systems, information needed to develop biotechnology solutions for energy and environmental challenges; (5) to use model organisms to understand human genome organization, human gene function and control, and the functional relationships between human genes and proteins at a genomic scale; (6) to understand and characterize the risks to human health from exposures to low levels of radiation; and (7) to anticipate and address ethical, legal, and social implications arising from BER-supported biological research.

Program Contact: (301) 903–5468.

(b) Medical Applications and Measurement Sciences

The research is designed to develop the beneficial applications of nuclear and other energy-related technologies for bio-medical research, medical diagnosis and treatment. The objectives are: (1) To utilize innovative radiochemistry to develop new radiotracers for medical research, clinical diagnosis and treatment; (2) to develop the next generation of non-invasive nuclear medicine instrumentation technologies, such as positron emission tomography; (3) to develop advanced imaging detection instrumentation capable of high resolution from the sub-cellular to the clinical level; and (4) to utilize the unique resources of the DOE in engineering, physics, chemistry and computer sciences to develop the basic tools to be used in biology and medicine, particularly in imaging sciences, photo-optics and biosensors.

Program Contact: (301) 903–3213.

(c) Environmental Remediation

This research delivers the scientific knowledge, tools, and enabling discoveries in biological and environmental research to reduce the costs, risks, and schedules associated with the cleanup of the DOE nuclear weapons complex; to extend the frontiers of biological and chemical methods for remediation; to discover the fundamental mechanisms of contaminant transport in the environment; to develop cutting edge molecular tools for investigating environmental processes; and to develop an understanding of the ecological impacts of remediation activities. Research priorities include bioremediation, contaminant fate and transport, nuclear waste chemistry and advanced treatment options, and the operation of the William R. Wiley Environmental Molecular Sciences Laboratory (EMSL) and the Savannah River Ecology Laboratory (SREL). The research performed for this program will provide fundamental knowledge on a broad range of remediation problems. Program Contact: (301) 903–4902.

(d) Climate Change Research

The program seeks to understand the basic physical, chemical, and biological processes of the Earth's atmosphere, land, and oceans and how these processes may be affected by energy production and use. The research is designed to provide data that will enable an objective assessment of the potential for, and the consequences of, human-induced climate change at global and regional scales. It also provides data and models to enable assessments of mitigation options to prevent such a change. The program is comprehensive with an emphasis on: (1) Understanding and simulating the radiation balance

from the surface of the Earth to the top of the atmosphere (including the effect of clouds, water vapor, trace gases, and aerosols); (2) enhancing and evaluating the quantitative models necessary to predict natural climatic variability and possible human-caused climate change at global and regional scales; (3) understanding and simulating both the net exchange of carbon dioxide between the atmosphere, terrestrial and ocean systems, and the effects of climate change on the global carbon cycle; (4) understanding ecological effects of climate change; (5) improving approaches to integrated assessments of effects of, and options to mitigate, climatic change; and (6) basic research directed at understanding options for sequestering excess atmospheric carbon dioxide in terrestrial ecosystems and the ocean, including potential environmental implications of such sequestration.

Program Contact: (301) 903–3281.

7. Energy Research Analyses

This program supports energy research analyses of the Department's basic and applied research activities. Specific objectives include assessments to identify any duplication or gaps in scientific research activities, and impartial and independent evaluations of scientific and technical research efforts. Consistent with these overall objectives, this program conducts numerous research studies to assess directions in science and to identify and assess new and improved approaches to science management. Program Contact: (202) 586–9942.

8. Experimental Program To Stimulate Competitive Research (EPSCoR)

The objective of the EPSCoR program is to enhance the capabilities of EPSCoR states to conduct nationally competitive energy-related research and to develop science and engineering manpower to meet current and future needs in energy-related fields. This program addresses basic research needs across all of the Department of Energy research interests. Research supported by the EPSCoR program is concerned with the same broad research areas addressed by the Office of Science programs that are described in this notice. The EPSCoR program is restricted to applications, which originate in 21 states (Alabama, Alaska, Arkansas, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming) and the commonwealth of Puerto Rico. It is anticipated that only a limited number of new competitive research grants will be awarded under this program subject to the availability of funds. Program Contact: Phone (301) 903–3427; Web site: *http://www.sc.doe.gov/bes/EPSCoR/index.htm.*

Issued in Washington, DC on October 21, 2003.

Ralph H. DeLorenzo,

Acting Associate Director of Science for Resource Management.

[FR Doc. 03–27021 Filed 10–24–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–301–088 and GT01–25–007]

ANR Pipeline Company; Notice of Compliance Filing

October 17, 2003.

Take notice that on October 14, 2003, ANR Pipeline Company (ANR) tendered for filing four agreements with PCS Nitrogen Ohio, L.P., *et al.* in compliance with the Commission's May 23, 2003 Order in the above-referenced dockets.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 website at *http://www.ferc.gov* using the eLibrary 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.

Protest Date: October 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00108 Filed 10–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–113]

CenterPoint Energy Gas Transmission Company; Notice of Partial Compliance Filing

October 17, 2003.

Take notice that on October 15, 2003, CenterPoint Energy Gas Transmission Company (CEGT) filed certain documents identified by the Commission's September 15, 2003 Order which CEGT committed to provide by October 15, 2003, in its request for partial extension of the general compliance deadline.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 website at *http://www.ferc.gov* using the eLibrary 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: October 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00115 Filed 10–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–3–000]

Golden Spread Electric Cooperative, Inc.; Notice of Application

October 17, 2003.

Take notice that on October 10, 2003, the Golden Spread Electric Cooperative, Inc. (Golden Spread) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue unsecured short-term and intermediate term notes in the amount not to exceed $160 million with the National Rural Cooperative Financing Corporation or with other banking institutions.

Golden Spread also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

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 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 for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: November 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00111 Filed 10–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–474–006]

Maritimes & Northeast Pipeline, L.L.C; Notice of Compliance Filing

October 17, 2003.

Take notice that on October 14, 2003, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing a response to a Commission Staff data request dated October 1, 2003.

Maritimes states that copies of its filing will be served to all parties of record in the RP00–474–000 proceedings.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 website at *http://www.ferc.gov* using the ''eLibrary'' 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: October 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00113 Filed 10–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–2–000]

Michigan Electric Transmission Company, LLC; Notice of Application

October 17, 2003.

Take notice that on October 10, 2003, the Michigan Electric Transmission Company, LLC (METC) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue notes, bonds or other forms of debt for refinancing existing or subsequent debt in an amount not to exceed $235 million.

METC also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

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 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 for TTY, contact (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00110 Filed 10–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–8–000]

Notice of Application; Northwest Pipeline Corporation

October 17, 2003.

Take notice that on October 14, 2003, Northwest Pipeline Corporation

(Northwest), P.O. Box 58900, Salt Lake City, Utah 84158, filed in Docket No. CP04–8–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and Part 157 of the Commission regulations, for authorization to abandon operation of three portable compressor units to provide supplemental capacity to its existing Kemmerer, Pegram and Lava Hot Springs compressor stations in Wyoming and Idaho, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Gary K. Kotter, Manager, Certificates and Tariffs, Northwest Pipeline Corporation, P. O. Box 58900, Salt Lake City, Utah 84158–0900, at (801) 584–7117 or fax (801) 584–7764.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests, comments 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.

Comment Date: October 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00116 Filed 10–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–01–000]

PPL Electric Utilities Corporation; Notice of Application

October 17, 2003.

Take notice that on October 10, 2003, PPL Electric Utilities Corporation, submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue short-term indebtedness in an aggregate face amount not to exceed $600 million.

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 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 for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: November 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00109 Filed 10–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. P–516–380]

South Carolina Coastal Conservation League and American Rivers, Complainants, v. South Carolina Electric & Gas Company, Respondent; Notice of Complaint

October 17, 2003.

Take notice that on September 9, 2003, as amended on October 15, 2003, South Carolina Coastal Conservation League and American Rivers (Complainants) filed with the Federal Regulatory Commission (Commission) a complaint against South Carolina Electric & Gas Company (Respondent), licensee of the Saluda Project No. 516. Complainants allege that Respondent is operating the project in a manner such that the standard for dissolved oxygen in the reach of the Saluda River below the project is not being met, and request that Respondent be ordered to comply with that standard.

Respondent's answer to the complaint and all comments, protest, and motions to intervene from any other person desiring to be heard on this matter must be filed with the Commission's Secretary at 888 First Street, NE., Washington, DC 20426, on or before the date shown 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 proceeding. Any person wishing to become a party must file a motion to intervene.

The answer to the complaint, as well as comments, protests, and motions to intervene, may be filed electronically via the Internet in lieu of paper filing. See 18 CFR 385.2001(a)(1)(iii) and the instructions under the ''eFiling'' link in the Documents & Filing section of the Commission's web site at *www.ferc.gov.*

The Commission strongly encourages electronic filing.

The complaint is available for review in the Commission's Public Reference Room 2A, and may also be viewed on the Commission's web site using the ''eLibrary'' link. For assistance with the Commission's web site, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659.

Comment Date: November 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00112 Filed 10–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–3–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

October 17, 2003.

Take notice that on October 1, 2003, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Third Revised Sheet No. 405E with an effective date of November 1, 2003.

Tennessee states that the filing is being made in order to provide more flexibility to its current firm transportation service, by primarily modifying the timeframe within which transportation service can be sold. Tennessee states that it also proposes to adopt a timeline in order to provide clarity on the requirements and timing for the future sales of capacity.

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 website 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: October 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00114 Filed 10–24–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7578–7]

Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2003 Fall Meeting of the Ozone Transport Commission (OTC). This meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context—particularly from the transportation sector.

DATES: The meeting will be held on November 12, 2003 starting at 1 p.m. (EST), and November 13, 2003 starting at 8:30 a.m. (EST).

ADDRESSES: Ramada Plaza Resort Oceanfront, 5700 Atlantic Avenue, Virginia Beach, VA 23451; (757) 428–7025.

FOR FURTHER INFORMATION CONTACT: Judith M. Katz, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2100. For Documents and Press Inquiries Contact: Ozone Transport Commission, 444 North Capitol Street NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair.org;* Web site: *http://www.otcair.org.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ''Ozone Transport Region'' (OTR) Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Ozone Transport Commission is to deal with ground level ozone formation, transport, and control within the OTR. The purpose of this notice is to announce that the OTC will meet on November 12–13, 2003 at the address noted earlier in this notice. This meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context—particularly from the transportation sector. Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meeting of the Ozone Transport Commission is not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda are available from the OTC office (202) 508–3840 (by e-mail: *ozone@otcair.org* or via our Web site at *http://www.otcair.org*).

Dated: October 20, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–27030 Filed 10–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7578–8]

Science Advisory Board Staff Office; Environmental Economics Advisory Committee of the Science Advisory Board, Panel on the Environmental Economics Research Strategy; Notification of a Public Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency, Science Advisory Board Staff Office is announcing a public meeting of the Science Advisory Board's (SAB's) Environmental Economics Advisory Committee (EEAC). The EEAC will convene as the Panel on the Environmental Economics Research Strategy to review the EPA's draft Environmental Economics Research Strategy.

DATES: The meeting will take place on Friday, November 14, 2003 from 8:30 a.m. until approximately 4 p.m. Eastern Time.

ADDRESSES: The meeting will be held at the Hilton Arlington & Towers, 950 N. Stafford St., Arlington, VA 22203, phone (877) 233–9330.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further

information regarding this meeting may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), via telephone/voice mail at (202) 564–4558; mail at U.S. EPA SAB (1400A), 1200 Pennsylvania Ave., NW., Room 6450, Washington, DC, 20460, or via e-mail at *miller.tom@epa.gov.* General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *Summary:* The U.S. Environmental Protection Agency Science Advisory Board Staff Office is providing this notification of an upcoming meeting of the Science Advisory Board's Panel on the Environmental Economics Research Strategy to receive briefings on and to conduct deliberations on the EPA draft ''Environmental Economic Research Strategy.''

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This committee of the SAB will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies.

Background: The EPA Science Advisory Board was asked by the National Center for Environmental Economics (NCEE) and the Office of Research and Development's National Center for Environmental Research (ORD/NCER) to review the EPA Environmental Economics Research Strategy. Background information on the review, and information on the process used to identify and consider consultants to supplement the EPA SAB Environmental Economics Advisory Committee in its conduct of this review are included in a **Federal Register** notice published on June 23, 2003 (68 FR 37151).

Availability of Meeting Materials: A copy of the draft agenda for the meeting that is the subject of this notice will be posted on the SAB Web site at (*http://www.epa.gov/sab/panels/eeaceersapanel.html*) approximately 10 days before the meeting. Other materials that may be made available for this meeting may also be posted on the SAB Web site in this time-frame.

Procedures for Providing Public Comments: It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at the PEERS panel meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) in writing (email, fax or mail—see contact information above) by close of business, November 7, 2003 in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access: Individuals requiring special accommodation to access this meeting, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 20, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–27031 Filed 10–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7579–1]

Industrial Pollution Control Superfund Site, Jackson, MS; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with the settling parties for recovery of past response costs pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act(CERCLA), 42 U.S.C. 9622(h)(1) concerning the Industrial Pollution Control Superfund Site located in Jackson, Hinds County, Mississippi. EPA will consider public comments on the proposed settlement until November 26, 2003. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of the publication.

Dated: October 9, 2003.

Ray Strickland,

Acting Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 03–27032 Filed 10–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0062; FRL–7333–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 8, 2003 to September 30, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the

Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0062 and the specific PMN number or TME number, must be received on or before November 26, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0062. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving

comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0062. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0062 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0062 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why Is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 8, 2003 to September 30, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 67 PREMANUFACTURE NOTICES RECEIVED FROM: 09/08/03 TO 09/30/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0809	09/08/03	12/06/03	Cytec Industries Inc.	(G) Polymeric flow and foam control additive for industrial coatings	(G) Alkyl polyester- acrylic copolymer
P–03–0810	09/08/03	12/06/03	Cytec Industries Inc.	(G) Polymeric flow and foam control additive for industrial coatings	(G) Alkyl polyester-acrylic copolymer
P–03–0811	09/08/03	12/06/03	CBI	(G) Catalyst	(G) Acid amine salt

I. 67 PREMANUFACTURE NOTICES RECEIVED FROM: 09/08/03 TO 09/30/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0812	09/08/03	12/06/03	Cytec Industries Inc.	(G) Polymeric flow and leveling additive for industrial coatings	(G) Alkyl polyester-acrylic copolymer
P–03–0813	09/09/03	12/07/03	CBI	(G) An open, non-dispersive use	(G) Polymeric modified vegetable oil
P–03–0814	09/09/03	12/07/03	CBI	(S) Ingredient for use in fragrances for soaps, detergents, cleaners and other household products	(G) Wood extract
P–03–0815	09/10/03	12/08/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0816	09/10/03	12/08/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0817	09/10/03	12/08/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0818	09/10/03	12/08/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0819	09/10/03	12/08/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0820	09/10/03	12/08/03	CBI	(G) Lubricant additive	(G) Sulfurized vegetable oil
P–03–0821	09/09/03	12/07/03	CBI	(G) Laminating adhesive	(G) Polyurethane
P–03–0822	09/10/03	12/08/03	CBI	(G) Reaction intermediate/raw material	(S) Fatty acids, canola-oil, me esters*
P–03–0823	09/10/03	12/08/03	CBI	(S) Adhesives; coatings	(G) Polybutadiene prepolymer
P–03–0824	09/10/03	12/08/03	CBI	(G) Electrode material	(G) Lithium metal phosphate
P–03–0825	09/11/03	12/09/03	CBI	(G) Coupling agent for fillers in polymers	(G) Sulfur-alkoxysilane
P–03–0826	09/11/03	12/09/03	CBI	(S) Thickness and rheology modifiers for emulsion paint	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–03–0827	09/11/03	12/09/03	CBI	(S) Thickness and rheology modifiers for emulsion paint	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–03–0828	09/12/03	12/10/03	CBI	(G) Open non dispersive (resin)	(G) Unsaturated urethane acrylate resin
P–03–0829	09/12/03	12/10/03	CBI	(G) Structural material	(G) Telechelic polyacrylate
P–03–0830	09/12/03	12/10/03	CBI	(G) Coating component	(G) Copolymer of acrylic acid and methacrylic acid derivatives
P–03–0831	09/16/03	12/14/03	CBI	(S) Urethane foam catalyst	(G) Tertiary amine carboxylic acid compound
P–03–0832	09/15/03	12/13/03	Basf Corporation	(S) Nonionic surfactant for dishwasher detergents	(S) Alcohols, C_{13-15}-branched and linear, ethoxylated propoxylated
P–03–0833	09/12/03	12/10/03	CBI	(G) Specialty additive	(G) Di-substituted stilbenedisulfonic acid salt
P–03–0834	09/12/03	12/10/03	CBI	(G) Processing aid	(G) Derivative of a disubstituted phenylenediamine
P–03–0835	09/16/03	12/14/03	Sumitomo Corporation of America - Houston Office	(S) Adhesion promoter for polypropylene	(S) 1-butene, polymer with ethene and 1-propene, chloro- and tetrahydro-2,5- dioxo-3-furanyl-terminated
P–03–0836	09/17/03	12/15/03	DIC International (USA), Inc.	(S) Binder for general coatings	(G) Polyester modified acrylic resin
P–03–0837	09/22/03	12/20/03	CBI	(G) Open non-dispersive (resin)	(G) Aliphatic polyisocyanate
P–03–0838	09/22/03	12/20/03	CBI	(G) Raw material	(G) Benzo thiadiazine derivative
P–03–0839	09/22/03	12/20/03	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Mono-halo substituted alkene
P–03–0840	09/22/03	12/20/03	CBI	(G) Raw material	(G) Substituted benzamine thio-ether
P–03–0841	09/22/03	12/20/03	CBI	(G) Photographic chemical	(G) Benzothiadiazine derivative
P–03–0842	09/15/03	12/13/03	CBI	(G) Thermoexpandable microcapsule	(G) Thermoexpandable microcapsule; thermoexpandable microsphere
P–03–0843	09/22/03	12/20/03	CBI	(G) Ink material	(G) Styrene copolymer
P–03–0844	09/22/03	12/20/03	CBI	(S) Inks; coatings	(G) Epoxy acrylate
P–03–0845	09/22/03	12/20/03	Bedoukian Research, Inc.	(S) Agricultural pheromone for use as sole active ingredient in monitoring traps. 40 CFR 152.10(b). (not a pesticide); agricultural pheromone for use as sole active ingredient in traps to achieve pest control. 40 CFR 152 25(b)(4)	(S) 7-tetradecen-2-one, (7*z*)-
P–03–0846	09/22/03	12/20/03	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Mono-halo-substituted alkyne
P–03–0847	09/22/03	12/20/03	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) 14-carbon keto-alkyne
P–03–0848	09/22/03	12/20/03	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Mono-halo-substituted alkyne

I. 67 PREMANUFACTURE NOTICES RECEIVED FROM: 09/08/03 TO 09/30/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0849	09/23/03	12/21/03	CBI	(G) Open, non-dispersion (urethane)	(G) Aqueous polyurethane dispersion
P–03–0850	09/23/03	12/21/03	CBI	(G) Open non-dispersive (dispersion)	(G) Aqueous polyurethane dispersion
P–03–0851	09/23/03	12/21/03	CBI	(S) Adhesives for car	(G) Blocked urethane polymer
P–03–0852	09/15/03	12/13/03	Oleon Americas, Inc.	(S) Lubricant additive e.g.-thickener in hydraulic fluids and greases	(S) Fatty acids, C_{18}-unsaturated, dimers, polymers with isostearic acid and neopentyl glycol
P–03–0853	09/15/03	12/13/03	Oleon Americas, Inc.	(S) Lubricant additive - engine and industrial gear oils	(S) Fatty acids, C_{18}-unsaturated, dimers, polymers with neopentyl glycol and oleic acid
P–03–0854	09/23/03	12/21/03	CBI	(G) Grease additive, component	(G) Polyurea
P–03–0855	09/22/03	12/20/03	CBI	(G) Contained use in energy production.	(G) Esterified quaternary ammonium compound
P–03–0856	09/24/03	12/22/03	CBI	(S) Intermediate for silane coupling agent	(G) Sodium thiooctanoate
P–03–0857	09/22/03	12/20/03	CBI	(G) Non-reactive additive in plastics and resins	(G) Mixed carboxylic acid esters
P–03–0858	09/22/03	12/20/03	CBI	(G) Non-reactive additive in plastics and resins	(G) Mixed carboxylic acid esters
P–03–0859	09/22/03	12/20/03	CBI	(G) Raw material	(G) Benzothiadiazine derivative
P–03–0860	09/25/03	12/23/03	Nova Molecular Technologies, Inc.	(S) Conversion to the 2/6 amine	(S) Pentanenitrile, 3-[(2-ethylhexyl)oxy]-*
P–03–0861	09/25/03	12/23/03	Nova Molecular Technologies, Inc.	(S) Conversion to the 2/6-5 amine; emulsifier for industrial textile softening; industrial dye additive	(S) Ethanol, 2,2′-[[3-[(2-ethylhexyl)oxy]pentyl]imino]bis-
P–03–0862	09/25/03	12/23/03	Nova Molecular Technologies, Inc.	(S) Conversion to the 2/6-2 amine ethoxylate; surfactant intermediate	(S) 1-pentanamine, 3-[(2-ethylhexyl)oxyl]-
P–03–0863	09/25/03	12/23/03	Nova Molecular Technologies, Inc.	(S) Agricultural adjuvant (wetting agent) for export	(S) Poly(oxy-1,2-ethanediyl), .alpha.,.alpha.′-[[[3-[(2-ethylhexyl)oxy]pentyl]imino]di-2,1-ethanediyl]bis[.omega.-hydroxy-
P–03–0864	09/25/03	12/23/03	CBI	(G) Resin for protective industrial coating	(G) Styrenated epoxy acrylate polymer
P–03–0865	09/29/03	12/27/03	Champion Technologies, Inc.	(G) Product can be used as a non-corrosive foamer in the oil and gas industry. non-corrosive can be defined by the lack of reaction of the product with specific metallurgies used to transport the product. however, use in not limited to the metallurgies commonly associated with the gas and oil industry.	(G) N-acrylic betaine
P–03–0866	09/29/03	12/27/03	Wacker Chemical Corporation	(S) Bonding agent for offshore coatings	(S) Siloxanes and silicones, di-me, polymers with 3-[(2-aminoethyl)amino]propyl ph silsesquioxanes, methoxy-terminated
P–03–0867	09/29/03	12/27/03	Dow Corning Corporation	(G) Softener	(G) Silicone quaternary salt
P–03–0868	09/30/03	12/28/03	CBI	(G) Glass epoxy laminate	(G) Aminotriazine modified cresol novolac resin
P–03–0869	09/30/03	12/28/03	Invista Inc.	(S) Emulsifier, corrosion inhibitor, and lubricant for metalworking fluid	(S) Cyclododecane, oxidized, by-products from, acidified, oil phase, ethoxylated

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 34 NOTICES OF COMMENCEMENT FROM: 09/08/03 TO 09/30/03

Case No.	Received Date	Commencement Notice End Date	Chemical
P–00–0203	09/29/03	09/19/03	(G) Fatty acid ester
P–02–0018	09/09/03	08/06/03	(G) Polyalkoxylated alkyl carbamate
P–02–0547	09/09/03	08/11/03	(G) Dimethyl, hydridomethyl, methylalkylsiloxane
P–02–0653	09/25/03	08/29/03	(G) Polyphenol, 2*h*-1,3-benzoxazine derivative
P–02–0659	09/17/03	09/11/03	(S) Stannane, dimethylbis[[(9*z*)-1-oxo-9-octadecenyl]oxy]-

II. 34 NOTICES OF COMMENCEMENT FROM: 09/08/03 TO 09/30/03—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–02–0753	09/25/03	09/22/03	(G) Oxime ester
P–02–0782	09/30/03	09/26/03	(G) Polyalkoxylated aromatic chromophore
P–02–0784	09/26/03	09/22/03	(G) Polyalkoxylated aromatic chromophore
P–02–0833	09/16/03	09/10/03	(G) Aromatic ether derivative
P–02–0990	09/17/03	09/05/03	(S) L-cysteine, hexaester with d-glucitol
P–03–0100	09/22/03	08/26/03	(G) Amine polymer
P–03–0152	09/30/03	08/20/03	(G) Substituted silane
P–03–0236	09/15/03	08/27/03	(S) Tetradecanoic acid, 2-[[3-[(1-oxotetradecyl)oxy]-2,2-bis[[(1-oxotetradecyl)oxy]methyl]propoxy]methyl]-2-[[(1-oxotetradecyl)oxy]methyl]-1,3-propanediyl ester
P–03–0237	09/30/03	09/05/03	(G) Polyurethane acrylate included polyester bone
P–03–0238	09/30/03	09/05/03	(G) Acrylate of hydroxyimide
P–03–0307	09/09/03	08/31/03	(G) Azo nickel complex
P–03–0317	09/17/03	09/04/03	(S) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with *n*-[3-dimethylamino)propyl]- 2-methyl-2-propenamide
P–03–0386	09/09/03	08/11/03	(G) Organofunctional polysiloxane
P–03–0395	09/25/03	08/19/03	(G) Steric hindered amine, oligomer
P–03–0441	09/26/03	08/31/03	(S) Oxirane, methyl-, polymer with oxirane, monoethyl ether*
P–03–0476	09/15/03	08/11/03	(G) Hydroxyfunctional acrylic copolymer
P–03–0477	09/10/03	08/10/03	(G) Modified alkaline epoxy resin
P–03–0508	09/26/03	08/18/03	(G) Water dispersible polyurethane
P–03–0520	09/24/03	09/05/03	(G) Silicone resin
P–03–0523	09/17/03	08/19/03	(G) Disubstituted benzene
P–03–0540	09/16/03	08/14/03	(G) Hexanedioic acid, polymer with aliphatic diols
P–03–0557	09/12/03	08/18/03	(G) Polyurethane
P–03–0569	09/29/03	08/29/03	(G) Saturated copolyester
P–03–0572	09/09/03	08/28/03	(G) Alkylated polyamide
P–03–0580	09/23/03	09/16/03	(G) Multifunctional polycarbodiimide
P–03–0593	09/30/03	09/18/03	(G) Alkoxylated acetal-derivative
P–03–0595	09/16/03	09/10/03	(G) Trialkylaluminum metal halide alkoxide reaction product
P–03–0640	09/25/03	09/16/03	(G) Epoxy-bisphenol adduct
P–03–0655	09/30/03	09/17/03	(S) Fatty acids, corn-oil, esters with propylene glycol

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: October 21, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–27033 Filed 10–24–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7578–9]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the Pick Your Part Auto Wrecking—Hayward

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act (the ''Act''). EPA is also providing notice of opportunity to comment on the proposed assessment.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty in a ''Class II'' administrative penalty proceeding.

Class II proceedings under section 309(g) are conducted in accordance with the ''Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits'' (''part 22''), 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in part 22. The deadline for submitting public comment on a proposed Class II order is forty (40) days after publication of this notice.

On September 29, 2003, EPA filed with Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3871, the following Administrative Complaint: In the Matter of Pick Your Part Auto Wrecking—Hayward, Docket No. CWA–9–2003–0003.

For the alleged violations set forth in the Administrative Complaint, EPA proposes to assess penalties of up to One Hundred Thirty-seven Thousand and Five Hundred Dollars ($137,500) for violations of NPDES Permit No. CAS000001 (issued by the California State Water Resources Control Board (Order No. 97–030–DWO)) and sections 301(a) and 308(a) of the Act, 33 U.S.C. 1311(a), 1318(a), at Pick Your Part Auto Wrecking—Hayward.

Procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II penalty is thirty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3871. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the Respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30 days after the date of publication of this notice.

Dated: September 30, 2003.

Alexis Strauss,

Director, Water Division.

[FR Doc. 03–27029 Filed 10–24–03; 8:45 am]

BILLING CODE 6560–50–M

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act Task Force

AGENCY: Council on Environmental Quality.

ACTION: Notice of public meeting.

SUMMARY: The Council on Environmental Quality (CEQ) established a National Environmental Policy Act (NEPA) Task Force to review the current NEPA implementing practices and procedures in the following areas: Technology and information management; federal and intergovernmental collaboration; programmatic analyses and subsequent tiered documents; and adaptive management and monitoring. In addition, the NEPA Task Force reviewed other NEPA implementation issues such as the level of detail included in agencies' procedures and documentation for promulgating categorical exclusions; the structure and documentation of environmental assessments; and other implementation practices that would benefit federal agencies.

''The Task Force Report to the Council on Environmental Quality—Modernizing NEPA Implementation'' was published and presented to CEQ on September 24, 2003. The Report contains recommendations designed to improve federal agency decision making by modernizing the NEPA process. To further the work of the NEPA Task Force, CEQ is holding a series of regional public roundtables to raise public awareness of the NEPA Task Force draft recommendations and discuss the recommendations and their implementation. The Eastern Regional Roundtable will be held at the Southeast Regional Office of the Pennsylvania Department of Environmental Protection, Lee Park (Suite 6010), 555 North Lane in Conshohocken, Pennsylvania on November 13–14, 2003. Representatives from important constituent groups that have worked on NEPA issues have been invited to participate in a discussion of the recommendations. Announcements of future roundtables will be published on the NEPA Task Force Web site and in the **Federal Register.**

DATES: The eastern regional public roundtable will be held on November 13 and 14 at the Southeast Regional Office of the Pennsylvania Department of Environmental Protection, Lee Park (Suite 6010), 555 North Lane in Conshohocken Pennsylvania, 19428–2233. The session on November 13 will begin at 9 a.m. and interested members of the public will have an opportunity to present their views at 3:30 p.m. following the roundtable discussion. That session will end in the evening after the public's views have been presented. The session on November 14 will begin at 9 a.m. and interested members of the public will have an opportunity to present their views at 11 a.m. following the roundtable discussion.

ADDRESSES: Interested parties can review the Task Force report via the CEQ Web site at *http://www.whitehouse.gov/ceq/* or the NEPA Task Force Web site at *http:ceq.eh.doe.gov/ntf/.* If you would like a printed copy, please mail a request to The NEPA Task Force, 722 Jackson Place, NW., Washington, DC 20585, or contact Bill Perhach at (202) 395–0826 to request a copy.

Dated: October 21, 2003.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 03–26973 Filed 10–24–03; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 03–3106]

GSA Approves Renewal of North American Numbering Council Charter Through October 4, 2005

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 9, 2003, the Commission released a public notice announcing GSA approves renewal of North American Numbering Council charter through October 4, 2005. The intended effect of this action is to make the public aware of the renewal of the North American Numbering Council charter.

DATES: Renewed through October 4, 2005.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov.* The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released October 9, 2003.

The GSA has renewed the charter of the North American Numbering Council (Council) through October 4, 2005. The Council will continue to advise the Federal Communications Commission (Commission) on rapidly evolving and competitively significant numbering issues facing the telecommunications industry.

In October 1995, the Commission established the North American Numbering Council, a federal advisory committee created pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988), to advise the Commission on issues related to North American Numbering Plan (NANP) administration in the United States, including local number portability administration issues. The original charter of the Council was effective on October 5, 1995, establishing an initial two-year term. The first amended charter was effective on October 5, 1997, renewing the term of the Council for two years. The second amended charter was effective on October 5, 1999, renewing the term of the Council for two years. The third amended charter was effective October 5, 2001, renewing

the term of the Council again for two years.

Since the last charter renewal, the Council has provided the Commission with critically important recommendations regarding numbering issues. During the term of the prior amended charter, the Council made recommendations on issues which included: (1) Local Number Portability provisioning flows; (2) Management and Ownership of the Centralized Toll Free Database by an LLC; (3) Use of Telephone Numbers as a Universal Service Fund Allocator; (4) review of the definition of Intermediate Numbers; (5) impact of Soft Dial Tone service; (6) costs and benefits of numbering resource optimization proposals to expand the NANP beyond 10 digits; (7) technical viability of increasing the Pooling Contamination Threshold; (8) Pooling Administration System Forecasting Requirements; (9) Grandfathered Wireless NXX Codes; (10) NPAC Change Management Administration; (11) possible ''Jeopardy'' for Wireless Number Pooling and Portability Deadline; and (12) Technical Requirements for the North American Numbering Plan Administrator (NANPA). In May 2002 and May 2003, the Council provided a detailed evaluation of the NANPA's performance for the periods January 2001–December 2001 and January 2002–December 2002, respectively. The Council will continue to evaluate NANPA's performance annually.

Moreover, the Council is presently considering and formulating recommendations on other important numbering-related issues that will require work beyond the term of the present charter. The term of the Council's renewed charter begins October 5, 2003 and runs through October 4, 2005.

The value of this federal advisory committee to the telecommunications industry and to the American public cannot be overstated. Numbers are the means by which consumers gain access to, and reap the benefits of, the public switched telephone network. The Council's recommendations to the Commission will facilitate fair and efficient numbering administration in the United States, and will ensure that numbering resources are available to all telecommunications service providers on a fair and equitable basis, consistent with the requirements of the Telecommunications Act of 1996.

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 03–26961 Filed 10–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–2963]

Sprint Corporation's Petition for Designation as an Eligible Telecommunications Carrier in Virginia

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the Sprint Corporation's (Sprint) petition. Sprint is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of Virginia.

DATES: Comments are due on or before November 6, 2003. Reply comments are due on or before November 20, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the of the Commission's Public Notice, CC Docket No. 96–45, released September 26, 2003. On August 29, 2003, Sprint filed with the Commission a petition pursuant to section 214(e)(6) of the Communications Act of 1934, as amended, seeking designation as an ETC to receive federal universal service support for service offered in portions of its licensed service area in Virginia that are served by two non-rural incumbent local exchange carriers—Verizon South, Incorporated—VA (Contel) and Verizon Virginia, Incorporated. Specifically, Sprint contends that: the Virginia State Corporation Commission (Virginia Commission) has provided an affirmative statement that it does not regulate commercial mobile radio service (CMRS) carriers; Sprint satisfies all the statutory and regulatory prerequisites for ETC designation; and designating Sprint as an ETC will serve the public interest.

The petitioner must provide copies of its petition to the Virginia Commission. The Commission will also send a copy of this Public Notice to the Virginia Commission by overnight express mail to ensure that the Virginia Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due on or before November 6, 2003, and reply comments are due on or before November 20, 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 then 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 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are Permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau Telecommunications Access Policy Division.

[FR Doc. 03–26954 Filed 10–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–2958]

Sprint Corporations' Petition for Designation as an Eligible Telecommunications Carrier in Alabama

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the Sprint Corporation's (Sprint) petition. Sprint is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of Alabama.

DATES: Comments are due on or before November 6, 2003. Reply comments are due on or before November 20, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the of the Commission's Public Notice, CC Docket No. 96–45, released September 26, 2003. On September 5, 2003, Sprint filed with the Commission a petition pursuant to section 214(e)(6) of the Communications Act of 1934, as amended, seeking designation as an ETC to receive federal universal service support for service offered in portions of its licensed service area in Alabama, that are served by three non-rural incumbent local exchange carriers—BellSouth Telecommunications, Incorporated, CenturyTel of Alabama, LLC (Northern), and CenturyTel of Alabama, LLC (Southern). Specifically, Sprint contends that: The Alabama Public Service Commission (Alabama Commission) has provided an affirmative statement that it does not regulate commercial mobile ratio service (CMRS) carriers; Sprint satisfies all the statutory and regulatory prerequisites for ETC designation; and designating Sprint as an ETC will serve the public interest.

The petitioner must provide copies of its petition to the Alabama Commission. The Commission will also send a copy of this Public Notice to the Alabama Commission by overnight express mail to ensure that the Alabama Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: Comments are due on or before November 6, 2003, and reply comments are due on or before November 20, 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 then 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 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau Telecommunications Access Policy Division.

[FR Doc. 03–26955 Filed 10–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–2961]

Sprint Corporation's Petition for Designation as an Eligible Telecommunications Carrier in New York

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the Sprint Corporation's (Sprint) petition. Sprint is seeking designation as an eligible telecommunications carrier (ETC) to receive Federal universal service support for service offered throughout its licensed service area in the State of New York.

DATES: Comments are due on or before November 6, 2003. Reply comments are due on or before November 20, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released September 26, 2003. On September 2, 2003, Sprint filed with the Commission a petition pursuant to section 214(e)(6) of the Communications Act of 1934, as amended, seeking designation as an ETC to receive Federal universal service support for service offered in portions of its licensed service area in New York that are served by two non-rural incumbent local exchange carriers—Verizon New York, Incorporated and Frontier Telephone of Rochester, Incorporated, a subsidiary of Citizens Communications Co. Specifically, Sprint contends that: The State of New York Department of Public Service (New York Department of Public Service) has provided an affirmative statement that it does not regulate commercial mobile radio service (CMRS) carriers; Sprint satisfies all the statutory and regulatory prerequisites for ETC designation; and designating Sprint as an ETC will serve the public interest.

The petitioner must provide copies of its petition to the New York Department of Public Service. The Commission will also send a copy of this Public Notice to the New York Department of Public Service by overnight express mail to ensure that the New York Department of Public Service is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due on or before November 6, 2003, and reply comments are due on or before November 20, 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 then 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 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–26956 Filed 10–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–2962]

Sprint Corporation's Petition for Designation as an Eligible Telecommunications Carrier in Georgia

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the Sprint Corporation's (Sprint) petition. Sprint is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of Georgia.

DATES: Comments are due on or before November 6, 2003. Reply comments are due on or before November 20, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released September 26, 2003. On September 8, 2003, Sprint filed with the Commission a petition pursuant to section 214(e)(6) of the Communications Act of 1934, as amended, seeking designation as an ETC to receive federal universal service support for service offered in portions of its licensed service area in Georgia that cover partial and complete wire centers served by BellSouth Telecommunications, Inc., a non-rural incumbent local exchange carrier. Specifically, Sprint contends that: The Georgia Public Service Commission (Georgia Commission) has provided an affirmative statement that it does not regulate commercial mobile radio service (CMRS) carriers; Sprint satisfies all the statutory and regulatory prerequisites for ETC designation; and designating Sprint as an ETC will serve the public interest.

The petitioner must provide copies of its petition to the Georgia Commission. The Commission will also send a copy of this Public Notice to the Georgia Commission by overnight express mail to ensure that the Georgia Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: Comments are due on or before November 6, 2003, and reply comments are due on or before November 20, 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, Natek, 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 then 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 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–26959 Filed 10–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–67; DA 03–3036]

Hamilton Relay, Inc. and Hands On Video Relay Service, Inc. Petitions for Waiver Extension, Permanent Waiver, and Clarification of Video Relay Service Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks public comment on petitions filed for an extension of video relay service (VRS) waivers, a request for permanent waiver of the requirements regarding equal access to interexchange carriers, and clarification that VRS providers are not required to provide speech-to-speech (STS), Spanish relay services, and the application of certain TRS mandatory minimum standards to VRS.

DATES: Interested parties may file comments in this proceeding on or before October 20, 2003. Reply comments may be filed on or before October 30, 2003. Parties that may have already submitted comments in this proceeding need not resubmit those comments unless they choose to update them.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–2247 (voice), (202) 418–7898 (TTY), or e-mail at *Dana.Jackson@fcc.gov.*

SUPPLEMENTARY INFORMATION: When filing comments, please reference CC Docket No. 98–67. 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, 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 Services 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, 445 12th Street, SW., Room TW–B204 Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted, along with three paper copies, to: Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 6–C410 Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. 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, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure.

Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this *Public Notice* may 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.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Federal Communications Commission.

P. June Taylor,

Chief of Staff, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–26974 Filed 10–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 10, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Randy and Jenifer Trimble, Burlington, Kansas individually and as co-trustees of the Randall L. Trimble Living Trust, to acquire control of Flint Hills Bancshares, Inc., Gridley, Kansas, and thereby indirectly acquire Citizens State Bank, Gridley, Kansas.

2. M.D. Michaelis, Paula Sue Michaelis, Donald E. Schrag, and L. Thomas Veatch, all of Wichita, Kansas, as trustees of the M.D. Michaelis Trust F, the Paula Sue Michaelis Trust F, the Matthew Michaelis Trust F, the Laura Haunschild Trust F, and the Amy Loflin Trust F, to acquire control of Emprise Financial Corporation, Wichita, Kansas, and thereby indirectly acquire Emprise Bank, Wichita, Kansas; Emprise Bank, National Association, Hays, Kansas; Emprise Bank, Iola, Kansas; and Emprise Bank, National Association, Hillsboro, Kansas.

Board of Governors of the Federal Reserve System, October 21, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–26965 Filed 10–24–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

SES Performance Review Board

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the FTC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Janet Silva, Director of Human Resources, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2022.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations regarding performance ratings to the Chairman.

The following individuals have been designated to serve on the Commission's Performance review Board:

Rosemarie A. Straight, Executive Director, Chair.
Howard J. Beales, Director, Bureau of Consumer Protection.
William E. Kovacic, General Counsel.

Donald S. Clark,

Secretary.

[FR Doc. 03–27013 Filed 10–24–03; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–73–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: The Second Injury Control and Risk Survey (ICARIS 2) Phase 2—New—The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC). This project will use data from a telephone survey to measure injury-related risk factors and guide injury prevention and control priorities including those identified as priorities in *Healthy People 2010* objectives for the nation. Injuries are a major cause of premature death and disability with associated economic costs of over 150 billion dollars in lifetime costs for persons injured each year. *Healthy People 2010* objectives and the recent report from the Institute of Medicine, *Reducing the Burden of Injury,* call for reducing this toll.

In addition to national efforts, NCIPC funds injury control prevention programs at the state and local levels. These programs need data both to establish their prevention priorities and monitor their performance. The use of outcome data (*e.g.*, fatal injuries) for measuring program effectiveness is problematic because cause-specific events are relatively rare and because data on critical risk factors (*e.g.*, was a helmet worn in a bike crash or was a smoke detector present at a fatal fire?) are often missing. Because these risk factors are early in the causal chain of injury, they are what injury control programs target to prevent injuries. Accordingly, monitoring the level of injury risk factors in a population can help programs set priorities and evaluate interventions.

The first Injury Control and Risk Factor Survey (ICARIS), conducted in 1994, was a random digit dial telephone survey that collected injury risk factor and demographic data on 5,238 English- and Spanish-speaking adults (greater than or equal to 18 years old) in the United States. Proxy data were collected on 3,541 children <15 years old. More than a dozen peer-reviewed scientific reports have been published from the ICARIS data on subjects including dog bites, bicycle helmet use, residential smoke detector usage and fire escape practices, attitudes toward violence, suicidal ideation and behavior, and compliance with pediatric injury prevention counseling.

ICARIS–2, a national telephone survey about injury, which began in the summer of 2000, has collected data on more than 8,700 of the targeted 10,200 respondents to date. The first phase of the survey was initiated as a means for monitoring the injury risk factor status of the nation at the start of the millennium. The second phase of the survey is needed to expand knowledge in areas investigators could not fully explore, previously. By using data collected in ICARIS as a baseline, data collected in ICARIS–2 Phase–2 will be used along with data currently being collected (ICARIS–2 Phase–1) to measure changes and gauge the impact of injury prevention policies. The ICARIS–2 surveys may also serve as the only readily available source of data to measure several of the *Healthy People 2010* injury prevention objectives. In order to more fully monitor injury risk factors and selected year *Healthy People 2010* injury objectives, as well as evaluate the effectiveness of injury prevention programs, the second phase (ICARIS–2 Phase–2) of the current national telephone survey on injury risk is being implemented. The only cost to the respondents is the time involved to complete the survey. The estimated annualized burden is 1521.

Form/Respondent category	Number of respondents	Frequency of response	Average burden per Response (in hours)
Screening:			
Ineligible Households plus Nonhouseholds	2800	1	1/60
Unable to reach respondent, 8 attempts	1000	4	6/60
Refusals—Screener	3150	1	.5/60
CATI Survey Instrument:			
Refusals—CATI	900	1	1.5/60
Partial Interview	150	1	10/60
Completed Interviews	4000	1	15/60

Dated: October 17, 2003.

Gaylon D. Morris,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–26986 Filed 10–24–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Notice of 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 committee meeting.

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5 p.m., November 13, 2003.

8 a.m.–5 p.m., November 14, 2003.

Place: Hilton Hotel, 333 O'Farrell Street, San Francisco, California 94102, telephone 415/771–1400, fax 415/202–7033.

Status: Open 8 a.m.–8:30 a.m., November 13, 2003.

Closed 8:30 a.m.–5 p.m., November 13, 2003.

Closed 8 a.m.–5 p.m., November 14, 2003.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas. It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene in open session from 8–8:30 a.m. on November 13, 2003, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the Study Section to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Price Connor, Ph.D., NIOSH Health Scientist, 1600 Clifton Road, NE, Mailstop E–20, Atlanta, Georgia 30333, telephone 404/498–2511, fax 404/498–2569.

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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 21, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–26983 Filed 10–24–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0057]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Final Guidance for Industry: How to Use E–Mail to Submit a Protocol

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 26, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX 202–395–6974, or e-mail: *Fumie__Yokota@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 4B–41, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

How to Use E–Mail to Submit a Protocol

The Center for Veterinary Medicine (CVM) may review protocols for safety and effectiveness studies of new animal drugs submitted by sponsors. The review of protocols facilitates the drug review and approval processes.

Protocols for nonclinical laboratory studies (safety studies) are required under 21 CFR 58.120. Protocols for effectiveness studies are required under 21 CFR 514.117(b). The burden hours associated with preparing the protocols and appendices were reported and approved under OMB control number 0910–0119 for nonclinical laboratory studies and OMB control number 0910–0346 for adequate and well-controlled effectiveness studies. In this guidance document, CVM is giving sponsors the option to submit a protocol as an attachment via the Internet.

In the **Federal Register** of April 4, 2003 (68 FR 16522), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received in response to that notice.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form FDA No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3,536	190	0.52	100	0.20	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate was calculated as the time it takes to ''submit'' the protocol which consists of filling out the form and pressing the ''insert submission'' button, adding the password and pressing the ''mail to'' button, since the burden for protocol is already estimated under OMB control number 0910–0119 for nonclinical laboratory studies and OMB control number 0910–0346 for efficacy studies. The number of approved sponsors is 190, we routinely receive about 100 protocols a year, and the 12 minutes (.2 *60 minutes/hour) is an estimate based on talking to participating sponsors and our testing the use of the form.

Dated: October 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–26963 Filed 10–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1998D–1146]

Guidance for Industry: Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance (#152) entitled ''Guidance for Industry: Evaluating the Safety of Antimicrobial New Animal Drugs with Regard to Their Microbiological Effects on Bacteria of Human Health Concern.'' This guidance document discusses a recommended approach for assessing the safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written comments on the guidance document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. 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 the 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: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–157), 7500 Standish Pl., Rockville, MD 20855, 301–827–0233, e-mail: *jgilbert@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 13, 2002 (67 FR 58058), FDA published a notice of availability for a draft guidance entitled ''Guidance for Industry: Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern'' giving interested persons until November 27, 2002, to submit comments. FDA considered all comments received and, where appropriate, incorporated them into the guidance.

This document provides guidance for industry on a possible process for evaluating the potential effects of antimicrobial new animal drugs on non-target bacteria as part of the new animal drug application process. This guidance document outlines a risk assessment approach for evaluating the microbial food safety of antimicrobial new animal drugs. Alternative processes that may be more appropriate to a sponsor's drug and its intended conditions of use, may be used to characterize the microbial food safety of that drug. FDA's purpose in this guidance is to ensure the safety of animal drugs used in food-producing animals and to evaluate the human health impact of their intended use.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices (21 CFR 10.115). The guidance represents the agency's current thinking about the safety of new animal drugs, with regard to their microbiological effects on bacteria of human health concern. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

FDA is announcing that a collection of information entitled ''Guidance for Industry: Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. In the **Federal Register** of September 19, 2003 (68 FR 54906), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. According to the Paperwork Reduction Act of 1995, a collection of information should display a valid OMB control number. The valid OMB control number for this information collection is 0910–0522 (expires April 30, 2005). A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

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 of 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 guidance document entitled ''Guidance for Industry: Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern'' from the Center for Veterinary Medicine home page at *http://www.fda.gov/cvm*.

Dated: October 6, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–27113 Filed 10–23–03; 12:30 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999D–1938]

Review and Revision of Guidances for Industry on the Development of Generic Drug Products; Development and Use of Food and Drug Administration Guidance Documents; Update and Withdrawal of Guidances

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; update and withdrawal of guidances.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER), Office of Generic Drugs (OGD) is updating drug manufacturers on OGD efforts to review policy and procedure guides (PPGs) and other existing OGD documents that provide guidance on the development of generic drug products. We are also announcing the withdrawal of a list of PPGs that have become obsolete or have been replaced with other guidances or agency directives (manuals for policy and procedures (MaPPs)).

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of agency guidance documents can be obtained on the Internet at *http://www.fda.gov/cder/guidance/index.htm*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Rita R. Hassall, CDER (HFD–600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5845.

SUPPLEMENTARY INFORMATION: Since the early 1990s, OGD has developed and issued more than 40 PPGs to provide information to industry on the development of generic drug products and to set forth procedures for the review of generic drug applications. In addition, other guidance has been provided in the form of letters and other communications to industry.

On July 8, 1999, the agency announced in the **Federal Register** (64 FR 36886) a long-term effort to review all of its guidances and identify those that need to be revised, those that need to be reformatted for consistency with the agency's good guidance practices regulation (GGP) (21 CFR 10.115), and those that need to be withdrawn because they are no longer current. As an initial step in that process, OGD withdrew a number of drug-specific bioequivalence guidances and a number of labeling guidances that were outdated and no longer reflected the current thinking of the agency.

This notice has a twofold purpose: (1) It updates manufacturers on the status of OGD efforts to review existing guidances, and (2) it announces the withdrawal of 30 PPGs that are obsolete.

The PPGs that are being withdrawn are listed below. In each case, the reason for the withdrawal has been provided in parentheses.

- 1–89 ''Correspondence Practices'' (The guidance ''Major, Minor, and Telephone Amendments to Abbreviated New Drug Applications'' describes current correspondence practices.)
- 3–89 ''Handling Telephone Inquiries on Status of Processing from Applicants or Their Representatives'' (MAPP 5020.1 has been issued on this topic.)
- 4–89 ''Microbiology Consults'' (It is no longer needed as OGD has its own microbiology staff.)
- 6–89 ''Not Approvable Actions for ANDA[1] and AADA[2] Supplements'' (The guidance ''Major, Minor, and Telephone Amendments to Abbreviated New Drug Applications'' describes current correspondence practices.)
- 8–89 ''Changes in the Labeling of ANDAs Subsequent to Revision of Innovator Labeling'' (The guidance ''Revising ANDA Labeling Following Revision of the RLD[3] Labeling'' addresses this topic.)
- 9–89 ''Delivery of Documents to the Office of Generic Drug's Document Room; Providing Requested Documents to Messengers and Other Representatives of ANDA/AADA Applicants'' (This describes interactions with messengers and other representatives that have been overtaken by advances in technology. See also guidance ''Major, Minor, and Telephone Amendments to Abbreviated New Drug Applications'' for information on current correspondence practices.)
- 10–89 ''Meetings With Pharmaceutical Firm Employees or Their Representatives'' (This is addressed in CDER MAPP 4512.1.)
- 11–89 ''Shredding of Carbons and Draft Reviews and Letters'' (This has been overtaken by advances in technology.)
- 12–89 ''Number of Manufacturing Sites Permitted in an ANDA or AADA'' (This was superceded by the guidance ''Variations in Drug Products that May Be Included in a Single ANDA.'')
- 13–89 ''Testing Requirements Applicable to Finished Dosage Forms Manufactured Outside the United States'' (This material will be incorporated into the center's guidance on ''Stability Testing of Drug Substances and Drug Products,'' which issued as a draft in June 1998.)
- 14–89 ''Signatory Concurrence and Agreement on Final Typed Reviews and Letters and Other Items in the Administrative File'' (This is addressed by MaPP 4151.1.)
- 16–90 First in-First Reviewed Policies'' (This was superseded by PPG 38–93, then addressed by MaPP 5240.3.)
- 18–90 ''Requests for Expedited Review of Supplements to Approved ANDAs and AADAs'' (This became MaPP 5240.1.)
- 19–90 ''Availability of Labeling Guidance'' (This became MaPP 5230.1.)
- 20–90 ''Variations in Solid Oral Dosage Forms and Injectables That Can Be Included Within a Single ANDA'' (The guidance ''Variations in Drug Products that May be Included in a Single ANDA'' was issued on this topic.)
- 21–90 ''First In-First Reviewed Policy and Exceptions Applied to Supplemental Applications'' (This was superseded by PPG 38–93, then addressed by MaPP 5240.3.)
- 24–90 ''Improvement by the Applicant of Unreviewed Original ANDA and AADA Submissions'' (This is no longer needed given existence of form OGD uses to receive applications. See ''ANDA Checklist for Completeness and Acceptability of an Application,'' *http://www.fda.gov/cder/ogd/anda_checklist.doc*.)
- 25–90 ''Removal of Work-Related Materials from the Division at the End of Employment'' (This is covered by existing CDER exit policies.)
- 26–90 ''Reference to Type I DMF's [4] in ANDAs and AADAs'' (This is obsolete as type I DMFs are no longer used.)
- 27–90 ''Acceptance for Filing and Review of AADAs Absent Approval of the Referenced Bulk Antibiotic'' (This became MaPP 5240.2; the MaPP was then withdrawn with repeal of section 507 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 357).)
- 30–91 ''Organization of an ANDA and an AADA'' (This is addressed in the guidance for industry ''Organization of an ANDA.'')
- 32–92 ''Reaffirmation of Expiration Dating Period for Abbreviated Applications'' (This is addressed by MaPP 5226.1.)

[1] ANDA means Abbreviated New Drug Application.

[2] AADA means Abbreviated Antibiotic Drug Application.

[3] RLD means Reference Listed Drug.

[4] DMF means Drug Master Files.

• 33–92 ''Consistent Container Information in an Abbreviated Application'' (This is addressed by MaPP 5225.2.)

• 34–92 ''Implementation of the Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities Final Policy'' (Revised October 3, 1992 (An agency-level policy addresses this topic.)

• 35–92 ''Revision of Exhibit Batch Requirements for Abbreviated Antibiotic Drug Applications'' (This became MaPP 5223.1; the MaPP was then withdrawn with repeal of section 507 of the act.)

• 36–92 ''Submission of an Investigational New Drug Application to the Office of Generic Drugs'' (This is addressed by MaPP 5240.4.)

• 37–92 ''Management of Office and Center Committees'' (This was previously withdrawn per memo dated February 14, 1997, because of center committee reorganization.)

• 38–93 ''Restatement of the Office of Generic Drugs First In-First Reviewed Policy and Modifications of the Exceptions to the Policy Regarding Minor Amendments'' (This is addressed by MaPP 5240.3.)

• 40–94 ''Scoring Configuration of Generic Drug Products'' (This is addressed by MaPP 5223.2.)

• 41–95 ''Packaging of Test Batches'' (This is addressed by MaPP 5225.1.)

A number of other PPGs and other OGD documents are undergoing revision. Some of them will be issued as MaPPs; others will be revised and reissued in the form of guidances for industry consistent with the GGP regulation.

The agency welcomes public comment on its efforts to review existing guidances related to the development of generic drugs and revise, reformat, or withdraw them as appropriate. The agency is also requesting public comment on topics for future guidance development regarding generic drugs.

This information is being issued consistent with FDA's GGPs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written comments. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 14, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–26964 Filed 10–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, Arthritis, Musculoskeletal, and Skin Diseases Committee.

Date: November 17–18, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of health, HHS)

Dated: October 17, 2003.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26989 Filed 10–24–03; 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: Cardiovascular Sciences Integrated Review Group, Pathology A Study Section.

Date: October 21–22, 2003.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Terrace Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genomics Shared Instruments.

Date: October 21, 2003.

Time: 8 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: Barbara Whitmarsh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, Bethesda, MD 20892, (301) 435–4511.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 1.

Date: October 22–23, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *greenwelp@csr.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.

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: November 2–4, 2003.

Time: 5:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: John L. Meyer, PhD, Scientific Review Administrator, ONC IRG Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *meyerjl@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cellular Mechanisms in Aging and Development Study Section.

Date: November 2–4, 2003.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: James P. Harwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, (301) 435–1256, *harwoodj@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SRB 301:RR03–002:Shared Instrumentation.

Date: November 3, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavillon, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Arthur A. Petrosian, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1259, *petrosia@csr.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.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Discovery and Development of Therapeutics Study Section.

Date: November 3–4, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Eduardo A. Montalvo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–B 02 M, Member Conflicts in Biophysics and Chemistry.

Date: November 3, 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: Donald Schneider, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172 MSC 7806, Bethesda, MD 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR Review Meeting.

Date: November 3, 2003.

Time: 8 a.m. to 12:01 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel—Downtown, 1250 22nd Street NW., Washington, DC 20037.

Contact Person: Mark P. Rubert, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218 MSC 7852, Bethesda, MD 20892, (301) 435–2398.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–H (90) Computational Biology.

Date: November 3–4, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, 2401 M Street, NW., Washington, DC 20037.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC: 7806, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemistry/Biophysics SBIR/STTR Panel.

Date: November 3–4, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.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.

Name of Committee: Digestive Sciences Integrated Review Group, Respiratory Physiology Study Section.

Date: November 3–4, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/BDCN/SBIR.

Date: November 3–4, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, 301–435–1248, *etcheber@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–L(10)B Drug Delivery and Drug Discovery SBIR/STTR Panel.

Date: November 3–4, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Alcohol and Toxicology Special Emphasis Panel.

Date: November 3, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue, 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.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Science Fellowship Review.

Date: November 3, 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: 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.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member conflicts: GMA–2 and GMA–3.

Date: November 3, 2003.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Patricia Greenwell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Applications: Developmental Disabilities, Communication and Science Education.

Date: November 3–4, 2003.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Thomas A Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS–X 10B Small Business: Electromagnetics.

Date: November 3, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Rosslyn, 1900 North Fort Myer Drive, Arlington, VA 22209

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BSPH Member Conflict SEP.

Date: November 3, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel—Downtown, 1250 22nd Street, NW., Washington DC, DC 20037.

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218 MSC 7852, Bethesda, MD 20892, 301–435–2398, *rubertm@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 NMB (04) Neurotoxicology of Heavy Metals.

Date: November 3, 2003.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SRB 40P: Program Project: Developing of Ultrasonic Tissue Characterization Methods.

Date: November 3–4, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1259, *petrosia@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: October 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Polcy.

[FR Doc. 03–26988 Filed 10–24–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1473–DR]

American Samoa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for American Samoa, (FEMA–1473–DR), dated June 6, 2003, and related determinations.

EFFECTIVE DATE: October 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the authority of Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with the Insular Areas Act, 48 U.S.C. 1469a(d), and the President's declaration letter dated June 6, 2003, Federal funds for the Public Assistance and Hazard Mitigation Grant Programs, and for Other Needs Assistance under the Individuals and Households Program are authorized at 90 percent of total eligible costs for American Samoa. This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–27051 Filed 10–24–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1493–DR]

District of Columbia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the District of Columbia (FEMA–1493–DR), dated September 20, 2003, and related determinations.

EFFECTIVE DATE: October 8, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the District of Columbia is hereby amended to include Categories C through G under the Public Assistance program for the District of Columbia determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20, 2003:

The District of Columbia for Categories C through G under the Public Assistance program (already designated for Individual Assistance, including direct Federal assistance and debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–27048 Filed 10–24–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1446–DR]

Guam; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of Guam, (FEMA–1446–DR), dated December 8, 2002, and related determinations.

EFFECTIVE DATE: October 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the authority of Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with the Insular Areas Act, 48 U.S.C. 1469a(d), and the President's declaration letter dated December 8, 2002, the Federal share of total eligible costs for debris removal and emergency protective measures (Categories A and B) under Public Assistance, including direct Federal assistance, and the Other Needs Assistance under the Individuals and Households Program is increased from 90 percent to 100 percent. Federal funding for Public Assistance Categories C through G, and the Hazard Mitigation Grant Program remain at 90 percent and the Territory and local contribution at 10 percent. These cost shares are effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–27052 Filed 10–24–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1490–DR]

North Carolina; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–1490–DR), datedSeptember 18, 2003, and related determinations.

EFFECTIVE DATE: October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2003:

Wake County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—

Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–27049 Filed 10–24–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1490–DR]

North Carolina; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–1490–DR), datedSeptember 18, 2003, and related determinations.

EFFECTIVE DATE: October 8, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2003:

Bladen, Columbus, Cumberland, Davidson, Duplin, Durham, Harnett, Johnston, Robeson, Sampson, and Wake Counties for Individual Assistance.

Orange County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–27050 Filed 10–24–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Aviation Security Advisory Committee Meeting

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aviation Security Advisory Committee (ASAC).

DATES: The meeting will take place on November 17, 2003, from 11 a.m. to 12 p.m., local time in Washington, DC.

ADDRESSES: The meeting will be held by telephonic conference call. Dial-in instructions are set forth below under the heading **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joseph Corrao, Office of Transportation Security Policy, TSA Headquarters (Room 1146N), 701 S. 12th Street, Arlington, VA, 22202; telephone 571–227–2980, e-mail *joseph.corrao@dhs.gov.*

SUPPLEMENTARY INFORMATION: This meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The agenda for the meeting will include discussion of the report of the general aviation airport security guidelines working group. This meeting, from 11 a.m. to 12 noon, is open to the public but telephonic conferencing capacity is limited. Members of the public who wish to monitor the discussion may dial into this telephonic meeting by dialing (888) 395–3015. At the prompt, provide the conference code ''G A Airport''. (Parties calling from locations outside the United States may contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**, for international calling instructions.)

Members of the public must make advance arrangements to present oral statements at this ASAC meeting. Written statements may be presented to the committee by providing copies of them to the Chair prior to the meeting. Comments may be sent to the Chair by telecopier at (571) 227–1374, ATTN: ASAC Chair. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Arlington, Virginia, on October 17, 2003.

Tom Blank,

Assistant Administrator for Transportation Security Policy.

[FR Doc. 03–27061 Filed 10–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Assessment Entitled: Proposal To Implement Candidate Conservation Agreements and Conservation Measures for Eastern Massasaugas in States Within Region 3 of the U.S. Fish and Wildlife Service

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public and other agencies of the availability of a draft Environmental Assessment (EA) and that the U.S. Fish and Wildlife Service (Service) is seeking public comment on this draft EA. The eastern massasauga (*Sistrurus catenatus catenatus,* hereafter massasauga) is a Federal candidate species for listing under the Endangered Species Act of 1973, as amended. The purpose of the EA is to evaluate the environmental consequences of implementing different strategies for conserving the remaining massasauga populations in Region 3. The Service believes that implementing adequate conservation efforts during the candidate stage may be sufficient to preclude the need to Federally list the subspecies.

DATES: Written comments must be received on or before November 26, 2003.

ADDRESSES: Written comments can be mailed to the address or fax number below. Electronic mail comments should be submitted to: *fw3_massasauga@fws.gov*. Persons wishing to review the document may obtain a copy by writing, telephoning, faxing, or e-mailing: Regional CCA Coordinator, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111; Telephone: (612) 713–5343; Fax: (612) 713–5292. The draft EA is also available at the

following Internet address: *http://midwest.fws.gov/nepa*.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, Regional CCA Coordinator, Telephone: (612) 713–5343, or e-mail: *peter_fasbender@fws.gov*.

SUPPLEMENTARY INFORMATION:

Public Involvement

The draft EA is available for public review and comment for a period of 30 days. This notice is provided pursuant to National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). Copies of the document can be obtained as indicated in the **ADDRESSES** section. In addition, documents will be available for public inspection during normal business hours (8–4:30), at the U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota.

All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)). 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. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

Candidate Conservation Agreements

Candidate Conservation Agreements (CCAs) are formal agreements between the Service and one or more parties to address the conservation needs of proposed or candidate species, or species likely to become candidates, before they become listed as endangered or threatened. The participants voluntarily commit to implementing specific actions that will remove or reduce the threats to these species, thereby contributing to stabilizing or restoring the species. In some cases, this may provide enough protection that listing is no longer necessary. The Service has entered into many Candidate Conservation Agreements over the years, primarily with other Federal agencies, State and local agencies, and conservation organizations. Some of these have successfully removed threats and listing was avoided.

Candidate Conservation Agreements with Assurances (CCAAs) provide non-Federal property owners who voluntarily agree to manage their lands or waters to remove threats to candidate or proposed species assurances that their conservation efforts will not result in future regulatory obligations in excess of those they agree to at the time they enter into the Agreement. In return for the participant's proactive management, the Service provides take authorization through the section 10(a)(1)(A) process of the ESA, which authorizes issuance of permits that will enhance the survival of the species. The permit would allow participants to take individuals or modify habitat to return population levels and habitat conditions to those agreed upon and specified in the Agreement.

Background on Candidate Conservation Agreements for Massasauga

The range of the eastern massasauga extends from western New York and southern Ontario to Iowa and southward to Missouri. The massasauga's decline is primarily attributed to habitat loss and persecution. The Service elevated the massasauga to the Federal candidate status in 1999. In 2001, the Service funded a region-wide massasauga conservation initiative. Region 3 States were given funds for the investigation and development of CCAs and CCAAs for pertinent Region 3 States, local land-management agencies, and private land owners. Illinois, Iowa, Michigan, Missouri, Ohio, and Wisconsin are the Region 3 States in various stages of CCA development. The CCA form will vary by State and site.

Background on Environmental Assessment

The draft EA considers two action alternatives and the ''No Action'' alternative. Alternative A implements CCA's or CCAA's for the massasauga on protected lands (*i.e.*, state property) throughout Region 3. Alternative C relies on the use of current regulatory tools to recover the massasauga if it becomes listed under the Act. The NEPA process will be completed after the comment period, at which time the Service will consider and respond to any submitted comments in Chapter 7 of the final EA. The Regional Director will decide whether to select one of the three alternatives and issue a Finding of No Significant Impact (FONSI), or to proceed in developing an Environmental Impact Statement if she determines there would be significant impacts.

The areas included in Candidate Conservation Agreements (listed in Sub-Section 1.4 of the EA) may contain facilities eligible to be listed on the National Register of Historic Places and other historical or archeological resources. The National Historic Preservation Act and other laws require these properties and resources be identified and considered in project planning. The public is requested to inform the Service of concerns about archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns.

Authority: 16 U.S.C. 1531, *et seq.*; 42 U.S.C. 4321–4347.

Dated: September 23, 2003.

Lynn M. Lewis,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 03–26977 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–1410–HY–P; F–85448, DYA–15]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the reserved mineral estate for conveyance pursuant to the Alaska Native Claims Settlement Act, as amended, will be issued to Doyon, Limited. The minerals were reserved to the United States pursuant to the Act of March 8, 1922, as amended and supplemented, in the Native allotment certificate issued for U.S. Survey No. 4453B, Alaska. The lands to be conveyed contain 39.90 acres, and are located in T. 2 S., R. 8 W., Fairbanks Meridian, in the vicinity of Nenana, Alaska. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until November 26, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Christy Favorite, by phone at 907–271–5656, or by e-mail at *cfavorit@ak.blm.gov.*

Christy Favorite,

Land Law Examiner, Branch of Adjudication I.

[FR Doc. 03–27002 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–88–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–03–1320–EL; COC 67231]

Notice of Invitation for Coal Exploration License Application, Ark Land Co., COC 67231; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license application, Ark Land Company.

SUMMARY: Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to title 43, Code of Federal Regulations, subpart 3410, members of the public are hereby invited to participate with Ark Land Company, in a program for the exploration of unleased coal deposits owned by the United States of America containing approximately 1,358.75 acres in Gunnison County, Colorado.

DATES: Written notice of intent to participate should be addressed to the attention of the following persons and must be received by November 26, 2003.

ADDRESSES: Karen Purvis, CO–921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and, Wendall A. Koontz, Ark Land Company, P.O. Box 591, Somerset, Colorado 81434.

SUPPLEMENTARY INFORMATION: The application for coal exploration license is available for public inspection during normal business hours under serial number COC 67231 at the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Uncompahgre Field Office, 2505 South Townsend Avenue, Montrose, Colorado 81401. Any party electing to participate in this program must share all costs on a pro rata basis with Ark Land Company and with any other party or parties who elect to participate.

Dated: September 23, 2003.

Karen Purvis,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. 03–26995 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–03–1320–EL–P; MTM 92869]

Notice of Invitation—Federal Coal Exploration License Application MTM 92869

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation.

SUMMARY: Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in Big Horn County, Montana.

SUPPLEMENTARY INFORMATION: The following-described lands located in Big Horn County, Montana, encompassing 80.00 acres:

T. 8 S., R. 39 E., P. M. M.

Sec. 5: Lot 17
Sec. 9: NW¼SW¼

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and Spring Creek Coal Company, P.O. Box 67, Decker, Montana 59025. Such written notice must refer to serial number MTM 92869 and be received no later than November 26, 2003 or 10 calendar days after the last publication of this Notice in the *Sheridan Press* newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the *Sheridan Press,* Sheridan, Wyoming.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Spring Creek CoalCompany, is available for public inspection at the Bureau of Land Management,5001 Southgate Drive, Billings, Montana, during regular business hours(9 a.m. to 4 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Giovanini, Mining Engineer, or Connie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5084 or (406) 896–5060, respectively.

Dated: September 17, 2003.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 03–26999 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1020–PK; HAG 04–0014]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Lakeview District.

ACTION: Meeting Notice for the Southeast Oregon Resource Advisory Council.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will hold a conference call for all members on Monday, November 10, 2003 at 2 p.m. Pacific standard time. The conference call is open to the public. Members of the public in the Lakeview area may attend the meeting in person in the Abert Rim Conference Room, Lakeview Interagency Office, 1301 South G Street, Lakeview, Oregon 97630. The meeting topics that may be discussed by the Council include a discussion of issues within Southeast Oregon related to: Birch Creek recommendation, Sustainable Working Landscapes, Sage Grouse, state and national BLM budget items and other issues that may come before the Board.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SEORAC conference call may be obtained from Pam Talbott, Contact Representative, Lakeview Interagency Office, 1301 South G Street, Lakeview, OR 97630 (541) 947–6107, or *ptalbott@or.blm.gov* and/or from the following Web site <*http://www.or.blm.gov/SEOR-RAC*>.

Dated: October 20, 2003.

Steven A. Ellis,

District Manager.

[FR Doc. 03–26979 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–03–1310–MSES 48231]

Proposed Reinstatement of Terminated Oil and Gas Lease, Mississippi

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease, MSES 48231, Wayne County, DeSoto National Forest, Mississippi, was timely filed and accompanied by all required rentals and royalties. No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rental and royalties at rates of $10 per acre and 16 2/3 percent. Payment of $500 in administrative fees and a $158 publication fee has been made.

FOR FURTHER INFORMATION CONTACT: Ann Dickerson, Land Law Examiner, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153 at (703) 440–1512.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management is proposing to reinstate the lease effective the date of termination, December 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above. This is in accordance with section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)).

Dated: September 25, 2003.

Michael D. Nedd,

State Director.

[FR Doc. 03–26998 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1430–ET; NMNM 56990]

Expiration of Bureau of Reclamation Withdrawal and Opening of Land; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Public Land Order No. 6607 which withdrew public land for use by the Bureau of Reclamation as a quarry site has expired. This notice opens the land to settlement, sale, location, and entry under the general land laws, including the United States mining laws.

EFFECTIVE DATE: November 26, 2003.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, 505–438–7597.

SUPPLEMENTARY INFORMATION:

1. Public Land Order No. 6607 which withdrew the following described land for use by the Bureau of Reclamation as a quarry site for the construction and maintenance of the Brantley Dam expired on June 3, 1995.

New Mexico Principal Meridian

T. 21 S., R. 24 E.,
Sec. 25, N½NE¼SE¼ and S½SE¼NE¼.

The area described contains 40 acres in Eddy County.

2. At 10 a.m. on November 26, 2003, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on November 26, 2003, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on November 26, 2003, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Public Land Order No. 6607 did not withdraw the lands from leasing under the mineral leasing laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States.

Dated: September 15, 2003.

Carsten F. Goff,

Deputy State Director, Resource Planning, Use, and Protection.

[FR Doc. 03–27003 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZAR 033067]

Public Land Order No. 7588; Partial Revocation of Public Land Order No. 3965; Arizona

AGENCY: Bureau of Land Management.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order insofar as it affects approximately 70 acres of National Forest System lands withdrawn for the Ferndell, Humboldt Peak Lookout, and Pine Administrative Sites. This order opens the National Forest System lands to mining.

EFFECTIVE DATE: November 26, 2003.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that a withdrawal is no longer needed on the lands described in Paragraph 1 and has requested the partial revocation. The lands withdrawn for the Pine Administrative Site have been conveyed out of Federal ownership and this is a record clearing action only for those lands.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 3965, which withdrew National Forest System lands for several Forest Service administrative sites, is hereby revoked insofar as it affects the following described lands:

Tonto National Forest

Gila and Salt River Meridian

(a) *Ferndell Administrative Site*
T. 2 S., R. 15 E.,
Sec. 5, W½NE¼SE¼.

Humboldt Peak Lookout Administrative Site

T. 7 N., R. 5 E.,
Sec. 1, SE¼SW¼NW¼, NE¼NW¼SW¼, and NW¼NE¼SW¼.
(b) *Pine Administrative Site*
T. 12 N., R. 8 E.,
Sec. 36, W½NE¼SE¼.

The areas described aggregate approximately 70 acres.

2. At 10 a.m. on November 26, 2003, the lands described in Paragraph 1(a) will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals,

other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 6, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–27004 Filed 10–24–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN 56315, 3–08808]

Public Land Order No. 7586; Revocation of Public Land Order No. 7142; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order in its entirety as to 40 acres of public land withdrawn for the Bureau of Land Management's Las Vegas Administrative Site. This site was never developed and is no longer needed for the purpose for which it was withdrawn.

EFFECTIVE DATE: October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 775–861–6532.

SUPPLEMENTARY INFORMATION: The land will remain closed to location and entry under the mining laws, and from operation under the mineral leasing and geothermal leasing laws, in accordance with the Southern Nevada Public Land Management Act of 1998.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 7142 (60 FR 25149, May 11, 1995), which withdrew public land for the Bureau of Land Management's Las Vegas Administrative Site, is hereby revoked in its entirety as to the following described land:

Mount Diablo Meridian

T. 20 S., R. 60 E.,
Sec. 22, SE¼NW¼.

The area described contains 40 acres in Clark County.

2. The land described in Paragraph 1 is hereby made available for disposition in accordance with Section 4 of the Southern Nevada Public Land Management Act of 1998, Public Law 105–263, 111 Stat. 2343, *et seq.* The land remains closed to location and entry under the mining laws, and from operation under the mineral leasing and geothermal leasing laws in accordance with the Act.

Dated: September 24, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–26997 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[140NMNM 103685]

Public Land Order No. 7587; Withdrawal of National Forest System Land for Langmuir Principal Research Site; New Mexico

AGENCY: Bureau of Land Management.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 852 acres of National Forest System land from location and entry under the United States mining laws for 20 years to protect the Langmuir Principal Research Site.

EFFECTIVE DATE: October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM Socorro Field Office, 198 Neel Avenue NW., Socorro, New Mexico 87801, 505–835–0412.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. Ch. 2 (2000), to protect the Langmuir Principal Research Site:

Cibola National Forest

New Mexico Principal Meridian

T. 4 S., R. 3 W.,
Sec. 5, lot 2 and W½SW¼;
Sec. 6, lots 5 and 6, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, NE¼, E½NW¼, and N½SE¼;
Sec. 8, W½NW¼ and NW¼SW¼.

The area described contains approximately 852 acres in Socorro County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: October 6, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–27005 Filed 10–24–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–75747]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a public park.

Mount Diablo Meridian

T. 20S., R. 60E.,
Sec. 12, W½NW¼NW¼NW¼, SW¼NWNW¼, W½SE¼NW¼NW¼, W½NW¼SW¼NW¼.

Containing 25 acres, more or less.

The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The lease/conveyance will also be subject to:

1. All valid and existing rights.

2. Those rights for public utility purposes which have been granted to Nevada Power Company by Permit No's. N–75351 & N–74487, Las Vegas Valley Water District by permit No. N–66292–01, and Southwest Gas Corporation by permit No. N–75403, under the Act of October 26, 1978 (FLPMA).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period until December 11, 2003, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89130.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this notice will become effective December 26, 2003. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: September 23, 2003.

Sharon DiPinto,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 03–26996 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–060–03–1220–DA]

Fort Stanton Area of Critical Environmental Concern (ACEC) Designation of Roads and Trails

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of closure of roads and designation of trails.

SUMMARY: The Roswell Field Office of the Bureau of Land Management (BLM) is closing roads and developing multiuse trails to protect resource values within the Fort Stanton ACEC. The Route Designation Plan (transportation plan) includes road closures, designating off-highway vehicle (OHV) routes, designation of multiuse trails, and closing roads, the use of which is causing damage within the ACEC. The designation is in accordance with the 1997 Roswell Resource Management Plan (RMP) and the Fort Stanton ACEC Final Activity Plan of March 2001. In accordance to the RMP and the ACEC Plan, approximately 24,000 acres will be designated as limited to designated roads and trails for OHV use, to protect soils, cultural resources, and vegetation, including threatened or endangered species. Twenty miles of roads will be closed, and twenty miles will be designated as open to OHV's. Sixty miles of multiuse hike/bike/equestrian trails will be designated. The Route Designation Plan is necessary to reduce the impact from recreationists to biological, archaeological, and scenic qualities of the ACEC, while providing for quality recreation opportunities.

DATES: This notice is effective October 27, 2003.

ADDRESSES: Bureau of Land Management, Roswell Field Office, Attention Paul T. Happel, Natural Resource Specialist, 2909 West Second, Roswell, New Mexico 88201. Internet e-mail: *paul_happel@blm.gov*.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Paul T. Happel, Natural Resource Specialist, at the address listed above, telephone number (505) 627–0203, during normal business hours (7:45 a.m. to 4:30 p.m. Mountain Time).

SUPPLEMENTARY INFORMATION: Instructions for filing a protest with the Director of the BLM may be found at 43 CFR 4.400. Any party to the case who is adversely affected by a decision of an officer of the BLM or an administrative law judge shall have a right to appeal to the Interior Board of Land Appeals. A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (the Roswell Field Office) a notice that he wishes to appeal. The authority for the proposed activities is under 43 CFR part 8342, which provides for the designation of roads and trails to protect resources of the public lands. This section goes on to require public participation, designation, and identification of designated areas and trails. Public meetings have been completed. Public participants were also involved in the NEPA process and were given an opportunity to comment on the Environmental Assessment for the Route Designation Plan. The RMP constitutes the formal designation process for OHV's. This Notice will serve as a public notice for the official designation and identification of specific roads and trails in the Fort Stanton ACEC. Appropriate informational material will be provided and available to the public at the BLM office. The Fort Stanton ACEC is located approximately 5 miles southeast of the village of Capitan, New Mexico, and approximately 10 miles north east of the village of Ruidoso, New Mexico.

The Roswell RMP designated Fort Stanton as an ACEC in 1997. A collaborative final activity plan was developed for the ACEC in March 2001. The ACEC Plan took approximately 2 years to complete with extensive public scoping and public assessment. The Route Designation Plan/Environmental Assessment was developed over an 18-month period with a collaborative work group. All public meetings were held in the evening, approximately 4 miles from the ACEC in the town of Capitan, New Mexico. This notice will not affect valid existing rights to public land users. Under the 1997 Roswell Resource Management Plan (RMP), the area will remain open to saleable mineral disposal. All public lands in Fort Stanton will remain withdrawn from the general mining laws, closed to the disposal of leaseable minerals, and to the leasing of oil and gas. Major rights-

of-way will be excluded on the entire area. The area is also excluded from the Taylor Grazing Act. Unrestricted hiking will be allowed through out the area. OHV's will be limited to designated roads and trails. The Route Designation Plan/Environmental Assessment designates the routes of vehicle travel and multiuse trails within the ACEC. Presently, there are 40 miles of existing roads within the ACEC. The Plan closes approximately 20 miles of existing roads within the ACEC. These 20 miles of roads are causing severe environmental damage, are placed in the wrong locations, are dangerous to users, and will be closed to general public use within the ACEC. Approximately 60 miles of multiuse hike/bike/equestrian trails are designated by the Route Designation Plan and will be developed separately from the existing road system within the ACEC. The trails will allow the users to gain access into the back country of the ACEC without being in direct competition with the motorized vehicles using the area. Roads and trails will be signed with standard OHV signage. Information kiosks will be placed at all roads that enter the ACEC. Attached to the kiosk will be a road/trail transportation system map, OHV rules and regulations, and interpretive road and trail brochures. The principal author of these closures, trail, and road designations is Paul T. Happel of the Roswell Field Office, Bureau of Land Management, Department of the Interior.

Dated: September 12, 2003.

Linda S.C. Rundell,

State Director.

[FR Doc. 03–26994 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; HAG–03–0249; OR–59196]

Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 80 acres of public land for a period of 20 years to protect and preserve the unique educational, scientific, and research values of the Hot Lake Natural Area. This notice segregates the land for up to 2 years from settlement, sale, location or entry under the general land laws including the mining laws. The land will remain open to mineral and geothermal leasing and mineral material sales.

EFFECTIVE DATE: Comments and requests for a public meeting must be received by January 26, 2004.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: William Schurger, Wenatchee Resource Area, 509–665–2116, or, Charles R. Roy, BLM Oregon/Washington State Office, 503–808–6189.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has filed an application to withdraw the following described public land from settlement, sale, location or entry under the general land laws including the mining laws, subject to valid existing rights:

Willamette Meridian

T. 40 N., R. 27 E.,
Sec. 7, SE¼SE¼;
Sec. 18, NE¼NE¼.

The area described contains 80 acres in Okanogan County.

The purpose of the proposed withdrawal is to protect and preserve the unique educational, scientific, and research values of the Hot Lake Natural Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above. Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the Oregon/Washington State office during regular business hours (8:30 a.m. to 4 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice in the **Federal Register**. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period will be limited to those uses which are compatible with the educational, scientific, and research values of the Hot Lake Natural Area.

Dated: October 14, 2003.

Robert D. DeViney,

Chief, Branch of Realty and Records Services.

[FR Doc. 03–26993Filed 10–24–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Pajaro Valley Water Management Agency Revised Basin Management Plan Project Santa Cruz, Monterey, and San Benito Counties, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of correction for public meeting.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) has prepared a draft environmental impact statement (DEIS) for the Pajaro Valley Water Management Agency (PVWMA) Revised Basin Management Plan Project. The original notice was published in the **Federal Register** on September 25, 2003, (68 FR 55412) and erroneously characterized the forum scheduled for October 29, 2003, as a public hearing. This notice of

correction is submitted to clarify that this meeting is not a public hearing. The meeting will be an open forum and the public is invited. The place and time for the public meeting have not changed and are indicated below.

DATES: Submit written comments on the DEIS on or before November 21, 2003 to Lynne Silva, Reclamation, at the below address.

A public meeting will be held to receive comments from interested parties, organizations, and individuals on the environmental impacts of the proposal. The public meeting will be held on October 29, 2003, at 7 p.m. at the address below.

ADDRESSES: The public meeting will be held at the Watsonville Senior Center, 114 East 5th Street, Watsonville, CA 95076.

Written comments on the DEIS should be addressed to Ms. Lynne Silva, Reclamation, at the below address.

Copies of the DEIS may be requested from Reclamation's South-Central California Area Office or from PVWMA's office at the following addresses:

- Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721–1813.
- Pajaro Valley Water Management Agency, 36 Brennan Street, Watsonville, CA 95076.

FOR FURTHER INFORMATION CONTACT: Ms. Lynne Silva, Bureau of Reclamation, South-Central California Area Office, telephone (559) 487–5807; or Mr. Charles McNiesh, Pajaro Valley Water Management Agency, (831) 722–9292.

SUPPLEMENTARY INFORMATION: At the meeting, PVWMA staff will make a brief presentation to describe the proposed project, its purpose and need, alternatives, and scenarios for construction and operation. The public may comment on environmental issues addressed in the DEIS. If necessary, due to large attendance, comments may be limited to 5 minutes per speaker. Written comments will also be accepted.

Reclamation 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. 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: October 20, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–26982 Filed 10–24–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21 Code of Federal Regulations (CFR), notice is hereby given that on January 8, 2003, Sigma Aldrich Company, Subsidiary of Sigma-Aldrich Corporation, 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315).	I
Mescaline (7381)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391).	I
4-Bromo-2, 5-dimethoxyamphetamine (7392).	I
2, 5-Dimethoxyamphetamine (7396).	I
3, 4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3, 4-methylenedioxyamphetamine (7402).	I
3, 4-Methylenedioxy-N-ethylamphetamine (7404).	I
3, 4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Psilocyn (7438)	I
Benzylpiperazine (BZP) (7493)	I
1-(alpha, alpha, alpha-trifluoro-m-tolyl) Piperazine (TFMPP) (7494).	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9639)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to repackage and offer as pure standards controlled substances in small quantities for drug testing and analysis.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, Office of Chief Counsel (CCD), and must be filed no later that November 26, 2003.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46

(September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: September 2, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–26962 Filed 10–24–03; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 26, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. Applicant: Permit Application No. 2004–017, Paul R. Renne, Berkeley Geochronology Center, 2455 Ridge Road, Berkeley, CA 94709.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Area. The applicant proposes to collect rock samples from 6 locations within the Barwick and Balham Valleys (ASPA #123), as part of a larger strategy to provide a new quantitative tool providing data on the ages and evolution of surfaces. The rock samples are an essential part of an on-going project constraining the terrestrial production rate of the cosmogenic nuclide ^{38}Ar. The McMurdo Dry Valleys are an ideal location for this type of study due to their very long exposure history (millions of years) combined with generally high elevations, low erosion and soil build up and high latitude: all factors which act to maximize cosmogenic nuclide production. Large scale flat surfaces with long exposure and high elevation within the Valleys, however, are scarce, and the flat plateau area formed by the Insel Range creates the most ideal surface for this type of sampling.

Location

Barwick and Balham Valleys (ASPA #123).

Dates

December 15, 2003 to January 30, 2004.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–27034 Filed 10–24–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Nuclear Fuel Services, Inc., Environmental Assessment and Issuance of Finding of No Significant Impact Related to Proposed Amendment to License No. SNM–124 for the Blended Low-Enriched Uranium Preparation Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Finding of no significant impact and availability of environmental assessment.

FOR FURTHER INFORMATION CONTACT: Kevin Ramsey, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington DC 20555–0001, telephone (301) 415–7887 and email *kmr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to NRC Materials License No. SNM–124 to authorize operation of the Blended Low-Enriched Uranium Preparation Facility (BPF) in Erwin, Tennessee and has prepared an Environmental Assessment (EA) in support of this action. Based upon the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate, and, therefore, an Environmental Impact Statement (EIS) will not be prepared.

Nuclear Fuel Services (NFS) request for the proposed action was initially noticed by the NRC along with a notice of opportunity to provide comments and request a hearing on January 7, 2003 (see 68 FR 796).

II. Environmental Assessment

Background

The NFS facility in Erwin, TN is authorized under SNM–124 to manufacture high-enriched nuclear reactor fuel. NFS is undertaking the Blended Low-Enriched Uranium Project (BLEU Project) to manufacture low-enriched nuclear reactor fuel. NFS is constructing a new complex at the Erwin site to house the operations involving low-enriched uranium. On July 27, 2003, Amendment 39 to License SNM–124 was issued to authorize storage of low-enriched uranium in the new complex. This was the first of three amendments planned for the BLEU Project. Manufacturing operations in the new complex have not been authorized yet.

NFS is requesting this amendment to authorize operations at the Blended Low-Enriched Uranium Preparation Facility (BPF). This is the second of the three amendments planned for the BLEU Project. The BLEU Project involves blending high-enriched uranium with unenriched (natural) uranium to produce low-enriched uranium. This is called ''downblending.'' Much of the

downblending will be performed at other facilities, but NFS plans to perform some downblending at its facility. The BPF operations will be located within the older facility because that facility is already authorized to handle high-enriched uranium. After the high-enriched uranium is downblended and converted to a low-enriched uranium liquid, it will be transferred from the BPF to the new complex.

NFS plans to submit a third amendment request to authorize manufacturing operations in the new complex. Only storage of low-enriched uranium is authorized in the new complex at this time.

Review Purpose

The purpose of this EA is to assess the environmental impacts of the proposed license amendment. It does not approve the request. This EA is limited to the proposed BPF operations at the Erwin Plant and any cumulative impacts on existing plant operations. The existing conditions and operations for the Erwin facility were evaluated by NRC for environmental impacts in a 1999 EA related to the renewal of the NFS license (Ref. 1) and a 2002 EA related to the first amendment for the BLEU Project (Ref. 2). Some of the operations proposed for the BPF were previously authorized in the 200 Complex and the impact of those operations was assessed in the 1999 EA. In addition, the 2002 EA assessed the impact of the entire BLEU Project (including BPF operations) using information available at that time. This assessment presents the up-to-date information and analysis the staff used to determine that issuance of a FONSI is appropriate and that an EIS will not be prepared.

Proposed Action

The proposed action is to amend NRC Materials License SNM–124 to authorize processing operations in the BPF. The BPF is being constructed within Building 333 in the protected area of the NFS site (formerly Building 301). The operations will convert high-enriched uranium materials to high-enriched uranyl nitrate (UN) solutions. The high-enriched UN solutions will be blended with natural UN solutions to produce low-enriched UN solutions. Blending of natural uranium and high-enriched uranium was previously authorized in the 200 Complex and some of the operations proposed for the BPF were assessed during the 1999 license renewal.

However, some of the operations are new and require a license amendment. The 200 Complex is being decommissioned and the blending operation is being moved to Building 333. The building is already in place and most construction activities are associated with renovating the building. The duration of the project will be five years from the time material is delivered to the site.

The BPF operations are composed of five processes—the Uranium Metal Process, Uranium Aluminum Alloy Process, Solvent Extraction Process, Enrichment Downblending Process, and Uranium Recovery Process.

- The Uranium Metal Process involves the conversion of uranium metal to uranium oxide in a furnace, and the dissolution of the uranium oxide in nitric acid.
- The Uranium Aluminum Alloy Process involves: (1) Dissolution of the aluminum with a caustic solution (sodium hydroxide); (2) separation of uranium solid; (3) dissolution of the uranium in nitric acid; (4) measurement of the special nuclear material (SNM) in the UN solution; and (5) measurement of the SNM in the used caustic solution.
- The Solvent Extraction Process involves: (1) Extracting the uranium from the impure UN solution with an organic solvent solution; (2) extracting the uranium from the organic solvent solution to produce a pure UN solution; (3) boiling the UN solution to adjust the concentration; and (4) treatment of the stripped solvent for reuse, and (5) processing of waste solutions.
- The Enrichment Downblending Process involves blending high-enriched UN solution with natural UN solution to produce low-enriched UN solution.
- The Uranium Recovery Process involves taking items contaminated with high-enriched uranium and rinsing them with nitric acid to remove the uranium. The resulting solution is transferred to the Solvent Extraction Process.

Need for Proposed Action

Framatome ANP Inc. has contracted with NFS to downblend surplus high-enriched uranium material to a low-enriched uranium product. The NFS product is expected to be converted to commercial reactor fuel for a Tennessee Valley Authority (TVA) nuclear power reactor; however, the NFS proposed action is limited to the production of low-enriched UN solutions as feed material to the new BLEU Complex. The BLEU Project is part of a U.S. Department of Energy (DOE) program to reduce stockpiles of surplus high-enriched uranium through re-use or disposal as radioactive waste. Re-use is considered the favorable option by the DOE because: (1) Weapons grade material is converted to a form unsuitable for nuclear weapons (addressing a proliferation concern); (2) the product can be used for peaceful purposes; and (3) the commercial value of the surplus material can be recovered (Ref. 3). An additional benefit of re-use is to avoid unnecessary use of limited radioactive waste disposal space.

Alternatives to the Proposed Action

The only alternative available to the NRC is no action (*i.e.*, deny the amendment request). Other alternatives to the proposed action are addressed in the DOE Environmental Impact Statement (Ref. 3) and are not re-analyzed in this EA.

Affected Environment

The affected environment for the proposed action and the alternative is the NFS site. A full description of the site and its characteristics is given in the 1999 EA related to the renewal of the NFS license (Ref. 1) and a 2002 EA related to the first amendment for the BLEU Project (Ref. 2). The NFS facility is located in Unicoi County, Tennessee, about 32 km (20 mi) southwest of Johnson City, Tennessee. The plant is about 0.8 km (0.5 mi) southwest of the Erwin city limits. The site occupies about 28 hectares (70 acres). The site is bounded to the northwest by the CSX Corporation (CSX) railroad property and the Nolichucky River, and by Martin Creek to the northeast. The plant elevation is about 9 m (30 ft) above the nearest point on the Nolichucky River.

The area adjacent to the site consists primarily of residential, industrial, and commercial areas, with a limited amount of farming to the northwest. Privately owned residences are located to the east and south of the facility. Tract size is relatively large, leading to a low housing density in the areas adjacent to the facility. The CSX railroad right-of-way is parallel to the western boundary of the site. Industrial development is located adjacent to the railroad on the opposite side of the right-of-way. The site is bounded by Martin Creek to the north, with privately owned, vacant property and low-density residences.

Effluent Releases and Monitoring

A full description of the effluent monitoring program at the site is provided in the 1999 EA related to the renewal of the NFS license (Ref. 1) and a 2002 EA related to the first amendment for the BLEU Project (Ref. 2). The NFS Erwin Plant conducts effluent and environmental monitoring programs to evaluate potential public health impacts and comply with the

NRC effluent and environmental monitoring requirements. The effluent program monitors the airborne, liquid, and solid waste streams produced during operation of the NFS Plant. The environmental program monitors the air, surface water, sediment, soil, groundwater, and vegetation in and around the NFS Plant.

Airborne, liquid, and solid effluent streams that contain radioactive material are generated at the NFS Plant and monitored to ensure compliance with NRC regulations in 10 CFR part 20. Each effluent is monitored at or just before the point of release. The results of effluent monitoring are reported on a semi-annual basis to the NRC in accordance with 10 CFR 70.59.

Airborne and liquid effluents are also monitored for nonradiological constituents in accordance with State discharge permits. For the purpose of this EA, the State of Tennessee is expected to set limits on effluents under its regulatory control that are protective of health and safety and the local environment. On October 10, 2002, the Tennessee Air Pollution Control Board issued a discharge permit for airborne effluents from the BPF.

Environmental Impact of Proposed Action

A full description of the environmental impacts of the proposed action is provided in the 1999 EA related to the renewal of the NFS license (Ref. 1) and a 2002 EA related to the first amendment for the BLEU Project (Ref. 2). The previously authorized operations are analyzed in the 1999 EA and the new operations are analyzed in the 2002 EA. For the proposed action, construction and processing operations will result in the release of low levels of chemical and radioactive constituents to the environment. Under accident conditions, higher concentrations of materials could be released to the environment over a short period of time. Based on the information provided by NFS and summarized in the EA's referenced above, the safety controls to be employed for the proposed action appear to be sufficient to ensure planned operations will be safe. Detailed accident analyses have been performed by NFS in an integrated safety assessment (ISA). NRC's review of the ISA will ensure compliance with the performance requirements in 10 CFR Part 70. This will provide additional confidence that potential accidents have been adequately evaluated before making a decision on the proposed action.

For normal operations, the effluent air emissions from the BPF will be discharged through the existing main NFS stack. While some effluents for the proposed action are expected to increase, the total annual dose estimate for the maximally exposed individual from all planned effluents is less than 0.01 milliseivert (mSv) or 1 millirem (mrem). This result is well below the annual public dose limit of 1 mSv (100 mrem) in 10 CFR 20.1301, and the constraint on air emissions to the environment of 0.1 mSv (10 mrem) in 10 CFR part 20.1101. BPF operations are not expected to increase the dose to workers at the NFS facility because the types and quantity of material, and the processing, will be similar to what is already licensed at the site. Surface water quality at the NFS site is currently protected by enforcing release limits and monitoring programs. No significant change in surface water impacts is expected from BPF operations. The proposed action will not discharge any effluents to the groundwater; therefore, no adverse impacts to groundwater are expected. BPF operations will be conducted in existing facilities; therefore, no adverse impacts to local land use, biotic resources, or cultural resources are expected. The proposed action involves transportation of feed material to the NFS site. All transportation will be conducted in accordance with the applicable NRC and U.S. Department of Transportation regulations; therefore no adverse impacts from transportation activities are expected.

Environmental Impact of No Action Alternative

Under the no action alternative, NFS would not be able to carry out its contract obligations to produce a commercial product from U.S. Government surplus, weapons-usable, high-enriched uranium. Failure to fulfill its role in the DOE program could cause DOE to select other alternatives for disposition of the surplus material that may be less cost effective and incur greater environmental impacts. For example, the disposal option would incur additional costs and consume available disposal space that may be better utilized for non-reusable wastes. If NFS were not able to fulfill its contract, DOE may transfer the downblending work to other facilities.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are insignificant.

Agencies and Persons Contacted

On May 31, 2002, the NRC staff contacted the Director of the Division of Radiological Health in the Tennessee Department of Environment and Conservation (TDEC) concerning the 2002 EA (Ref. 2) and the potential impact of the BLEU Project on the environment. On August 6, 2003, the NRC staff contacted the Director of the TDEC Division of Radiological Health concerning the revised environmental impacts in this EA. On August 22, 2003, the Director responded that they had reviewed the draft EA and had no comments.

On May 22, 2002, the NRC staff contacted the Tennessee Historical Commission, Division of Archeology concerning the 2002 EA (Ref. 2) and the potential effect of the BLEU Project on historical resources. No additional consultation was made because the proposed action is entirely within existing facilities and the facility description in the amendment request (Ref. 4) is not significantly different from the facility description in the 2002 EA.

On June 6, 2002, the NRC staff contacted the Fish and Wildlife Service concerning the 2002 EA (Ref. 2) and the potential effect of the BLEU Project on endangered species. No additional consultation was made because the proposed action is entirely within existing facilities and the facility description in the amendment request (Ref. 4) is not significantly different from the facility description in the 2002 EA.

References

Unless otherwise noted, a copy of this document and the references listed below will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room).

1. U.S. Nuclear Regulatory Commission, ''Environmental Assessment for Renewal of Special Nuclear Material License No. SNM–124,'' January 1999, ADAMS No. ML031150418.

2. U.S. Nuclear Regulatory Commission, ''Environmental Assessment for Proposed License Amendments to Special Nuclear Material License No. SNM–124 Regarding Downblending and Oxide Conversion of Surplus High-Enriched Uranium,'' June 2002, ADAMS No. ML021790068.

3. U.S. Department of Energy, ''Disposition of Surplus High Enriched Uranium Final Environmental Impact Statement'', DOE/EIS–0240, Volume 1, June 1996. This document is available to the public from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

4. B.M. Moore, Nuclear Fuel Services, Inc., Letter to U.S. Nuclear Regulatory

Commission, ''License Amendment Request for BLEU Preparation Facility,'' October 11, 2002, ADAMS No. ML023380210.

5. B.M. Moore, Nuclear Fuel Services, Inc., Letter to U.S. Nuclear Regulatory Commission, ''ISA Summary for BLEU Preparation Facility Processes,'' October 14, 2002, ADAMS No. ML023090172.

6. B.M. Moore, Nuclear Fuel Services, Inc., Letter to U.S. Nuclear Regulatory Commission, ''Supplemental Information to Complete an Environmental Review for the BLEU Preparation Facility,'' May 28, 2003, ADAMS No. ML031560494.

III. Finding of no Significant Impact

Pursuant to 10 CFR Part 51, the NRC staff has considered the environmental consequences of amending NRC Materials License SNM–124 to authorize operation of the BPF. On the basis of this assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and the Commission is making a finding of no significant impact. Accordingly, preparation of an environmental impact statement is not warranted.

IV. Further Information

For further details, see the references listed above. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, the 20th day of October 2003.

For the Nuclear Regulatory Commission.

Kevin M. Ramsey,

Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–27009 Filed 10–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export Plutonium

Pursuant to 10 CFR 110.70(b)(2) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following request for a license to export plutonium. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the request for a license to export plutonium noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this request follows.

NRC EXPORT LICENSE APPLICATION FOR PLUTONIUM

Name of applicant Date of application Date received Application number Docket number	Description of Material		End use	Country of destination
	Material type	Type qty		
Department of Energy (DOE)—Headquarters. October 1, 2003 October 6, 2003, XSNM03327, 11005440	Plutonium Oxide Powder	140.0 kg Pu 02/123.48 kg Pu	Fabrication of four MOX lead assemblies to be returned to the U.S. for testing in commercial reactors.	France.

Dated this 17th day of October 2003 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Edward T. Baker,

Deputy Director, Office of International Programs.

[FR Doc. 03–27011 Filed 10–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Peer Review Committee for Source Term Modeling; Notice of Meeting

The Peer Review Committee For Source Term Modeling will hold a closed meeting on October 29–31, 2003, at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Wednesday October 29 through Friday, October 31, 2003—8:30 a.m. until the conclusion of business.

The Committee will review Sandia National Laboratories (SNL) activities and aid SNL in development of guidance documents for estimating source terms resulting from sabotage attacks on radioactive material sources other than spent nuclear fuel. The guidance document will assist the NRC in evaluations of the impact of specific terrorist activities targeted at a range of radioactive materials.

This meeting is being held with less than the required 15 days notice in order to accommodate the travel arrangements of a number of the members attending. The meeting is closed and its short notice will not effect public participation.

Further information contact: Andrew L. Bates, (telephone 301–415–1963) or Dr. Charles G. Interrante (telephone 301–415–3967) between 7:30 a.m. and 4:15 p.m. (ET).

Dated: October 20, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–27010 Filed 10–24–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48666; File No. SR–Amex–2003–83]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Listing Standards Applicable to Units

October 21, 2003.

On September 5, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify the listing requirements applicable to units.

The proposed rule change was published for comment in the **Federal Register** on September 16, 2003.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with 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. The Commission believes that the proposed rule change should assist issuers by clarifying the listing standards applicable to units and similar securities. Finally, the Commission believes that the expanded disclosure requirements contemplated by the proposed rule change should provide investors with timely information about these securities.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change(SR–Amex–2003–83) 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. 03–27006 Filed 10–24–03; 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. 48464 (September 9, 2003), 68 FR 54250.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48658; File No. SR–CHX–2003–12]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change, and Amendment No. 1 Thereto, by the Chicago Stock Exchange, Incorporated Relating to Automatic Execution of Partial Orders

October 20, 2003.

On August 1, 2003, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add an Interpretation and Policy providing that a CHX specialist may voluntarily elect to activate the functionality that allows automatic execution of partial orders on its Midwest Automatic Execution (''MAX'') System at any point during a regular trading session. On September 5, 2003, the Exchange amended the proposed rule change.[3]

The proposed rule change was published for comment in the **Federal Register** on September 15, 2003.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

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.[5] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to 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 finds that the proposed rule change, as amended, is reasonably designed to accomplish these ends by providing clarity to the CHX Rules by specifying the ability of CHX specialists to disable or enable the auto-partials functionality of the Exchange's MAX System on a voluntary basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change, as amended, (SR–CHX–2003–12) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27008 Filed 10–24–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Kathleen Boege, Associate General Counsel, CHX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 48454 (September 5, 2003), 68 FR 54032.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3553]

State of Texas; Amendment

The above-numbered declaration is hereby amended to extend the incident period for this disaster to October 16, 2003.

All other information remains the same, i.e., the deadline for filing applications for physical damage is December 8, 2003, and for economic injury the deadline is July 7, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 21, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–27016 Filed 10–24–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates; Quarterly Determinations

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.375 (4⅜) percent for the October–December quarter of FY 2004.

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. 03–27017 Filed 10–24–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part T of the Statement of the Organization, Functions and Delegations of Authority that covers the Social Security Administration (SSA). Chapter TA covers the Deputy Commissioner for Disability and Income Security Programs. Notice is hereby given that Chapter TAH, which covers the Office of Hearings and Appeals, is being amended to abolish the Office of Special Programs and Services (TAH–2). The change is as follows:

Chapter TA

Office of Disability and Income Security Programs

SubChapter TAH

Office of Hearings and Appeals

Section TAH.10 *The Office of Hearings and Appeals*—(Organization):

The Office of Hearings and Appeals, under the leadership of the Associate Commissioner for Hearings and Appeals, includes:

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals includes:

Delete: _____

2. The Office of Special Programs and Services (TAH–2).

Section TAH.20 *The Office of Hearings and Appeals*—(Functions)

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals (TAH) provides the Associate Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

Delete in its entirety:

2: The Office of Special Programs and Services (TAH–2).

Dated: October 9, 2003.

Jo Anne B. Barnhart,

Commissioner.

[FR Doc. 03–26991 Filed 10–24–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4484]

Overseas Buildings Operations; Industry Advisory Panel: Meeting Notice

The Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, October 30, 2003, from 9:45 until 11:45 a.m. and 1 until 3:30 p.m. eastern standard time. The meeting will be held in conference room 1107 at the Department of State, 2201 C Street, NW., (entrance on 23rd Street), Washington, DC. The purpose of the meeting is to discuss new technologies and successful management practices for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Luigina Pinzino at 703/875–7109 before Tuesday, October, 28, to provide date of birth, Social Security number, and telephone number.

FOR FURTHER INFORMATION CONTACT: Luigina Pinzino 703/875–7109.

Dated: September 23, 2003.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. 03–27037 Filed 10–24–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 4192]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on November 12, 13, and 14, in Washington, DC. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b[c][1] and [4], it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a world threat overview and a round table discussion that calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC. 20522–2008, phone: 571–345–2214.

Dated: October 2, 2003.

Joe D. Morton,

Director of the Diplomatic, Security Service, Department of State.

[FR Doc. 03–27036 Filed 10–24–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review for the Reno/Tahoe International Airport, Reno, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program submitted by the County of Washoe for the Reno/Tahoe International Airport, Reno, Nevada under the provisions of Title 1 of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as ''the Act'') and title 14, Code of Federal Regulation (CFR), part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under title 14 CFR part 150 were in compliance with applicable requirements effective November 15, 2001. The proposed Noise Compatibility Program will be approved or disapproved on or before April 5, 2004.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is October 10, 2003. The public comment period ends on December 9, 2003.

FOR FURTHER INFORMATION CONTACT: Elisha Novak, Airport Planner, San Francisco Airports District Office, Federal Aviation Administration, 831 Mitten Road, Room 210, Burlingame, California 94010, Telephone: 650–876–2928. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for the Reno/Tahoe International Airport, which will be approved or disapproved on or before April 5, 2004. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulation part 150, promulgated pursuant to title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has formally received the Noise Compatibility Program for the Reno/Tahoe International Airport, effective on October 10, 2003. It is requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 5, 2004.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures reduce the level of aviation safety, create an undue burden on intestate or foreign commerce, or are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, Community Environmental Needs Division, 800 Independence Avenue, SW., Room 621, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Room 3012, Hawthorne, California 90261.

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, California 94010.

County of Washoe, Airport Authority, 2001 East Plumb lane, Reno, Nevada 89502.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on October 10, 2003.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 03–27027 Filed 10–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation; Suborbital Rocket Launch

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments; correction.

SUMMARY: This document contains two corrections to a notice and request for comments that was published in the **Federal Register** on Monday, October 20, 2003 (68 FR 5997). **Federal Register** Document 03–26373, published October 20, 2003 (68 FR 59977), clarifies the applicability of FAA licensing requirements to suborbital rocket launches, in general, and suborbital RLVs, in particular, so that a vehicle operator can determine, in advance of consultation with the FAA, whether it must obtain a launch license. This correction revises a paragraph addressing a suborbital trajectory. This action also corrects footnote 2, by adding the full FAA Docket number.

Accordingly, pursuant to the authority delegated to me, Commercial Space Transportation; Suborbital Rocket Launch, as published in the **Federal Register** on Monday, October 20, 2003 (68 FR 59977), (FR Doc. 03–26373) is corrected as follows:

1. On page 59979, Column 3, the third full paragraph beginning, ''The FAA rulemaking regarding RLV * * *'' is corrected to read as follows:

The FAA rulemaking regarding RLV missions, concluded in 2000, addressed ''suborbital trajectory'' in the context of RLVs. The FAA regards a suborbital trajectory as the intentional flight path of a launch vehicle, reentry vehicle, or any portion thereof, whose vacuum instantaneous impact point (IIP) does not leave the surface of the Earth. The IIP of a launch vehicle is the projected impact point on Earth where the vehicle would land if its engines stop or where vehicle debris, in the event of failure and break-up, would land. The notion of a ''vacuum'' IIP reflects the absence of atmospheric effects in performing the IIP calculation. If the vacuum IIP never leaves the Earth's surface, the vehicle would not achieve Earth orbit and would therefore be on a suborbital trajectory.

2. On page 59980, column 2, footnote 2, Docket No. FAA–2000, is corrected to read Docket No. FAA–2000–7953.

Issued in Washington, DC, on October 22, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulation.

[FR Doc. 03–27023 Filed 10–22–03; 1:42 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–15957

Applicant: CSX Transportation, Incorporated, Mr. Richard M. Kadlick, Chief Engineer, Train Control,4901 Belfort Road, Suite 130 (S/C J–350),Jacksonville, Florida 32256.

CSX Transportation, Incorporated (CSXT) seeks approval of the proposed discontinuance and removal of the

traffic control system on the main and siding tracks, between Fetner, North Carolina, milepost S–164.8, Aberdeen Subdivision, and N. Hamlet Yard, North Carolina, milepost S–247.1, Hamlet Terminal Subdivision, on the Florence Service Lane. The proposed changes include the installation of a Direct Traffic Control System along with Communications Based Train Management (CBTM) under the direction of the CSXT train dispatcher located in Jacksonville, Florida. In addition, CSXT will promptly provide a Product Safety Plan (PSP) and risk assessment for implementation of CBTM.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 22, 2003.

Grady C. Cothen,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–27058 Filed 10–24–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–16096

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction,4901 Belfort Road, Suite 130 (S/C J–370),Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the signal systems on the two main tracks and yard tracks, at West Keyser, West Virginia, milepost BA–203.1, on the C&O Division, Mountain Subdivision. The proposed changes are as follows:

1. Removal of the manually controlled ''West Keyser'' interlocker and switch No. 28;
2. Conversion of all other switches (No.'s 22, 24, 25, and 29) to hand operation;
3. The installation of intermediate signals at milepost BA–203.1;
4. Conversion of Rules 255–259(93) to Rules D251(93) between milepost BA–203 and milepost BA–203.2, with the No. 1 main track as westbound and the No. 2 main track as eastbound; and
5. Conversion of Rules 265–271(93) to Rules D251(93) between milepost BA–203.2 and milepost BA–206.4, with the No. 1 main track as westbound.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 22, 2003.

Grady C. Cothen,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–27059 Filed 10–24–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement for the Central Avenue Corridor Rapid Transit Project

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

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

SUMMARY: The Federal Transit Administration (FTA) and the City of Albuquerque Transit Department intend to prepare an Environmental Impact Statement (EIS) for the Central Avenue Corridor Rapid Transit Project. The proposed project is located within the jurisdictional boundaries of Albuquerque and Bernalillo County, New Mexico. The EIS will evaluate: (1) The no-build alternative; (2) two alignment alternatives; (3) two technology alternatives including light rail transit and bus rapid transit; (4) station and park and ride locations, a maintenance facility, and electrical substations; and (5) a supporting bus system. Other reasonable alternatives that emerge from the scoping process will also be evaluated. Scoping will occur through correspondence and meetings with the general public, other public stakeholders, and federal, state, and local agencies having an interest in the proposed project. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA) of 1969 and the applicable regulations implementing NEPA as set forth in 23 CFR part 771 and 40 CFR parts 1500–1508.

DATES: One agency and five public scoping meetings will be held for the Central Avenue Corridor Rapid Transit Project. These meetings will be held at various locations within the City of Albuquerque and are scheduled for November 10–13, 2003 and November 17–20, 2003. Details specific to the dates, times, and locations of the scoping meetings will be published in local newspapers and other local media and will be posted on the project Web site at *http://www.ABQRTP.com.* The deadline for submitting scoping comments is December 5, 2003 (see addresses below). All scoping meetings will be held at locations accessible by persons with disabilities. Please notify the RTP Project Manager at (505) 724–3100 at least one week in advance of the meeting date if language translation or hearing-impaired signing is needed.

ADDRESSES: Written comments will be accepted at the meetings or may be sent to the following address until December 5, 2003: Albuquerque Transit Department, 100 First Street SW., Albuquerque, New Mexico 87102, Attn: Rapid Transit Project. A scoping document may be requested by writing to the above address or by calling (505) 881–5357. Persons or agencies desiring to be placed on the mailing list for the EIS should send their name, mailing address, and e-mail address to the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Tiggs, Community Planner, Office of Planning and Program Development, Federal Transit Administration, Region 6, 819 Taylor Street, Room 8A36, Fort Worth, Texas 76102, (817) 978–0567.

SUPPLEMENTARY INFORMATION:

I. Scoping

Scoping comments should focus on identifying specific environmental, cultural, economic, or social impacts to be evaluated by the EIS and project alternatives that better achieve project objectives and/or that have less adverse impact. Comments should be specific with regard to the issues and alternatives to be evaluated and not on the preference for a particular alternative. An opportunity to state a preference for a specific alternative will be provided during the comment period for the draft EIS.

II. Project Need

The need for the proposed project was identified as part of an Alternatives Analysis prepared by the City of Albuquerque in cooperation with FTA. As determined by that effort, the need for the proposed project is to: (1) Provide additional transit capacity within the Central Avenue Corridor; (2) improve mobility to regional employment and activity centers; and (3) facilitate the implementation of adopted growth and development plans and policies for the Albuquerque region. Transit service within the Central Avenue Corridor currently accounts for over 30% of the total transit ridership for the entire Albuquerque Transit System. Traffic congestion in this corridor hinders efficient bus service. According to traffic projections prepared by the Mid-Region Council of Governments, traffic congestion is expected to worsen.

The study corridor encompasses several regional employment centers and activity centers that would be connected by the proposed project. These include the Atrisco Business Park, the Albuquerque Botanical Gardens and Aquarium, Old Town, Downtown, University of New Mexico, Albuquerque Technical-Vocational Institute, and the Albuquerque Uptown District. The proposed project would also provide service to several smaller employment and activity centers including the three regional medical hospital complexes, the Nob Hill and Hiland Districts, and the International Market Center. Collectively, these locations represent the vast majority of major employment and activity centers within the Albuquerque metropolitan area.

The City of Albuquerque has adopted specific land use and development goals and policies that include the proposed project area. The adopted policies include the *Centers and Corridor Plan* and the Planned Growth Strategy. The Central Avenue corridor is identified as a high transit corridor in both of these plans. In addition, Central Avenue is targeted for development and redevelopment with transit-oriented development. Plans to implement the adopted policies are underway by the City of Albuquerque.

III. Alternatives

The proposed project to be evaluated by the EIS includes the (1) no-build alternative which will assume that no transportation improvements will occur within the corridor beyond those already committed to in the adopted transportation programs; and (2) two alignment alternatives within the Central Avenue Corridor. The approximate length of each build alternative is approximately 11 miles. The first alignment starts in the vicinity of Central Avenue and Unser Boulevard in Albuquerque and proceeds east on Central Avenue to Louisiana Boulevard. At Louisiana Boulevard, the route proceeds northerly to its terminus near Menaul Boulevard in the Albuquerque Uptown District. The second alignment starts in the vicinity of Central Avenue and Unser Boulevard in Albuquerque and proceeds east on Central Avenue to Lomas Boulevard. The route follows Lomas Boulevard east to Louisiana Boulevard. At Louisiana Boulevard, the route proceeds northerly to its terminus near Menaul Boulevard in the Albuquerque Uptown District. The centerline alignment for both routes will fall within or immediately adjacent to the existing street sections. Both light rail transit and bus rapid transit will be evaluated in each alignment alternative. Ten to eleven stations will be evaluated, each spaced at intervals of approximately one mile.

IV. Probable Effects

The EIS will identify and evaluate all probable environmental, economic, social, and cultural effects for each of the project alternatives. Based on the Alternatives Analysis previously prepared for the proposed project, primary issues are likely to include loss of on-street parking and access to businesses, changes to traffic circulation and diversion, changes to land use, proximity effects on historic properties,

properties contaminated by hazardous materials, neighborhood effects, and utility relocations. These and other issues (*e.g.*, noise, air quality, drainage, visual effects) will be evaluated by the EIS for both the long-term and construction period. Measures to mitigate significant adverse impacts will be developed as part of the EIS.

V. Public Involvement

A comprehensive public involvement program (PIP) has been developed and will be implemented as part of the Draft EIS. The PIP will include: Agency and public scoping meetings; community-wide public information meetings; public hearings; informational briefings to stakeholder groups, elected officials, and other local and regional officials; and information dissemination via a project website and newsletters. The PIP will also involve a citizens advisory committee and other stakeholder groups to obtain input on issues, concerns, and advise on neighborhood and transit oriented development issues.

VI. FTA Procedures

The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the regulations implementing NEPA set forth in 23 CFR part 771 and 40 CFR parts 1500–1508. Consistent with FTA policy, the NEPA process will also be used to comply with other federal environmental laws, regulations, and executive orders, such as section 106 of the National Historic Preservation Act, the 1990 Clean Air Act Amendments, section 4(f) of the U.S. Department of Transportation Act, the Endangered Species Act, and Executive Orders 11988, 11990 and 12898 on Floodplain Management, Protection of Wetlands, and Environmental Justice, respectively.

In addition, the City of Albuquerque intends to seek Section 5309 New Starts funding for this project and will therefore follow the requirements of 49 CFR part 611 as well as the requirements of NEPA and all other applicable federal and FTA program requirements. The New Starts regulation requires a planning Alternatives Analysis, which will be completed in conjunction with the Draft EIS. The Alternatives Analysis/Draft EIS will lead to a locally-preferred alternative which must be adopted by the Metropolitan Planning Organization into its financially constrained metropolitan transportation plan before preliminary engineering will be authorized by FTA. If authorized, preliminary engineering for the Central Avenue Corridor Rapid Transit Project will be conducted in conjunction with the preparation of the final EIS.

Issued on: October 21, 2003.

Robert Patrick,

Regional Administrator, FTA Region 6.

[FR Doc. 03–27060 Filed 10–24–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 241X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Aiken County, SC

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F-*Exempt Abandonments* to abandon a 2-mile line of railroad between milepost SA–49.0 at Oakwood, SC, and milepost SA–51.0 at Montmorenci, SC, in Aiken County, SC. The line traverses United States Postal Service Zip Code 29839.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 26, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues, [1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), [2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 6, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 17, 2003, with: Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 31, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by October 27, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on the Board's Web site at *www.stb.dot.gov.*

Decided: October 20, 2003.

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–26882 Filed 10–24–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–416 (Sub–No. 3X)]

San Bernardino Associated Governments—Abandonment Exemption—in San Bernardino County, CA

Consistent with the Surface Transportation Board's decision in *Orange County Transportation Authority, Riverside County Transportation Commission, San Bernardino Associated Governments, San Diego Metropolitan Transit Development Board, North San Diego County Transit Development Board—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Company,* Finance Docket No. 32173 *et al.* (STB served Mar. 12, 1997) (*Transit Agencies*), San Bernardino Associated Governments (SANBAG) has filed a verified notice of exempt abandonment, and information otherwise required under 49 CFR 1152 Subpart F—*Exempt Abandonments,* to abandon any residual common carrier obligation on a 1.92-mile line of railroad, formerly operated by The Burlington Northern and Santa Fe Railway Company (BNSF), between milepost 9.48 and milepost 11.40 in Redlands, San Bernardino County, CA. The line traverses United States Postal Service Zip Code 92374.

In *Transit Agencies,* the Board granted SANBAG and several other California transit agencies an exemption from 49 U.S.C. Subtitle IV. The Board also adopted the agencies' proposal that they file a notice, reciting the labor protection the Board is required to impose and adopting the environmental and historic reports filed by the rail carrier (here BNSF) discontinuing service over the line, to meet the agencies' obligations in fully abandoning the subject rail lines. SANBAG has provided that information and has adopted the environmental and historic reports for this line submitted by BNSF in its notice of abandonment exemption in *The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in San Bernardino County, CA,* STB Docket No. AB–6 (Sub-No. 398X) (STB served Dec. 12, 2002, and consummated Apr. 1, 2003).

Also, consistent with the requirements of 49 CFR part 1152 subpart F, SANBAG has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period;[1] and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication),[2] and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). This exemption will be effective on November 26, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 6, 2003. Petitions to reopen must be filed by November 17, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles A. Spitulnik, McLeod, Watkinson & Miller, One Massachusetts Avenue, NW., Suite 800, Washington, DC 20001.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

SANBAG is relying on BNSF's environmental report, which addressed the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by October 31, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339]. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SANBAG shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by SANBAG's filing of a notice of consummation by October 27, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon under this notice will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 20, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–27018 Filed 10–24–03; 8:45 am]

BILLING CODE 4915–00–P

[1] SANBAG indicates that its certification is also based on the information provided by BNSF in its abandonment notice of exemption.

[2] In compliance with 49 CFR 1105, SANBAG is relying on the environmental documentation provided by BNSF in its abandonment notice of exemption pursuant to the Board's decision in *Transit Agencies.*

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

Corrections

Federal Register

Vol. 68, No. 207

Monday, October 27, 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 DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001–16; FAR Case 2002–025; Item III]

RIN 9000–AJ70

Federal Acquisition Regulation; Unique Contract and Order Identifier Numbers

Correction

In rule document 03–24584 beginning on page 56679 in the issue of Wednesday, October 1, 2003, make the following correction:

On page 56680, in the second column, under the heading **D. Dertermination To Issue an Interim Rule**, in the 12th line, ''8-577 '' should read ''98-577''

[FR Doc. C3–24584 Filed 10–24–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 398

[Docket No. FMCSA–2000–7017]

RIN 2126–AA52

Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used in Interstate Commerce

Correction

In rule document 03–20369 beginning on page 47860 in the issue of Tuesday, August 12, 2003, make the following correction:

On page 27860, in the second column, under the **DATES** heading, in the fifth line, ''November 10, 2003'' should read ''December 10, 2003.''

[FR Doc. C3–20369 Filed 10–24–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
October 27, 2003

Part II

Environmental Protection Agency

40 CFR Parts 51 and 52

Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–7575–9; RIN 2060–AK28; Electronic Docket OAR–2002–0068; Legacy Docket A–2002–04]

Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing revisions to the regulations governing the NSR programs mandated by parts C and D of title I of the Clean Air Act (CAA). Today's changes reflect EPA's incorporation of comments from the proposed rule for ''Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NSR): Routine Maintenance, Repair and Replacement.'' These changes provide a category of equipment replacement activities that are not subject to Major NSR requirements under the routine maintenance, repair and replacement (RMRR) exclusion. The changes are intended to provide greater regulatory certainty without sacrificing the current level of environmental protection and benefit derived from the NSR program. We believe that these changes will facilitate the safe, efficient, and reliable operation of affected facilities.

EFFECTIVE DATE: This final rule is effective on December 26, 2003.

ADDRESSES: *Docket.* Docket No. A–2002–04 (Electronic docket OAR–2002–0068), containing supporting information used to develop the proposed rule and today's final rule, is available for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday (except government holidays) at the Air and Radiation Docket and Information Center (6102T), Room B–108, EPA West Building, 1301 Constitution Avenue, NW, Washington, D.C. 20460; telephone (202) 566–1742, fax (202) 566–1741. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.*

FOR FURTHER INFORMATION CONTACT: Mr. Dave Svendsgaard, Information Transfer and Program Integration Division (C339–03), U.S. EPA Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone 919–541–2380, or electronic mail at *svendsgaard.dave@epa.gov*, for questions on this rule.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this final action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups:

Industry group	SIC [a]	NAICS [b]
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122
Petroleum Refining	291	324110
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510
Natural Gas Liquids	132	211112
Natural Gas Transport	492	486210, 221210
Pulp and Paper Mills	261	322110, 322121, 322122, 322130
Paper Mills	262	322121, 322122
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213
Pharmaceuticals	283	325411, 325412, 325413, 325414

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

Entities potentially affected by this final action also include State, local, and tribal governments that are delegated authority to implement these regulations.

Outline

The information presented in this preamble is organized as follows:

I. General Information
A. How can I get copies of this document and other related information?
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2. Electronic Access
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II. Background
A. What is the RMRR exclusion?
B. Issues surrounding the RMRR exclusion
C. Process used to develop this rule
D. What we proposed
III. Equipment Replacement Provision
A. Overview and justification for today's final action
B. What is an identical or functionally equivalent replacement and why should such an activity be considered RMRR?
C. What cost limit has been placed on the equipment replacement approach?
D. What will be the basis of applying the 20-percent threshold?
E. What basic design parameters are being established to qualify for the equipment replacement provision?
F. What collection of equipment should be considered in applying the equipment replacement provision and how should it be defined?
G. Consideration of non-emitting units as part of the process unit
H. What is the accounting basis for the process unit?
I. Enforcement
1. Compliance assurance
2. General issues
J. Quantitative Analysis
K. Consideration of other options
1. Annual Maintenance, repair and replacement allowance
2. Capacity-based option
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L. Specific list of excluded activities
M. Stand-alone exclusion for energy efficiency projects
N. Legal Basis
1. How does the NSR program address existing sources and why is today's rule consistent with this approach?
2. Why today's rule appropriately implements the Clean Air Act's definition of modification
IV. Administrative Requirements for This Rule
A. Executive Order 12866—Regulatory Planning and Review

B. Executive Order 13132—Federalism
C. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
E. Paperwork Reduction Act
F. Regulatory Flexibility Analysis
G. Unfunded Mandates Reform Act of 1995
H. National Technology Transfer and Advancement Act of 1995
I. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. Executive Order 12988—Civil Justice Reform
V. Effective Date for Today's Requirements
VI. Statutory Authority

I. General Information

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

1. *Docket.* The EPA has established an official public docket for this action under Docket ID No. A–2002–04. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20004. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742. A reasonable fee may be charged for copying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.A.1. of this preamble. The EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of today's final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

II. Background

A. What Is the RMRR Exclusion?

Title I of the Clean Air Act (CAA) established the New Source Review program [1] to help control airborne emissions from major new stationary sources of pollution. Under the program, anyone who seeks to construct a new stationary source that will be a major source of regulated pollutants must obtain a permit from State authorities (or, where a State has not established its own program, from EPA directly) before beginning construction of the source. In order to obtain the permit, the owner or operator must, among other things, demonstrate that the new source will have state-of-the-art pollution control devices.

The NSR program does not generally affect existing sources, but it does apply if they undergo a ''modification.'' The NSR provisions of the CAA do not create their own definition of ''modification,'' instead borrowing the definition of the term established by section 111 of the CAA, which defined the term for purposes of the New Source Performance Standards (NSPS) program. That definition states that ''[t]he term ''modification'' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.'' Under 40 CFR parts 51 and 52, the rules we have promulgated to carry out the NSR program, ''major modification'' is similarly defined as any physical change in or change in the method of operation of a major stationary source that would result in: (1) A significant emissions increase of a regulated NSR pollutant; and (2) a significant net emissions increase of that pollutant from the major stationary source.[2] The regulations further provide that certain activities do not constitute a ''physical change or change in the method of operation'' under the definition of ''major modification.'' One category of such activities is routine maintenance, repair and replacement (RMRR). The regulatory provisions excluding RMRR from the definition of change constitute the RMRR exclusion.

B. Issues Surrounding the RMRR Exclusion

Until today, the NSR regulations have not further specified what types of activities are encompassed by the term RMRR. Heretofore, we have applied the RMRR exclusion exclusively on a case-by-case basis using a multi-factor test for determining whether a particular activity falls within or outside the exclusion. We have made these case-by-case determinations both in the context of applicability determinations, where a source or permitting authority has requested EPA's guidance concerning whether a particular activity falls within the exclusion or requires a permit, and

[1] We broadly use the term ''New Source Review,'' or NSR, to encompass both the PSD and the Non-attainment New Source Review program.

[2] Once a modification is determined to be major, NSR requirements apply only to those specific pollutants for which there would be a significant net emissions increase.

in the context of enforcement actions, where we have challenged an activity undertaken by a source after the fact and the source has asserted that the activity was permissible under the exclusion.

This case-by-case approach has been praised for its flexibility, but criticized for hampering activities important to assuring the safe, reliable and efficient operation of existing plants. Specifically, some of the case-by-case determinations we have made, particularly over the past decade, and particularly in a series of enforcement actions, have been criticized for giving the exclusion a narrow scope that disallows replacement of significant plant components with identical or functionally equivalent components. Critics argue that the effect is to discourage plant owners or operators from engaging in replacements that are important to restoring, maintaining and improving plant safety, reliability, and efficiency. They further argue that this effect is exacerbated by what they assert are the uncertainties inherent in the case-by-case approach.

To elaborate on the uncertainty issues: Unless an owner or operator seeks an applicability determination from his or her reviewing authority, it can be difficult for the owner or operator to know with reasonable certainty whether a particular activity constitutes RMRR. This gives the owner or operator five choices, two of which the owner or operator is not likely to select, and the other three of which have significant drawbacks for the productivity of the plant.

First, the owner or operator may simply seek an NSR permit. That course, however, is likely to be time-consuming and expensive, since it will likely result in a requirement to retrofit an existing plant with state-of-the-art pollution controls which often is very costly and can present significant technical challenges. Therefore, an owner or operator is not likely to select this option if it can be avoided.

Second, the owner or operator may proceed at risk without a reviewing authority determination. That option, however, is also not likely to be attractive where a significant replacement activity is involved, because if the owner or operator proceeds without a reviewing authority determination and if we later find that he or she made an incorrect determination on its own, the owner or operator faces potentially serious enforcement consequences. Those consequences could well include substantial fines (along with the further consequences of having been determined to be in violation of the CAA) and penalties and a requirement to install the state-of-the-art pollution controls, even though those controls present technical issues or represent a significant enough expenditure that they likely would have deterred the owner or operator from seeking a permit in the first place. The owner or operator is not likely to take this risk if he or she believes there is a high probability of these kinds of consequences and if he or she has other options.

Third, the owner or operator may seek an applicability determination. That process, too, is time-consuming and expensive, albeit typically less so than seeking a permit. This path presents a potentially significant barrier to today's global, quick-to-market industries, such as computer chips, pharmaceuticals, and autos. This approach also is likely to result in substantial foregone activities that would enhance the safety, reliability and efficiency of the plant while awaiting the applicability determination.

Fourth, the owner or operator may forego or curtail replacements that would enhance the safe, reliable, or efficient operation of its plant, instead opting to repair existing components even though they are inferior to current day replacements because they likely have deteriorated with use and probably are less advanced and less efficient than current technology. Foregoing the replacement activities altogether will reduce plant safety, reliability and efficiency; curtailing or postponing them does as well, differing only in the degree of these effects.

Finally, the owner or operator may curtail the plant's productive capacity by replacing components with less than the best technology in order to be more certain that the replacement is within the RMRR regulatory bounds, or he or she may agree to limit the source's hours of operation or capacity or install less than state-of-the-art air pollution controls to ensure no increase in emissions. Either of those courses, however, will also result in loss of plant productivity.

The uncertainties are also problematic for State and local reviewing authorities. They require those authorities to devote scarce resources to make complex determinations, including applicability determinations, and consult with other agencies to ensure that any determinations are consistent with determinations made for similar circumstances in other jurisdictions and/or that other reviewing authorities would concur with the conclusion.

Industry commenters strongly echoed these concerns, asserting that the expense and delay associated with NSR scrutiny, whether or not the activity is ultimately judged to be subject to major NSR, have caused a number of facilities to forego needed and beneficial maintenance, repair, and replacement activities, including ones that would likely have reduced emissions. In our June 2002 report to the President, we similarly concluded that the NSR program has impeded or resulted in the cancellation of projects that would have maintained and improved the reliability, efficiency, or safety of existing energy capacity.

We are persuaded that we should change the approach to the RMRR exclusion that we have been following for equipment replacements. The approach we have been taking often has not encompassed the replacement of existing components with identical or similar new components that serve the same function, that represent a small fraction of the value of the process unit of which they are a part, that do not change the process unit's basic design parameters, and that do not cause the process unit to exceed any emission limitations. For the reasons noted above, this approach tends to have the effect of leading sources to refrain from replacing components, to replace them with inferior components, or to artificially constrain production in other ways. We are persuaded that none of these outcomes advanced the central policy of the major NSR program as applied to existing sources, which is not to cut back on emissions from existing major stationary sources through limitations on their productive capacity, but rather to ensure that they will install state-of-the-art pollution controls at a juncture where it otherwise makes sense to do so. We also do not believe the outcomes produced by the approach we have been taking have significant environmental benefits compared with the approach we are adopting today and, indeed, we believe our new approach may well produce environmental improvements as compared to the old one.

We are also persuaded that uncertainties surrounding the scope of the exclusion that are associated with the case-by-case approach tend to exacerbate the problem outlined above. These uncertainties can discourage replacements that would promote safety, reliability and efficiency even in instances where, if the matter were brought to EPA, we would determine that the replacement in question was RMRR. Such discouragement results in lost capacity and lost opportunities to improve energy efficiency and reduce air pollution.

We believe that these problems will be significantly reduced by the rule we

are adopting today. This rule specifies that the replacement of components of a process unit with identical components or their functional equivalents will come within the scope of the exclusion, provided the cost of replacing the component falls below 20 percent of the replacement value of the process unit of which the component is a part, the replacement does not change the unit's basic design parameters, and the unit continues to meet enforceable emission and operational limitations.

Our new equipment replacement approach will allow owners or operators to replace components under a wider variety of circumstances than they have been able to do under our prior RMRR approach. It also provides more certainty both to source owners or operators who will be able better to plan activities at their facilities, and to reviewing authorities who will be able better to focus resources on other areas of their environmental programs rather than on time-consuming RMRR determinations. The effect should be to remove disincentives to undertaking RMRR activities falling within the rule, thereby enhancing key operational elements such as efficiency, safety, reliability, and environmental performance. For example, we anticipate that improved safety and reliability will result in more stable process operations and reduce periods of startup, shutdown, and malfunction and the increased emissions usually associated with them. Accordingly, we believe the rule will promote the central purpose of Title I of the CAA, ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' CAA section 101.

We note that we continue to believe that our prior narrower and entirely case-by-case approach to the RMRR exclusion was consistent with the relevant language of the CAA and a reasonable effort to effectuate its policies. At the same time, we also believe that the final rule's categorical exclusion of certain replacement activities and the broader definition of RMRR on which that exclusion is premised are likewise consistent with the statute's language and represent a better accommodation of the statute's twofold ends. We therefore have decided to adopt the final rule.

C. Process Used To Develop This Rule

In the 1992 ''WEPCO Rule'' preamble, we declared our intent to issue guidance on the subject of RMRR. In 1994, as an outgrowth of meetings with the Clean Air Act Advisory Committee, we developed, for discussion purposes only, a preliminary draft that presented possible ways of how RMRR could be defined. We received a substantial volume of comments on this document. We subsequently decided not to include this preliminary draft approach in our 1996 NSR proposed rulemaking.

In 2001, the President's National Energy Policy directed EPA in consultation with the Department of Energy (DOE) and other Federal agencies to review the impact of NSR on investment in new utility and refinery generation capacity, energy efficiency and environmental protection. Our Report to the President illustrated the problems associated with our prior case-by-case approach to identifying RMRR activities and underscored the advantages of establishing an objective bright-line approach for administering the RMRR provision.

We held conference calls with various stakeholders during October 2001 (including representatives from industry, State and local governments, and environmental groups) to discuss new ideas that were raised as to how the RMRR provision might be improved. The proposed RMRR rule reflected many of the ideas discussed in those meetings. Today's final rule on the equipment replacement provision is based on careful consideration of comments received on the proposed RMRR rule (67 FR 80920, December 31, 2002), where we sought comment on all aspects of our proposed approaches. Today's rule represents final action on only one part of what we proposed in December 2002—the equipment replacement provision. We have decided, for now, not to take final action on the proposed annual maintenance, repair and replacement allowance approach.

D. What We Proposed

The RMRR proposal offered for comment two cost-based approaches for determining what constitutes routine maintenance, repair, and replacement. Under the proposal, facilities could have relied on a facility-wide annual maintenance, repair and replacement allowance and/or an equipment replacement cost threshold to determine whether major NSR requirements were triggered by performing plant maintenance, repair and replacement activities. The proposal additionally outlined two options based on the capacity and age of a facility. We solicited comment on all aspects of the proposed approaches as well as any other viable option for clarifying the term ''routine maintenance, repair, and replacement.'' We took public comment on the proposed rule until May 2, 2003—120 days following publication in the **Federal Register**.

Under the ''annual maintenance, repair and replacement allowance,'' an annual maintenance cost allowance would be established for each industrial facility based on an industry-specific percentage. For the percentage, we considered using the Internal Revenue Service ''Annual Asset Guideline Repair Allowance Percentages'' (AAGRAP), which for years has been used as an integral part of an exclusion under the New Source Performance Standard (NSPS) program. A multi-year allowance approach, in addition to the annual approach, was also offered for consideration in the proposal.

Safeguards were proposed to ensure that the types of activities undertaken under the annual allowance are not activities that should be subject to greater scrutiny. These safeguards include: (1) No new unit may be installed; (2) no unit may be replaced in its entirety; and (3) changes may not cause an increase in the short-term emission rate of any regulated NSR pollutant.

Under the ''equipment replacement provision,'' or ERP, we proposed to streamline the process for determining if major NSR permitting requirements apply to replacement of existing equipment with identical new equipment or with functionally equivalent equipment. Per-replacement-of-component(s) thresholds, potentially up to 50 percent of the cost of replacing the process unit, were suggested by the proposal. As long as the threshold was not exceeded and the basic design parameters remained unchanged, the activity would be considered RMRR under this approach.

Under the proposal, all activities that fell within the annual maintenance, repair and replacement allowance or the equipment replacement threshold and that met all the other criteria for these provisions would be considered RMRR without further review. Activities that were unable to be accommodated under the annual maintenance, repair and replacement allowance or the equipment replacement threshold could still qualify for the RMRR exclusion after a case-by-case review in accordance with current rules.

We solicited comments on all aspects of our RMRR proposal.

III. Equipment Replacement Provision

A. Overview and Justification for Today's Final Action

Today, we are revising certain provisions of the major NSR program by

finalizing the equipment replacement provision (ERP) to specify activities that will automatically qualify for the RMRR exclusion. This rule is effective on December 26, 2003. At this time, we are not taking action on our proposed annual maintenance, repair and replacement allowance approach.

Although many commenters requested that we further clarify the case-by-case approach for determining whether an activity is RMRR, we are not taking action on this suggestion at this time. We are still considering what, if any, changes should be made to that policy. In the meantime, the case-by-case approach will remain available for the owner or operator of a source to use as an alternative and/or supplement to today's ERP.

Under today's rule, an activity (or aggregations of activities) can qualify for the ERP if: (1) It involves replacement of any existing component(s) [3] of a process unit with component(s) that are identical or that serve the same purpose as the replaced component(s); (2) the fixed capital cost of the replaced component(s), plus costs of any activities that are part of the replacement activity (*e.g.*, labor, contract services, major equipment rental, and associated repair and maintenance activities),[4] does not exceed 20 percent of the current replacement value of the process unit; and (3) the replacement(s) does not alter the basic design parameters of the process unit or cause the process unit to exceed any emission limitation or operational limitation (that has the effect of constraining emissions) that applies to any component of the process unit and that is legally enforceable.

Today's final rule specifies the procedures by which the owner or operator of a source selects the basic design parameters for steam electric generating facilities and for other types of process units. Specifically, for steam electric generating facilities, we have clarified our proposed approach by specifying maximum hourly heat input and fuel consumption rate [5] as basic design parameters. We are also allowing owners or operators of steam electric generating facilities the option to select a pair of parameters based on the process unit's output—more specifically, maximum hourly electric output rate or maximum steam flow rate—as an alternative to the previously proposed input-based parameters. Likewise, we are retaining our proposed approach of specifying maximum rate of fuel or material input for other types of process units, but we also allow you to use maximum rate of heat input, or maximum rate of product output if you prefer an output-based basic design parameter. In addition, we allow you to propose an alternative basic design parameter(s), if the above options are inappropriate for your process unit.

We are not specifically defining the basis for determining the replacement value of a new process unit. Instead, the final rule provides you with the flexibility of using any of the following: (1) Replacement cost; [6] (2) invested cost, adjusted for inflation; (3) the insurance value, where the insurance value covers complete replacement of the process unit (rather than, for example, lost revenue replacement); or (4) another accounting procedure to establish a replacement value of the process unit if such accounting procedure is based on Generally Accepted Accounting Principles (GAAP). The GAAP are the conventions, rules and procedures that define accepted accounting practice for recording and reporting financial information, including broad guidelines as well as detailed procedures. The basic doctrine was set forth by the Accounting Principles Board of the American Institute of Certified Public Accountants, which was superseded in 1973 by the Financial Accounting Standards Board.

If you choose to use options 3 or 4 to determine the replacement value for a particular process unit, you must send a notice reflecting your decision to your reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. You must continue to use the same basis to evaluate any additional activities that you undertake on that process unit within that same fiscal year. If you have provided notice of using either option 3 or 4, then the reviewing authority will assume that the same method will be used for subsequent fiscal years unless you send a notice to them declaring your intent to use another method. In the absence of providing any notification to your reviewing authority, you must use option 1 or 2.

The final rules also set forth a definition of process unit, specifically delineate the boundary of the process unit for certain specified industries, and define a functionally equivalent replacement. A more detailed discussion of these requirements and our rationale for this action is contained in other parts of this preamble section.

Today's final rules are designed to allow you to engage in activities that facilitate the safe, reliable and efficient operation of your source. We believe that today's final action broadens the major NSR program exclusion for equipment replacements and provides you with additional certainty as to what equipment replacement activities qualify for the RMRR exclusion. By adding certainty to the process, we are removing the disincentives to undertaking routine equipment replacements and promoting proper operational planning to facilitate safe, reliable and efficient operations. When an activity qualifies for the ERP, it will be considered RMRR and excluded from major NSR without regard to other considerations. In many cases, we believe that maintaining safe, reliable and efficient operations will have the corresponding environmental benefit of reducing the amount of pollution generated per product produced. The final rules also will reduce the resource burden on reviewing authorities resulting from implementation of the existing, case-by-case process for determining RMRR. In these respects, the final rules are consistent with the central purpose of the CAA, ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' CAA section 101.

B. What Is an Identical or Functionally Equivalent Replacement and Why Should Such an Activity Be Considered RMRR?

We proposed to exclude the replacement of existing equipment with identical or functionally equivalent components. As we observed at the time of our RMRR proposal, we believe that most identical and functionally equivalent replacements are necessary for the safe, efficient and reliable operations of virtually all industrial operations; are not of regulatory concern; will improve air quality (*e.g.*, by decreasing startup, shutdown, and malfunctions); and thus should qualify

[3] For the sake of clarity, we want to be clear that the term ''component'' is meant to be applied broadly and read broadly to include replacements of both large components, such as economizers, reheaters, etc. at a boiler, as well as small items, such as screws, washers, gaskets, *etc.*

[4] We note that certain ancillary costs incurred during a given replacement activity should not be part of the replacement activity, such as replacement power that must be purchased during the maintenance shutdown of an electric utility.

[5] Actually proposed as ''fuel consumption specifications.''

[6] Replacement cost can be either an estimate of the fixed capital cost of constructing a new process unit or the current appraised value of the process unit.

for the ERP under the RMRR exclusion. We believe industrial facilities are constructed with the understanding that certain equipment failures are common and ongoing maintenance programs that include replacing components in order to maintain, restore, or enhance the reliability, safety, and efficiency of a plant are routine. Conversely, delaying or foregoing maintenance could lead to failure of the production unit and may create or add to safety concerns.

When such equipment replacement occurs, the replaced component is inherent to both the design and purpose of the process unit, and there is no reason to believe that such activity will cause the unit to emit above its original design capacity. Moreover, most of these replacements are conducted at industrial facilities to maintain proper operations and to implement good engineering practices. For example, if a pump associated with a distillation column fails and is replaced with an identical new pump, we believe that such a common activity is and should be considered an excluded replacement. It is not a ''change'' to the plant, since it merely maintains the plant as designed. Instead, it is the type of activity expected to occur to maintain the plant. Therefore, we think replacements like this properly fall within the exclusion for ''routine maintenance, repair and replacement.'' We also believe treating them in this fashion is consistent with the basic policies of the CAA: that existing plants are subject to major NSR permitting requirements only when they engage in an activity that constitutes an opportune time to install state-of-the-art pollution control equipment.

We also believe that this principle extends beyond the replacement of equipment with identical equipment. When equipment is wearing out or breaks down, it often is replaced with equipment that serves the same purpose or function but is different in some respects or improved in some ways in comparison with the equipment that is removed. To continue with the example used above, if, instead of replacing the worn out distillation column pump with an identical one, the owner or operator replaced it with a new and improved model, it does not seem to us that this changes the fundamental reasons for treating that replacement as likewise within the scope of ''routine maintenance, repair and replacement.''

This is particularly true since technology is constantly changing and evolving. When equipment of this sort needs to be replaced, it often is simply not possible to find the old-style technology. Owners or operators may have no choice but to purchase and install equipment reflecting current design innovations. Even if it is possible to find old-style equipment, it seems unnecessary and undesirable to generally construe NSR permitting requirements in a manner that is bound to deter owners or operators from using the best equipment that suits the given need when replacements must be installed.

The limiting principle here is that the replacement equipment must be identical or functionally equivalent and must not change the basic design parameters of the affected process unit (*e.g.*, for electric utility steam generating units, this might mean heat input and fuel consumption specifications). We also believe, however, that we need not and should not treat efficiency as a basic design parameter as we do not believe NSR was intended to impede industry in making energy and process efficiency improvements. We believe such improvements, on balance, will be beneficial both economically and environmentally. This treatment of efficiency should address the concern and perception that the NSR program serves as a barrier to activities undertaken to facilitate, restore, or improve efficiency, reliability, availability, or safety of a facility.

Today's rule does not distinguish between the replacement of components that are expected to be replaced frequently or periodically and the replacement of components that may occur on a less frequent or one-time basis. It likewise does not distinguish between the replacement of larger and smaller components, instead requiring greater scrutiny if the replacement in question is part of an activity that exceeds 20 percent of the replacement value of the process unit.

Our decisions on these points are derived from reflection on the function of the exclusion in the context of the CAA. As explained above, and as described more fully in our legal analysis set forth below, we do not believe that application of the major NSR program to ''modified'' plants is designed to require existing plants that are continuing to operate in a manner consistent with their original design to curtail their rate of production or hours of operation beyond limitations set forth in their existing permits. We likewise do not believe that the program is designed to discourage plants from replacing parts or components so as to preserve their ability to produce at that rate. Rather, we believe Title I of the Clean Air largely leaves to State and local permitting authorities whether to require adjustments in the operations of those plants in order to reduce emissions to the degree needed to attain or maintain national air quality standards, and how to weigh the trade-offs such adjustments may produce in terms of potential economic impacts and loss of productivity. Instead, we believe the central function of the application of major NSR permitting requirements to ''modifications'' is to assure that plants install state-of-the-art pollution controls.

We recognize that on these points, the approach taken by our final rule thereby differs in some respects from the multi-factor, case-by-case approach we have been using in identifying RMRR, and particularly from some of our applications of that test to certain equipment replacements. We believe, however, that this adjustment in our approach is fully warranted for the reasons outlined above, and described more fully in our legal analysis below.

The following examples of functionally equivalent replacements under today's rule include:[7]

- Replacing worn out pipes in a chemical process plant with pipes that are constructed of different metallurgy (*e.g.*, to help reduce corrosion, erosion, or chemical compatibility problems).
- Replacing an analog controller with a digital controller, even though a similar analog controller can still be purchased and even though the new controller would allow for more precise control. A good example was presented to us by the forest products industry during our review of the NSR program's impacts on the energy sector. A company in that sector needed to replace outdated analog controllers at a series of six batch digesters. In this case, the original controllers were no longer manufactured. The new digital controllers, costing approximately $50,000, are capable of receiving inputs from the digester vessel temperature, pressure, and chemical/steam flow. The new controllers would have more precisely filled and pressurized digesters with chips, chemicals, and steam, thus bringing a batch digester on line faster.
- Replacing an existing mill or pulverizer (*e.g.*, grinding clinker in a

[7] As discussed in more detail below, although such activities would be functionally equivalent, they would still need to meet other criteria to qualify for the ERP. For example, a functionally equivalent replacement does not qualify for the ERP if it results in a change to a basic design parameter of the affected unit. If an activity does not qualify for RMRR under the ERP, the case-by-case RMRR approach would still be available to the owner or operator under those circumstances. And, of course, even if the activity does not qualify for the RMRR exclusion, the activity will not be a modification and, hence, will not trigger NSR unless it results in a significant emissions increase.

cement factory or coal for a boiler) with a new one of a different type because both new and old equipment serve the same purpose (even if the characteristics of the ground material would be different before and after the replacement).

• Replacing existing spray paint nozzles with new ones that might atomize the spray better or have a higher transfer efficiency because the ''before'' and ''after'' nozzles serve the same function.

At the same time, there are numerous activities that occur at facilities that may fall within the bounds of the cost threshold percentage, basic design parameters, and other backstop features of today's rule, but nevertheless cannot qualify for the RMRR exclusion on the grounds that the equipment is neither identical nor functionally equivalent. An example of this would be a chemical processing facility where the owner or operator makes a physical change that allows the production of a new end product that physically could not have been manufactured with the previous equipment using the same raw materials as used before in the same amounts as before. This would not be a functionally equivalent replacement activity because the facility is able to produce an end product after making the change that the facility was not capable of making before the change. Consequently, this activity would not qualify as RMRR under today's ERP.

Several commenters said the equipment replacement provision will streamline the major NSR applicability analysis. A number of commenters believed the ERP would be easier to implement than the proposed annual maintenance, repair and replacement allowance approach. One commenter said that allowing identical replacements to be excluded from major NSR will codify existing industrial practices, where replacement has no impact on emissions and would clearly represent RMRR.

Many commenters expressed support for the ERP, but recommended certain changes that they felt needed to be made to improve the proposal. One commenter supported the ERP in combination with a capacity-based option, on the assumption that repair and maintenance is to be excluded as well as equipment replacement.

One commenter attempted to collect data from turbine customers and found that achieving a level of data collection necessary for the ERP was far from simple, because the cost of maintenance activities is affected by such things as variability in engine model, package technology, and type of maintenance contract. Another commenter gave an example of the benefit that the ERP may provide. Without the ERP, the commenter said the source is limited to some fraction of boiler tubes allowed to be replaced at a given time, whereas with the ERP, replacement of all boiler tubes would, in the commenter's opinion, rightfully be considered routine. Another commenter said the ERP will remove regulatory burdens for types of equipment replacements that are in their view ''routine,'' such as replacement of tubes in industrial boilers. They added that, without a clearer understanding of which activities are RMRR, they may be inclined to delay conducting such replacements.

Many other commenters generally opposed any change to the RMRR exclusion, including one based on equipment replacement. Some of these commenters believed the ERP was problematic because it would allow a source to replace an entire process unit over time. Two of the commenters opposed the ERP because they felt it would create disincentives for the implementation of Plantwide Applicability Limits (PAL) and Clean Unit provisions from the recently finalized rule.

One commenter said that from an engineering standpoint, for a power plant, the difference between routine maintenance and a major plant refurbishing project is clear. To further clarify, the commenter made the following points. According to the commenter, routine maintenance is frequent and follows a predictable pattern. The commenter characterized routine maintenance at power plants as: repair of leaking pipes, pumps, valves, and fans; cleaning and lubrication of components; and inspections. The commenter added that permanent staff do this work either while the plant is operating or during only brief periods of downtime. The commenter further expressed that activities that are not routine require long plant or process unit shutdowns, are done infrequently, and are major capital projects for which special funding is set aside as a result of years of planning and design work.

One commenter said the proposal will allow emissions increases that will be difficult to offset through other regulations. One commenter objected to the ERP for a number of reasons: (1) The provision does not prevent replacement with different equipment; (2) it does not promote efficiency improvements or application of good air pollution controls; and (3) it would allow replacements that would significantly increase emissions. This commenter said replacement of air pollution controls should trigger best available control technology (BACT) or lowest achievable emission rate (LAER) requirements. Two local air pollution control agencies in California noted that they currently already exclude all replacements with identical equipment from major NSR when certain conditions are met.

Commenters generally had similar viewpoints on allowing both identical and functionally equivalent equipment replacements to qualify as RMRR. However, some commenters expressed greater concern related to excluding the replacement of equipment with functionally equivalent equipment. Primarily their concerns were rooted in the fact that a functionally equivalent replacement component could lead to increases in operational efficiency or productivity, and these commenters asserted that these sorts of process enhancements should not be excluded as RMRR.

We agree with the commenters who felt identical and functionally equivalent replacement activities generally should be excluded as RMRR. We also agree with the commenters who believe that this provision will streamline the major NSR applicability process and will bring clarity. The provision we are finalizing will allow a source to make a simple determination as to whether a replacement piece of equipment qualifies as identical or functionally equivalent. This type of determination will be straightforward and easier for the source to implement than the current case-by-case analysis required to determine a replacement falls within the RMRR exclusion. We support the air pollution agencies that have already excluded these types of changes from NSR.

We disagree with those commenters who believe that this provision will create disincentives for sources to accept a PAL or have emission units designated as Clean Units. A PAL offers a source to bring on entirely new emissions units with no Federal preconstruction permit, as long as emissions caps are not exceeded. A PAL or a Clean Unit designation allows a source to make modifications without performing a major NSR applicability test. These advantages will still be the driving force for sources to elect to use the PAL or Clean Unit provisions, and we do not believe this final rule will significantly detract from their appeal.

We also believe that there is substantial value in facilitating equipment replacements to a greater degree than our current approach permits and draws a cleaner and more

easily administered line between equipment replacements that categorically do not require a permit and major plant refurbishing which will result in increased emissions. For pieces of equipment used at industrial facilities, most manufacturers have well-established procedures for the inspection and replacement that are part of the regular maintenance necessary to provide for the equipment's safe, efficient and reliable operation. Some of these replacements are large in terms of cost and infrequent, but all are necessary to maintain the safe, efficient and reliable use of the process unit. We believe it is important to allow for these replacements provided that certain safeguards are in place, as discussed below.

We disagree with suggestions from commenters that the time period between activities, standing alone, provides an appropriate or clear distinction between activities that should be permissible under the RMRR exclusion and those that should not. In fact, some components wear out every year, while others wear out every 20 years. Nevertheless, both types of changes should fall within the ERP of the RMRR exclusion because both allow the facility to operate as designed. By not imposing a time limitation, the ERP allows replacement activities to be driven by consideration of economic efficiency rather than artificial regulatory constraints.

We disagree with commenters who expressed particular concern about functionally equivalent replacements. We continue to believe such activities should be encouraged and should qualify as RMRR. Even though a functionally equivalent component varies in some respects from the replaced component, we feel the most important factor to consider is whether the replacement will serve the same purpose as the replaced component. We acknowledge that a functionally equivalent replacement can result in an increase in efficiency and, consequently, productivity. In fact, one of our goals is to promote such outcomes. However, we believe that the basic design parameter safeguard is appropriate to assure that the ERP only automatically excludes from major NSR functionally equivalent replacements that do not result in a significant change to the fundamental characteristics of the process unit.

We note that the two local programs in California that exclude the replacement of equipment with identical equipment also allow the replacement of equipment with functionally equivalent equipment without considering such action to be a modification. Due to local air quality considerations, the local programs establish minimum pollution control requirements that are imposed in some circumstances when functionally equivalent equipment replacements occur. Nothing in today's rule would prevent a State or local program from imposing additional requirements necessary to meet Federal, State or local air quality goals.

After reviewing the comments on our proposal, we have decided to promulgate what we proposed in December 2002 for the RMRR equipment replacement provision with relatively minor changes. We decided to include another safeguard in addition to those we proposed in order to appropriately constrain the meaning of the term ''functionally equivalent.'' The additional safeguard is that an excluded replacement activity cannot cause the process unit to exceed any emission limitation or operational limitation (that has the effect of constraining emissions) that applies to the process unit and that is legally enforceable.

Thus, today's final rule allows you to categorize identical and functionally equivalent equipment replacements as RMRR if the fixed capital cost of such replacement plus the cost of repair and maintenance activities that are part of the replacement activity does not exceed 20 percent of the replacement value of the process unit, and if the replacement does not alter a basic design parameter of the process unit or cause the process unit to exceed any emission limitation or operational limitation (that has the effect of constraining emissions) that applies to the process unit.

C. What Cost Limit Has Been Placed on the Equipment Replacement Approach?

The next concept presented in the proposal is the cost-based limitation on the scope of the ERP. The purpose of this threshold is to distinguish between those equipment replacement activities that should automatically qualify as RMRR without further consideration and those activities that should undergo case-specific consideration. This concept is akin to the long-established reconstruction provision under the NSPS program. For the reasons explained below, we have decided to establish a 20-percent cost threshold under the ERP.

We believe a similar bright-line rule that would obviate the need for case-by-case review under our multi-factor test of appropriate categories of equipment replacements would be extremely useful in addressing many of the problems that we have identified with the current operation of the NSR program. Such a rule would be particularly useful in avoiding the uncertainty and delay, and consequent postponed or foregone equipment replacements, that our multi-factor case-by-case review induces. For example, our RIA indicates that it takes a year, on average, to obtain a determination whether a proposed replacement is routine. That kind of delay obviously creates perverse disincentives to refrain from equipment replacements and instead repair existing equipment or find some other solution.

This is the kind of problem that classically leads agencies to fashion bright-line tests to provide greater regulatory certainty and efficiency. Moreover, because the kind of disincentives that give rise to this concern operate largely by economic means, prompting sources to take one course of action (cut back on productive equipment replacement) rather than another (replace the equipment and incur the costs of delay, as well as potentially the costs of installing state-of-the-art controls), we think a cost-based threshold is a reasonable basis on which to create such a bright-line rule.

In the proposal, we observed that it may sometimes be difficult to determine where to draw the line between an activity that should be treated as an excluded replacement activity and one that should be viewed as a physical change that might constitute a major modification, when the replacement of equipment with identical or functionally equivalent equipment involves a large portion of an existing process unit. We solicited comment on a range of equipment replacement cost thresholds such as one based on the NSPS program. Under the NSPS program, when the cost of a project at an existing affected facility exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new unit (that is, the current capital replacement value of the existing affected source), then the source must notify and provide information to the permitting authority. After considering a range of factors, including the cost of the activity, the estimated life of the facility after the replacements, the extent to which the replaced equipment causes or contributes to the emissions from the source, and any economic or technical limitations on compliance with the NSPS, the reviewing authority

determines whether the proposed project is a reconstruction.[8]

We observed that, in some respects, an equipment replacement cost threshold set at the NSPS reconstruction test could be an appropriate approach for distinguishing between routine and nonroutine identical and functionally equivalent replacements under the major NSR program. As under the NSPS program, we do not believe it is reasonable to exclude from major NSR those activities that involve the total replacement of an existing entire process unit.

We also noted, however, that there are other considerations pointing in favor of a threshold lower than the 50-percent reconstruction threshold that might be appropriate to bound the ERP. Under NSPS, when a source undertakes a replacement activity at an existing affected facility that constitutes half or more of the facility's capital replacement value, our rules require a case-by-case determination as to whether such replacements constitute construction. We noted that a percentage threshold lower than 50 percent might be more appropriate for determining where we would require case-by-case consideration of the question whether equipment replacements constitute a modification of an existing process unit under major NSR. We solicited comments on the appropriate level of any percentage.

Many commenters supported the threshold of 50 percent of replacement value as the upper limit on equipment replacement. They felt this number is consistent with existing regulatory requirements and would accord the flexibility originally intended under the CAA for RMRR activities, while at the same time assuring that major, nonroutine projects remain subject to major NSR applicability review, and they felt this number is consistent with a common-sense interpretation of the regulations.

They also believed a 50-percent cutoff to be consistent with reconstruction definitions used in many NSPS and National Emission Standards for Hazardous Air Pollutants regulations. Some commenters stated that a 50-percent cutoff for the ERP would be valid for the same reason as for the NSPS reconstruction test; significant changes to a process unit are necessary before retrofit controls should be considered, provided there is no increase in emissions.

Many other commenters opposed the 50-percent replacement value threshold. They believed the capital replacement percentage should be much less than 50 percent. One commenter suggested as an appropriate threshold that the sum of equipment replacement costs for a single process unit over any period of 5 consecutive years should not exceed 50 percent of the replacement value of the process unit. Another commenter said the replacement percentage should not be higher than 25 percent. Another commenter suggested a replacement percentage of 5 to 10 percent to reduce the risk of replacement of an entire process unit over time without installation of BACT. One commenter said a more appropriate percentage for electricity producers is 0.1 to 1.0 percent. Another commenter said the threshold should be 5 percent, 1 percent, or even less, as shown by an NSR enforcement case against the Tennessee Valley Authority (TVA).

Another commenter believed the 50-percent number has no practical effect in protecting public health and the environment, and the commenter was not aware of any projects that have exceeded 50 percent in cost.

While opposed to the ERP in general, one commenter said the cost threshold should be as high a percentage as possible, so as not to promote premature replacement of equipment that is repairable. Another commenter said the 50-percent number from the NSPS is archaic and not environmentally protective. This commenter suggested that the threshold instead be 24 percent. The commenter believed this lower percentage is appropriate because the lifetime of high-cost materials will considerably exceed 5 years.

We agree with those commenters who see a relationship between establishing a threshold for equipment replacements that we will treat as RMRR under the major NSR program and the threshold the NSPS program established for reconstruction. However, we disagree that these two thresholds should be the same. The NSPS threshold was intended to identify those activities that, even though they did not qualify as a modification under NSPS, nevertheless are of such magnitude that further consideration should be given as to whether they are projects tantamount to new construction. The 50-percent NSPS threshold is not a bright line in the sense that all projects that exceed 50 percent are automatically considered as reconstruction. Rather, as discussed above, it is a threshold intended to alert permitting authorities to significant projects and allow case-by-case decisions based on a series of regulatory factors.

The ERP replicates the NSPS concept in some ways. It identifies a threshold below which there is no need for further inquiry into whether an activity qualifies for the ERP and above which there is a need for a case-by-case determination. The major difference between the ERP and the NSPS reconstruction test is that the ERP deals with modifications, not reconstructions. This difference weighs in favor of establishing the equipment replacement threshold at something less than the reconstruction threshold. It is logical and practical to conclude, as some of the commenters do, that by using the word ''modification'' the CAA intended to capture activities on a smaller scale than reconstructions. As noted above, we have set the ERP cost threshold at 20 percent. This value is less than one-half of the 50-percent reconstruction threshold and, therefore, fits well within this conceptual framework.

A 20-percent cost threshold would be consistent with the decision of the U.S. Court of Appeals for the Seventh Circuit in the *Wisconsin Electric Power Company* v. *Reilly* (''WEPCO'') case, to the extent that it would not automatically allow the activities performed there to constitute RMRR. See 893 F.2d 901 (7th Cir. 1990). This court decision directly addressed the question of what level of ''like kind'' replacement activities qualify as changes under the major NSR program.

In the *WEPCO* case, the Court considered an activity involving 5 coal-fired units at WEPCO's Port Washington plant. Each unit was rated at 80 megawatts of electrical output capacity. The activity involved the replacement of numerous major components. The information submitted by WEPCO showed that the company intended to replace several components that are essential to the operation of the Port Washington plant. In particular, WEPCO sought to replace the rear steam drums on the boilers at units 2, 3, 4, and 5. According to WEPCO, these steam drums were a type of ''header'' for the collection and distribution of steam and/or water within the boilers. WEPCO viewed their replacement as necessary to continue operation of the units in a safe condition. In addition, at each of the emissions units, WEPCO planned to repair or replace several other integral components, including replacement of the air heaters at units 1, 2, 3, and 4. WEPCO also planned to renovate major mechanical and electrical auxiliary systems and common plant support facilities. WEPCO intended to perform

[8] In the proposal, it was incorrectly stated that applicability of the NSPS was triggered if a project exceeded 50 percent of the cost of replacing the affected facility. As stated in this notice, if an activity exceeds this cost threshold, that only triggers further evaluation, not the automatic application of the NSPS to the source.

the work over a 4-year period, utilizing successive 9-month outages at each unit. The cost of the activity was estimated in 1988 to be $87.5 million. The Court noted that EPA concluded at the time this activity was unprecedented in that EPA did not find a single instance of renovation work at any electric utility generating station that approached this activity in nature, scope and extent. The Court determined, at our urging, that the changes did constitute a ''physical change'' under the NSR rules.

In the case of a steam electric generating facility, the process unit definition provided in today's rule is nearly identical to the make-up of the ''comparable new facility'' that was used in the NSPS evaluation of the WEPCO renovation project. However, under our rule we would not include the cost of pollution control equipment in determining the replacement cost of the WEPCO process units. WEPCO had electrostatic precipitators on each of its 5 process units, which our rule would subtract from the replacement cost. In addition, the WEPCO evaluation dealt with 5 boilers, each with its own turbine-generator set; to be consistent with today's definition of steam electric generating facility, we would likely treat each boiler unit as belonging to a different process unit. However, since all of the boilers underwent similar renovations, for simplicity we can assume that all of the process unit-specific activity costs are equivalent.

Using 1991 dollars, consistent with the timeframe of the Seventh Circuit Court's decision, it appears that the value of the 5 process units at the 400-megawatt WEPCO Port Washington facility would be approximately $321 million based on 1991 model plant values provided by the International Energy Agency. The 1988 project cost of $87.5 million scaled up to 1991 dollars would have had an adjusted project cost of $92.3 million.[9] Thus, the capital cost percentage for the replacement activities at WEPCO, averaged over its 5 process units, amounted to 29 percent. Alternatively, using the project cost of ''at least $70.5 million'' cited in the 1991 decision by the Seventh Circuit, and using the same value for process unit cost, we compute at least 22 percent. The 20-percent threshold is, therefore, beneath the scope of the activities at issue in the *WEPCO* case and hence not inconsistent with that decision.

[9] Using the Chemical Engineering magazine's Annual Plant Cost Index (composite), $87.5 million in 1988 dollars is equal in real terms to (361.3/342.5) multiplied by 87.5 million, or $92.3 million in 1991 dollars.

The 20-percent threshold also is supported by available data for the electric utility sector. We have a robust and detailed set of information available on maintenance, repair and replacement activities for the electric utility sector. Information about the electric utility sector persuades us that we have established the right ERP threshold for this sector.

Information on other industrial sectors beyond electric utilities (as well as general economic theory) further supports our 20 percent bright line test. Case studies performed by an EPA contractor and included in Appendix C of our final regulatory impacts analysis (RIA) estimate the overall impact of the rule on six different industrial sectors (pulp and paper mills, automobile manufacturing, natural gas transmission, carbon black manufacturing, pharmaceutical manufacturing, and petroleum refining). The case studies find that routine equipment replacement activities generally do not cause emissions increases. The case studies also find that equipment replacement activities vary widely within these industries. Likewise, the cost of these activities as a percent of the process unit replacement value varies widely. We recognize that the study addresses specific case examples from only a part of regulated industry and that the project cost information is derived from a limited inquiry of industry representatives. We believe, however, that the study provides a useful scoping assessment that tends to support the proposition that the 20 percent threshold derived for the utility industry (which is based on robust industry data) should be applied to industry as a whole. In short, the study supports our view that it is reasonable to assume that equipment replacement activities in the utility industry are similar enough to replacement practices in other industry that the 20 percent value determined for utilities, is appropriate for industry as a whole. This data indicates that most typical replacement activities will fall within the 20-percent threshold. At the same time, the data indicates that some major replacement activities likely will cross the 20-percent threshold and will require a case-by-case evaluation under the multi-factor RMRR test.

Two comment letters (from the Utility Air Regulatory Group (UARG) and from the American Lung Association (ALA), *et al.*) were particularly helpful in understanding the issues associated with the electric utility sector. The UARG provided as an attachment to its comment letter a document describing major repair and replacement activities that its members believe must be undertaken at utility generating stations in order to keep those facilities operational. The UARG noted that capital costs incurred for repair and replacement activities at an individual process unit additionally include activities more minor than those addressed in the document. The UARG grouped repair and replacement activities into project families; within each project family were per-component costs ($/kW) for numerous equipment replacement activities. We have reviewed the list of projects supplied by UARG and have concluded that these types of replacement activities are important to maintaining, facilitating, restoring or improving the safety, reliability, availability, or efficiency of process units. Therefore, generally speaking, these types of individual activities and groups of activities should qualify for the ERP and be excluded from major NSR without case-specific review. We also believe that it is reasonably expected in the electric utility industry for groups of these activities to be implemented at the same time. Such groupings should also be excluded without case-specific review. When we compare the 20-percent ERP cost percentage to the UARG data, we find that individual replacement activities would, in fact, qualify for the ERP and that limited groupings of these activities would qualify. However, larger groupings of these activities—groupings that are not usually seen in the industry—would not qualify for the ERP. This shows that the 20-percent threshold will be effective in distinguishing between activities (and aggregations of activities) that should not require case-specific review to be excluded from major NSR and those that do.

The ALA commenters provided with their comments the results of their analysis of projects at issue in an NSR enforcement case against Tennessee Valley Authority (TVA). As shown in the ALA comment letter, the Clean Air Task Force and the Natural Resources Defense Council looked at costs for 14 projects on a process unit basis, in year 2001 dollars, from the publicly available record for the case. For all but one of the challenged projects, the ALA commenters calculated a cost of less than 4 percent of process unit replacement cost. The ALA commenters submitted results of this analysis with their opposition to a source-wide, 5-percent maintenance allowance. As noted above, we concluded in our 2002 report to the President that the NSR

program—and the RMRR provision in particular—has in fact resulted in delay or cancellation of activities that would have maintained and improved the reliability, efficiency, and safety of existing energy capacity. The primary purpose of today's rule is to rectify this problem. Thus, to the extent the activities addressed by ALA qualify for the ERP, we now believe that such activities, if conducted in the future, should be excluded from major NSR.

A final factor that we believe supports our selection of a 20 percent threshold is the cost of installing state-of-the-art controls on existing units. There is obviously no single answer to the question of at what point that cost becomes the deciding factor in an owner's decision whether to replace a piece of equipment and incur that cost, since much will depend on the rate of return on the investment. Nevertheless, we think it is reasonable to assume that if the cost of the controls is greater than the cost of the replaced equipment, it is likely to operate as a substantial deterrent to replacing the equipment at issue. That is likely to be the case with respect to electric utilities if we set the threshold below 20 percent, which represents the approximate cost of retrofitting existing plants with state-of-the-art controls. The equation is similar for industrial boilers. Notably, those sectors represent a substantial fraction of the emissions potentially subject to the NSR program. While the relative costs of air pollution controls in other industries vary more widely than the costs for utility and industrial boilers, we nevertheless believe that the costs and technical issues associated with retrofitting air pollution controls factor significantly into equipment replacement decisions.

D. What Will Be the Basis of Applying the 20-Percent Threshold?

In the proposal, we solicited comment on whether implementing the ERP on a per-activity basis or on some other reasoned basis, such as applying the percentage to components that are replaced collectively over a fixed period of time, may be more workable.

Many commenters stated that the ERP should be implemented on a per-activity (or aggregation of activities) basis. Two of the commenters cited longstanding NSR precedent as the basis of their comments, while two other commenters relied on NSPS precedent. Another commenter thought the per-activity approach would be less confusing than summing activities over a fixed period of time. Other commenters believed the equipment replacement threshold should in fact be applied on a 5-year rolling average.

We have decided to apply the percentage threshold on a per-activity (or aggregation of activities) basis. This is consistent with how major NSR has been applied in the past and will continue to apply in the future, with the exception of those sources which establish a PAL. The major NSR program is a preconstruction program that requires applicability to be determined for a given activity at a facility and, as necessary, permitting to occur prior to the time activities are commenced. The major NSR program also requires applicability to be determined, in the first instance, based on an assessment only of the parts of a facility involved in the activity. A per-activity basis works well with this approach. We are not going final with a ''component-by-component'' approach that we solicited comment on through our RMRR proposal.

There would be obvious problems if we chose any of the other approaches suggested in the proposal or suggested by commenters (for example, annual basis or 5-year rolling average). One of the primary concerns with applying the percentage to activities performed over a span of time is that we would be restructuring the major NSR program to operate based on after-the-fact determinations. This raises the difficult question of what happens under this type of approach if you learn after commencement of an activity that it does not qualify under the ERP. This situation is largely avoided by the per-activity approach that we are establishing in today's rule.

It should be noted that activities that are related must be aggregated under the ERP, in the same way as they would have to be aggregated for other NSR applicability purposes. Under our current policy of aggregation, two or more replacement activities that occur at the same time are not automatically considered a single activity solely because they happen at the same time. For example, a steam turbine rotor replacement project and a boiler tube replacement project would not be aggregated simply because they occur during the same maintenance outage and on the same process unit. Further inquiry into the nature of the activities and their relationship to each other is needed before deciding whether the activities must be aggregated under NSR. Also, non-replacement activities that are part of a larger replacement activity should be included when calculating costs for a replacement activity against the capital cost threshold.

E. What Basic Design Parameters Are Being Established To Qualify for the Equipment Replacement Provision?

In the proposal, equipment replacements were only eligible for the ERP if they did not change the basic design parameters of the process unit. We proposed that maximum heat input and fuel consumption specifications for EUSGUs and maximum material/fuel input specifications for other types of process units are basic design parameters. We solicited comments on limiting the eligibility of the ERP this way and on the basic design parameters we proposed.

Several commenters expressed concerns with either the use of these specific parameters, or the restriction of the regulated community to only this set of design parameters. Other comments centered around an inconsistency in how EPA has accounted for efficiency in the basic design parameter safeguard. The commenters stated that, while EPA stated in the proposed preamble that efficiency is not a basic design parameter, the basic design parameter safeguard, as proposed, has the potential to bar equipment replacements that achieve significant gains in efficiency.

Commenters from all sides supported EPA's approach to handling activities intended to improve an affected process unit's performance beyond its basic design parameters. Commenters asserted that these actions would not fall within the RMRR exclusion. Commenters from the gas transmission industry concurred and amplified this concept, stating that an engine that is ''uprated'' at the time of overhaul should not be excluded from major NSR under the RMRR exclusion.

We recognize that the proposed basic design parameters are inconsistent with some industry conventions, and that we should allow for industry-specific flexibility or specify additional source category-specific parameters. For example, for natural gas transmission compressor stations, commenters explained that brake horsepower is the conventional design capacity parameter. We received similar comments from other industries, including cement and surface coaters, who objected to limiting their facilities to the proposed basic design parameters. Accordingly, we have decided to provide flexibility by providing a menu of choices from which the owners or operators may select and also by allowing for owners or operators to propose alternative basic design parameters to their reviewing authority which would then be made legally enforceable.

In addition to this flexibility, there may be a need for additional flexibility in using the basic design parameters that are spelled out in today's rule. For instance with boilers, maximum steam production rate is often used by the industry, and it may make sense in some cases to set the design parameters based on those values rather than on maximum heat input. Likewise, a crude oil distillation tower may have several capacities that are a function of the type of crude that is to be processed, and so a refiner may need to have a set of basic design parameters for its crude towers. These situations can be addressed by the source proposing alternative parameters or sets of parameters to their reviewing authority.

Also, there should be flexibility in how the basic design parameters are demonstrated when the owner or operator chooses not to rely on the design information for its process unit. For example, in order to establish the heat input value that the process unit has demonstrated it is capable of achieving, an electric generating unit should have the flexibility to reference available credible information, such as results of historic maximum capability tests or engineering calculations. Results from tests performed by electric utilities in the context of providing assurances to generation dispatch systems and regional or national power pools may be used to establish the process unit's maximum heat input. A review of such data or other available operational data or design information can reveal the heat input that the process unit is capable of achieving in its ''pre-activity'' configuration, and this can be compared to a ''post-activity'' heat input value. Plant operators, where the specified basic design parameters are inappropriate for the process, can propose what the measure of performance will be for these process units, including the use of permit limits on amount of production, to their reviewing authority. For process units having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

Many pieces of equipment are purchased based on their capacity or output. Consequently, for both utilities and non-utilities, we have modified the proposed basic design parameters to include output-based alternatives in today's final rule. For utilities, the owner or operator can select maximum hourly electric output rate and maximum steam flow rate as its basic design parameters, as an alternative to using input-based measures of maximum hourly fuel consumption rate and maximum hourly heat input. (We are clarifying from the proposal that the correct parameter is maximum hourly heat input, not maximum heat input.) Owners or operators may set different design parameters for different fuel types (such as coal or oil) or a combustion device that can accommodate multiple fuel types: for coal-fired units, owners or operators should consider that the fuel consumption rate will vary depending on the quality of the coal for a given heat input. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on BTU content should be used for coal-fired units.

Regardless of whether the source selects a basic design parameter(s) specified for non-utilities in today's rule or gets approval from their reviewing authority to use an alternative parameter(s) for any type of source, we have not specified a fixed averaging time period for the circumstance because we want the owner or operator to have the flexibility to select an averaging time that best accommodates their operation. In most cases, we believe that long term averaging periods (*e.g.,* a 12-month fixed period) will not be appropriate.

Thus, an equipment replacement that improves a process unit's efficiency and thereby enables the unit to return to its design parameters can qualify as RMRR even if current actual emissions increase as a result. For example, if boiler tubes or refractories are replaced on a boiler process unit, and these activities are beneath the capital cost threshold and are within the unit's basic design parameters, then they would qualify as RMRR under the ERP even if this improves the unit's efficiency.

The manufacturer's design parameters of a process unit are always acceptable if an owner or operator chooses to rely on them. In the rare cases where a facility does not have established design parameters, we believe that a reasonable look back period should be used for establishing the pre-activity values for basic design parameters, rather than taking the condition of the process unit immediately before the activity. We have therefore established a 5-year look back period, consistent with that for the NSPS hourly emissions increase test, for these situations.

We were urged by some commenters to incorporate a *de minimis* increase level in the basic design parameters that would allow activities to qualify for the ERP even though the activities would result in a minor change to the relevant basic design parameters. They argued that some effects resulting from the replacement may not be apparent before the equipment has been replaced. They argued that allowing for small changes in basic design parameters would add greater certainty to the ERP because unforeseen small changes would not cause an activity to lose the exclusion after the fact. While we sympathize with the commenter's concern, we do not see a ready solution to this problem under the RMRR exclusion. In fact, we are not persuaded that those types of changes can be readily justified under the ERP because it is hard to see how an activity that causes basic design parameters to change is not ''a change'' under NSR.

In sum, we continue to believe that an identical or functionally equivalent replacement should not qualify for the ERP if the activity causes the process unit to exceed its specified basic design parameters. Without such a requirement, significant alteration of a process unit's fundamental design could be accomplished under the guise of the ERP. Such an outcome obviously does not square with the idea that identical or functionally equivalent replacements are not ''changes'' under the major NSR program. Our final rule is different from the proposal, however, in that it provides greater flexibility in defining basic design parameters for process units. We were persuaded by commenters who expressed concerns that the proposed approaches did not adequately encompass all affected operations and industry sectors.

F. What Collection of Equipment Should Be Considered in Applying the Equipment Replacement Provision and How Should It Be Defined?

In the proposal, we raised the issue of what collection of equipment should be considered in applying the threshold under the ERP. We proposed the term ''process unit'' as the appropriate collection to accommodate the intended coverage of activities under the ERP. The purpose of this term is, to the extent possible, to align implementation of the ERP with generally accepted and practical understandings of what constitutes a discrete production process. The general definition that we proposed was based closely on the definition of process unit contained in 40 CFR 63.41 and read as follows:

> Process unit means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store a completed product. A single facility may contain more than one process unit.

To help illustrate these concepts, we further proposed five industry-specific

examples of how this definition of process unit might be applied.

Some commenters compared the proposal's definition of ''process unit'' (''* * * producing or storing a completed product * * *'') to the definition that is used by section 112(g) and that appears in 40 CFR 63.41 ('' * * * producing or storing an intermediate or final product * * *''). One of the commenters supported the proposed definition. Two commenters said the rule's definition should be consistent with that used by section 112(g), which they believe is broad enough to encompass interrelated operations. While supporting the RMRR proposal's definition, two commenters recommended that EPA provide regulatory flexibility by allowing a facility the option to choose which definition it will use.

One commenter generally supported the proposed definition of ''process unit,'' but this commenter believed that ''the delineation of a process unit should be made by regulated entity rather than explicitly defined in a rule.''

Three commenters asserted that pollution control equipment should be included in the process unit definition. One industry commenter said pollution control equipment is often integral to the process and may produce an intermediate product. One environmental commenter believed the proposed rule was unclear as to whether pollution control equipment is part of the process unit.

Several commenters said the proposed definition is too vague or broad. Another commenter urged EPA to change the definition of process unit to limit the scope of what is allowed in the ERP, so that the source of emissions (for example, an entire coal boiler) would not be allowed to be replaced without major NSR. The commenter asserted that the replacement unit's scope should be limited to an emission unit.

Most commenters agreed that the general process unit definition is sufficient. However, a number of commenters suggested that we revise or eliminate some of the process unit examples (that is, the industry category-specific definitions), and others were concerned that the proposed definitions do not support the detailed process unit definition for a specific industry because the definitions will never capture all possible elements and configurations.

We received comments from several industry representatives suggesting changes to our proposed industry-specific definitions, and also to request that we delineate other process unit types explicitly in the rule. Definitions were submitted for sugar mills, chemical manufacturing plants, surface coating operations, flat glass manufacturing, fiberglass manufacturing, and gas compressor stations.

One industry commenter agreed with our proposed approach to proportionately allocate, based on capacity, the cost of those components shared by two or more process units. Another commenter suggested that, for electric utilities, we allocate the cost of shared equipment based on a *pro rata* share of megawatts produced.

We agree with the commenters who favor using a process unit as the basis for administering the ERP and including a definition of process unit in the final rule. We also agree with the commenters who suggested that the definition of process unit should be consistent with the definition in 40 CFR 63.41, and we have altered the final rule definition to include those processes that produce ''intermediates.'' We acknowledge that, without further explanation, the term ''intermediates'' is susceptible to misinterpretation, which can cause confusion and lead to less regulatory certainty. Thus, we provide the following explanation as to how we intend to interpret today's rule.

By ''intermediates,'' we mean the intended product of an integrated facility operation. For example, for an automotive manufacturing plant, while the completed product would be the driveable vehicle ready for shipping to the showroom, an intermediate product could be the engine or the painted body shell. In this case, we would not consider smaller production operations, such as the e-coat, primer surface, or top coat operation, to be intermediates in the context of our final rule definition for process unit. Our primary goal in defining this term ''process unit'' is to encompass integrated manufacturing operations that produce a completed product, and those operations that produce an intermediate as the product of the process unit. In the case of the automotive paint shop, series of coating steps together comprise the carefully designed and interrelated set of operations, all of which are needed to provide a coating system that meets design specifications. The individual operations almost never are implemented individually and, as a practical matter, simply would serve no meaningful purpose in the absence of the others.

We disagree with the commenters who wish to include all pollution control equipment in the definition of process unit. We feel that periodic replacement of components of emissions control equipment should be encouraged and would rarely lead to actual emissions increases. In instances where identical or functionally equivalent replacement of pollution control equipment occurs, it is likely you will qualify for a Pollution Control Project exclusion. We do agree, however, that where the control equipment is an integral component of the process it should be included. Therefore, we are excluding associated pollution control equipment from the definition of the ''process unit,'' except for control equipment that serves a dual purpose in the process. We know there are industries where pollution control equipment performs a dual purpose; for example, condensers often serve to control emissions of organic air pollutants while serving as an integral component of the operation of a fractionation column. A low-NO_X burner is another example of a dual-purpose component. In such cases, to provide clarity and simplify administration of the ERP, our rule provides that dual purpose equipment should be considered part of the process. We are also clarifying in today's rule that administrative buildings (including warehousing) are not to be included in the process unit, but other types of non-emitting units that are integral to the processing equipment should be included.

We also have included in our final rule industry-specific examples of how this definition might be applied. The examples are drawn from three selected industrial processing categories—electric utilities, refineries, and incinerators. We proposed each of these detailed definitions and received mostly support from commenters on their accuracy. While we also proposed detailed definitions for two other industries—pulp and paper and cement producers—we have decided not to finalize those definitions after receiving comments from the relevant industry trade association asserting that the definitions did not, and could not, capture all of their industry's configurations and they believed the generic process unit definition was sufficient for their industry. Because of the centrality of the ''process unit'' concept to the usefulness of the ERP, it is our desire to include specific definitions for steam electric generating facilities, petroleum refineries, and incinerators in the final rule to provide as much certainty as possible for facilities in these industries. As noted above, these definitions also should be useful for those in other industries who

will apply our general definition because the industry specific definitions provide clear examples of how we intend the general definition to be interpreted and applied. During the public comment period on the proposal, several commenters submitted additional industry specific definitions and asked us to put them in the final rule. We are not finalizing these suggested definitions at this time, because we did not include them in the proposed rule. However, provided below are the process unit definitions that commenters submitted to us and that we think comport well with the general definition of process unit promulgated today.

• For a *natural gas compressor station,* each compressor system, together with its proportionate share of common support equipment is a separate process unit. This would generally consist of the air inlet system, accessory drive system, gas producer, fuel delivery system, cooling system, lube system, power turbine, power shaft, control system, starting system, exhaust system, and support facilities (*e.g.*, auxiliary power generating equipment, heating/cooling equipment, station and yard pipe, valves, etc.).

• For a *flat glass manufacturing plant,* each production line within a facility should be a separate process unit. Flat glass production is completed on a continuous line where raw materials are added at one end, a continuous ribbon of glass is formed, and finished glass is packaged at the other end. The flat glass production line consists of: the batch house, where raw materials are stored and weighed; the furnace and refiner, where the raw materials are melted; the bath, where the glass ribbon is formed; the lehr, where the ribbon is annealed; and the cutting and packaging equipment, where the glass is removed from the line for sale to customers or for additional processing later.

• For a *fiberglass production facility,* each production line is a separate process unit. Fiberglass is manufactured on a continuous line where raw materials are melted at one end to form a continuous strand of fiberglass that is packaged at the other end. The fiberglass production line begins with the batch house, where raw materials are stored and weighed. In the melter, forehearth, and refiner, the raw materials are melted and refined. From the refiner, glass fibers are formed through controlled bushings. From the bushings, the continuous strand fibers are either directly cut or packaged or wound onto spools for packaging for sale to customers or for additional later processing.

• For the production of *precipitated amorphous silica,* the process unit includes, but is not limited to: raw material storage and handling equipment used for mixing sand and other raw materials prior to addition to the furnace; the furnace itself; the raw material storage and handling equipment for the cullet dissolving and silica precipitation process; all dissolving, precipitation, and filtration tanks and equipment; and drying equipment. Further, the process unit includes all the product packaging, storage, handling, and transfer equipment.

• For a *chemical manufacturing plant,* the process unit would include all the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended primary product and associated byproducts or intermediates. The process unit can consist of more than one unit operation. Chemical manufacturing process units may include, but are not limited to: raw material storage, and air oxidation reactors and their associated product separators and recovery devices; reactors and their associated product separators and recovery devices; distillation units and their associated distillate receivers and recovery devices; associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A chemical manufacturing process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and process control or dual purpose air pollution control devices or systems. For a chemical manufacturing facility, there are several types of process units: those that separate and distill raw material feedstocks; those that change molecular structures through reactions or polymerization; those that ''finish'' the reacted or polymerized product, through compounding, blending, or similar operations; auxiliary facilities, such as boilers and by-product fuel production; and those that load, unload, blend, or store products. Process equipment that acts to control emissions, such as condensers, recovery devices, and oxidizers, is considered part of the process unit.

We note that we were unable to include some other process unit definitions submitted by commenters. While we do not believe that these other proposed definitions were necessarily inconsistent with our general definition of process unit, we had concerns and questions with some of these proposed definitions. We believe that now that this rule is issued, we can more fully evaluate those other definitions, including communicating with the leading industry officials, and determine whether we would approve of their use.

Finally, we have made some slight corrections to the process unit definitions that we proposed based on comments we received on the proposed definitions.

There are numerous industries that have industrial boilers at their facility to provide electricity and steam to their operations. As a general rule, we would expect these boilers to be treated as a separate process unit from the other unit operations occurring at the facility. We would expect the boundaries of the process units for such boilers to be consistent with the boundaries established under the definition for a steam electric generating facility in today's rule, which encompasses all equipment from coal handling to the emission stacks.

We also decided to continue to require that owners or operators who have components shared by two or more process units to proportionately allocate, based on capacity, the cost of those components. And we agree with the commenter that an equitable approach for electric utilities having components shared by two or more process units is to allocate the cost of shared equipment based on the *pro rata* share of megawatts produced by each process unit.

G. Consideration of Non-Emitting Units as Part of the Process Unit

Many commenters supported excluding non-emitting equipment from the ERP. One commenter stated that triggering the major NSR review process for maintenance activities is an impediment to continuous improvement projects for certain products and processes, even if actual emissions decrease or only non-emitting units on the process line are affected. Delays or postponements of project maintenance work adversely affect the reliability, safety and productivity of operations and cost control efforts. Another commenter recommended that work at clearly non-emitting units, specifically including foundation regrouting and repair and frametop replacement, should be excluded from this rule. Three commenters believed that non-emitting units cannot result in an

increase of emissions and thus do not need to be evaluated under major NSR.

A blanket exclusion for non-emitting units could create problems of interpretation because the term ''non-emitting components'' is ambiguous when considering certain components. Commenters asserted that identifying and separating out non-emitting components can be a complex undertaking, and may be contrary to the goal of a clear and straightforward option. One commenter provided the following examples: (1) Piping systems (although pipe connectors are a source of fugitive emissions, the pipe normally is not); and (2) structural supports for a process unit (separating out the cost of supports from an investment basis throughout a facility will be difficult).

Another commenter believed it would be difficult to separate the costs of emitting and non-emitting equipment when determining the cost of the process unit. The commenter also believed it would be difficult to determine allocation of shared equipment in the cost analysis.

We are concerned that, if owners or operators were allowed to strip away all of the non-emitting components from a process unit definition, it would create significant ambiguity in the rule and could result in significant variation in how the rule is applied to similar sources in different jurisdictions. In addition, we simply do not think it is practical or logical to separate ''non-emitting'' components of a process unit from ''emitting'' components. We believe that integrated manufacturing operations (that is, process units) typically include both types of equipment. Separating emitting from non-emitting equipment would create an artificial divide that contrasts sharply with physical and operational reality.

As noted above, however, we do believe that a distinction should be made between non-emitting equipment that is part of a process unit and non-emitting equipment that is functionally distinct from the process unit. For example, most production facilities have buildings or space to house administrative offices, such as offices for the plant accounting staff. Such non-emitting facilities should not be considered part of any process unit under today's rule.

H. What Is the Accounting Basis for the Process Unit?

In the proposal, the accounting basis for the ERP discussed was the same as for the NSPS reconstruction provision, which is the fixed capital cost that would be required to construct an entirely new unit. We also discussed for the annual maintenance, repair and replacement allowance using the invested cost of a unit as the accounting basis. We proposed that it would be appropriate to require that costs be calculated using an approach along the lines set out in the EPA Air Pollution Control Cost Manual (*http://www.epa.gov/ttn/catc/dir1/c_allchs.pdf*). Finally, we solicited comment on whether the costs associated with the unanticipated shutdown of equipment, due to component failure or catastrophic failures such as explosions or fires, should be included in evaluating costs under the ERP.

In reviewing comments, we recognized that some commenters appeared to direct their comments on the accounting methods at the annual maintenance, repair and replacement allowance, and not necessarily the ERP. Often, we came to this conclusion simply by the way the commenters organized their comments, and not by any specific statements in the comment letter. However, since we asked for comment on the accounting approaches as they would be applied to both the annual maintenance, repair and replacement allowance and the ERP, we believe that comments that appeared to be dedicated to the annual maintenance, repair and replacement allowance should also apply to our evaluation of the accounting for the ERP, except in the case where the commenter specified that their comments on the proposed accounting methods applied only to the annual maintenance, repair and replacement allowance or the ERP. Likewise, for considering whether costs associated with unanticipated shutdown of equipment, we considered the comments to apply to both the ERP and the annual maintenance, repair and replacement allowance unless the commenter specifically noted that the comment should not be applied to both of the proposed rule provisions.

Most commenters asked for flexibility on whether a facility should use replacement value, invested cost or insurance valuation as the basis for the calculations. They felt that all were of equal merit and different ones would be available at different facilities so EPA should not prescribe only one type.

Most commenters did not support the sole use of the EPA Air Pollution Control Cost Manual (APCCM) to standardize calculations for replacement and repair costs for RMRR in general. Most commenters felt that the APCCM is a worthy reference for costing but also that sources should not be limited to only one manual, because a single manual is likely to have shortcomings and not be able to represent every situation.

Many commenters supported an exclusion of costs for unanticipated shutdowns and failures. They noted that strong incentives exist to avoid fires, explosions and other unanticipated equipment failures because of the risk of human injury and production interruptions and because of the expense involved in restoring lost capacity. As a result, they contend that a catastrophic event already penalizes the facility dramatically, but then to impose the case-by-case analysis would only exacerbate their troubles. They explained that failures take place occasionally and can result in a sudden, unplanned partial or total loss of equipment. When such a failure occurs at a natural gas compressor station, the turbine or engine concerned must be replaced immediately to avoid a disruption in gas supply. Other facilities may have similar pressures to maintain their product around the clock. Such replacement fits easily within most elements of the equipment replacement test. Commenters asserted that replacing a catastrophically failed turbine or engine is clearly ''routine,'' since companies will always replace such failures.

Other commenters, however, opposed an exclusion for unanticipated shutdowns and failures on the grounds that maintenance activities performed during forced outages are simply maintenance and should be considered as such, particularly given that the proposed RMRR rule approaches and the December 2002 final rules already have given the industry a number of exclusion options.

We are allowing sources to determine the applicability of today's rule on the basis of replacement value, with an option for sources to notify their reviewing authority in writing if they desire to use another option (for example, invested cost or insurance value where the insurance value covers only the complete replacement of the process unit). The equipment replacement cost should be based on the current replacement value of the entire process unit at the time of conducting the activity.

Typically, replacement value is more easily obtained than invested cost. Most manufacturers will have information concerning the replacement value of a process unit, because such costs are commonly used when evaluating various business scenarios relating to manufacturing costs. Also, use of replacement value is consistent with the NSPS provisions.

In addition to determining the replacement value of a process unit, in our final rule we allow for the use of several other accepted methods in different industries for estimating such values. Replacement values are the estimated value of replacing a unit and can be based on a current appraisal. In lieu of replacement cost, you can also use inflation-adjusted original investment, insurance limits if insured for full replacement of the unit, or other cost estimation techniques currently employed by the company, as long as the company follows GAAP and if approved by the reviewing authority.

A dollar-per-kilowatt rate for calculating costs may be appropriate for utilities. This model is specific to source and fuel type and is updated periodically. We allow sources to use insurance valuation methods such as the Handy-Whitman Index to determine replacement costs for electric utilities. Other sources to compute costs include the Nelson Refinery Construction Index Factors, Solomon Refinery Study, and licensors of the respective process unit (*e.g.*, Kellogg, UOP).

In order for a cost-based approach to be equitable, all owners or operators must include the same categories of expenses in both the process unit replacement value and the replacement activities sought to be excluded. Therefore, although the final rule does not mandate any particular approach, we believe it is generally appropriate to calculate costs using an approach similar to the elements of Total Capital Investment as defined in the APCCM. While the manual contains basic concepts that could be used to estimate total capital investment at a process unit, it is geared toward cost calculations for add-on control equipment. On the other hand, the underlying concepts are taken from work done by the American Association of Cost Engineers to define the components of cost calculations for all types of processes, not just emission control equipment. In certain cases, other manuals might make more sense depending on their circumstances.

Under the APCCM, total capital investment includes the costs required to purchase equipment, the costs of labor and materials for installing the equipment (direct installation costs), costs for site preparation and buildings, and certain other indirect installation costs. However, any costs that are part of the installation and maintenance of pollution control equipment should be excluded from the cost calculation, per our discussion in the previous section of this preamble. We believe equipment that serves a dual purpose of process equipment and control equipment (combustion equipment used to produce steam and to control hazardous air pollutant emissions, exhaust conditioning in the semiconductor industry, *etc.* should be considered process equipment.

Direct installation costs include costs for foundations and supports, erecting and handling the equipment, electrical work, piping, insulation, and painting. Indirect installation costs include such costs as: engineering costs; construction and field expenses (costs for construction supervisory personnel, office personnel, rental of temporary offices, *etc.*); contractor fees (for construction and engineering firms involved in the activity); startup and performance test costs; and contingencies.

We believe there may be merit to the comments we received advocating a categorical exclusion for unanticipated shutdowns and failures of some kind. When such an outage occurs, there may be a real urgency to restore the plant to operation without forcing it to await the results of a permitting action or applicability determination. In the past, we have handled these situations with case-by-case consent orders; however, even that approach may lead to unnecessary delays. It may specifically be sensible to relaxing the 20 percent cost threshold limitation for such events because it is unlikely that sources would incur an outage to avoid controls. We did not propose such a stand-alone exclusion and hence we believe we should not act upon it at this time.

I. Enforcement

1. Compliance Assurance

We believe that the records developed and maintained in the ordinary course of business will provide the primary means of assuring compliance with today's rule. We know that, as a general rule, companies necessarily generate and keep records related to the types of projects covered by today's rule. For example, companies generally have comprehensive procedures by which funds are allocated to both capital and maintenance expense projects. Many of the records generated by these procedures are needed for tax accounting purposes and, by law, must be maintained for at least 6 years. Moreover, additional records must be maintained in industries regulated for other purposes, such as the energy sector (over 90 percent of which, by capacity, is subject to FERC regulation). Public utilities, licensees and natural gas companies that are subject to FERC jurisdiction must, unless they receive a waiver from the Commission, comply with extensive accounting and record retention requirements. They must keep financial information according to uniform systems of accounts that are set out in 18 CFR part 101 for public utilities and licensees, and 18 CFR part 201 for natural gas companies. These uniform systems of accounts include hundreds of specific accounts, including individual accounts for boiler plant equipment, engines and engine-driven generators, turbogenerator units, and hundreds of other asset, liability, cost and property items.

These companies also must retain records according to the schedules set forth in 18 CFR part 125 (for public utilities and licensees) and 18 CFR part 225 (for natural gas companies). The types of records that companies must keep include, for public utilities and licensees, for example, generation and output logs (records must be kept for 3 years), load records (3 years), gauge-reading reports (2 years), maintenance work orders and job orders showing entries for labor, materials and other charges in connection with maintenance and other work pertaining to utility operations (5 years), work order sheets for construction work in progress (5 years), appraisals and valuations made of utility property or investments (3 years), engineering records, drawings, and other supporting data for proposed or as-constructed utility facilities, including detail drawings and records of engineering studies (must be kept until facilities are retired), contracts or other agreements relating to services performed in connection with construction of utility plant (6 years after the plant is retired or sold), general and subsidiary ledgers (10 years), paid and canceled vouchers, and original bills and invoices for materials, services, *etc.* (5 years).

Altogether, these various sources of information provide more than reasonable assurance of compliance with today's rule. This is particularly true given EPA's broad authority to inspect affected facilities and require submission of compliance related data. Accordingly, we are not imposing any recordkeeping requirements in today's rule.

2. General Issues

Today's rule provides revisions to the major NSR program to specify categories of equipment replacement activities that we will consider RMRR in the future. As recognized by the U.S. Supreme Court, an agency may not promulgate retroactive rules absent express congressional authority. *See Bowen* v. *Georgetown Univ. Hosp.*, 488 U.S. 204,

208, 102 L. Ed. 2d 493, 109 S. Ct. 468 (1988). The CAA contains no such expressed grant of authority, and we do not intend by our actions today to create retroactive applicability for today's rule. 42 U.S.C. 7401 *et seq.* Today's rule applies only to conduct that occurs after the rule's effective date.

None of today's rule revisions apply to any changes that are the subject of existing enforcement actions that the Agency has brought and none constitute a defense thereto. Furthermore, prior applicability determinations on major modifications that result in control requirements in an NSR permit that currently applies to a source remain valid and enforceable as to that source.

As noted above, today we are changing the scope of the RMRR exclusion from the major NSR program by taking final action on the ERP. If you subsequently undertake an activity that does not meet the applicable provisions of these new alternatives and do not obtain a preconstruction permit if you are required to do so, you will be subject to any applicable enforcement provisions (including the possibility of citizens' suits) under the applicable sections of the CAA. Sanctions for violations of these provisions may include monetary penalties of up to $27,500 per day of violation, as well as the possibility of injunctive relief, which may include the requirement to install air pollution controls.

J. Quantitative Analysis

At proposal, we presented a quantitative analysis of the possible emissions consequences of the range of different approaches to the RMRR exclusion to evaluate if our policy conclusions are correct. Our analysis was conducted using the Integrated Planning Model (IPM). This analysis was done for electric utilities because we have a powerful model to perform such an analysis that we do not have for other industries. We stated that the results for electric utilities accurately reflect the trends we would see in other industries.

The IPM analyses of different scenarios showed that the breadth of the RMRR exclusion would have no practical impact on, let alone be the controlling factor in determining, the emissions reductions that will be achieved in the future under the major NSR program. The analyses showed that emissions of SO_2 are essentially the same under all scenarios, but that under today's rule these emission levels will be met in a more economically efficient manner than the base case. This stands to reason because nationwide emissions of SO_2 from the power sector are capped by the title IV Acid Rain Program. For NO_X, these analyses showed modest relative decreases in some cases and modest relative increases in other cases. These predicted changes represent only a fraction of nationwide NO_X emissions from the power sector, which hover around 4.3 million tons per year (tpy). At this time, we do not have adequate information to predict with confidence which modeled scenario is most likely to occur. What these analyses indicate, however, is that regardless of which scenario is closest to what comes to pass, today's rule will not have a significant impact, up or down, on emissions from the power sector. However, we expect the rule to result in significant improvements in safety, reliability, and other relevant operational parameters.

The DOE also presented further analysis of the possible emissions consequences of the range of different approaches to the RMRR exclusion. Using the National Energy Modeling System (NEMS), a variety of changes in energy efficiency and availability were evaluated, as well as the effect on emissions resulting from these regulatory revisions. This analysis concluded that efficiency improvements resulting from increased maintenance, repair and replacement are expected to decrease emissions, whereas availability improvements are expected to increase emissions. In the cases represented in this analysis, the emissions reductions from assumed reductions in heat rates tended to dominate the corresponding effects of the assumed availability increases.

A number of commenters said that the underlying assumptions EPA used in the IPM analysis were flawed and resulted in erroneous conclusions regarding the emission reduction potential of the proposed RMRR rules. Several commenters stated that EPA's IPM analysis incorrectly assumes that no major modifications at any older units would ever trigger the requirement to add new pollution controls. In addition, according to commenters, EPA also erroneously assumed that this lack of major maintenance, repair and replacement will have very little impact on the performance of those power plants, when in reality their emissions would increase significantly. The commenters cited a Clean Air Task Force analysis for power plants, which estimates that EPA's rule revisions will result in at least 7 million more tons of SO_2 and 2.4 million more tons of NO_x annually. Some commenters also questioned the appropriateness of using EPA's analysis for the electric generating sector to draw conclusions about non-utilities.

One commenter said the IPM and DOE NEMS analyses correctly demonstrate that EPA's RMRR proposal will have no appreciable impact on emissions from the power sector. According to the commenter, this conclusion is consistent with EPA's findings in a 1989 report, ''1989 EPA Base Case Forecasts,'' which demonstrated that continuing to allow utilities to undertake activities including ongoing annual operating and maintenance activities and a major refurbishment when the unit reached 30 years of operating life would have no appreciable impact on emissions from the power sector, just as EPA's and DOE's recent analysis confirmed.

One commenter said the proposal lacks any reference to the gains accomplished by major NSR, the ongoing enforcement actions, settlements reached as a result of those actions, or the potential gains from the investigations now pending. The commenter argued that EPA's reliance on improvements in productive capacity as the measure of success fails to consider that productive capacity must be balanced with the interests of health and welfare. The commenter also noted that a critical part of EPA's burden is to consider all the relevant factors leading to its conclusion that the exclusions are necessary and appropriate and that at the very least this includes an assessment of the expected effects on emissions, which in turn will determine the public health benefits and costs of the proposed rule. Although data on emission reductions achieved under the existing program are available, we have stated that we cannot precisely quantify the effects the proposed rule will have on emissions. Some commenters stated that before promulgating a final rule, EPA should provide such a quantitative assessment of the rule.

We disagree with the commenters who believe that emissions would be significantly higher for electric utilities than are estimated under the IPM model runs. These commenters' arguments rely on the assumption that EPA's base case is invalid because, if major NSR rules were left unchanged, eventually all coal-fired utilities would either apply BACT or deteriorate so badly that they would have to shut down. We do not believe this assumption is accurate. As we have explained, our experience suggests that under the current NSR program, managers of coal-fired electric generating facilities have available to them a number of actions they can take to avoid triggering major NSR, and in many instances they will take one of

these actions to avoid the high retrofit costs and delays in obtaining a major NSR permit. If necessary, owners or operators can and will limit their activities to those that do not trigger major NSR, and will take enforceable restrictions on fuel use or other actions to avoid major NSR. This results in some decline in efficiency and capacity, as the EPA's base case modeled, but the units would likely remain viable electric generating units for years without triggering BACT requirements. Thus, we believe our base case represents a far more realistic assessment of what would happen under current major NSR rules than the dramatic BACT reductions presented by these commenters.

Furthermore, while some of the facilities may be modified and subjected to control, nationwide emissions as estimated in the model runs would still rise to the level of the Acid Rain cap for SO_2. To the degree these modifications come at facilities that are otherwise projected to be controlled because of existing SO_2 and NO_X requirements, there would be no difference in effect between the model runs and alternative scenarios. We agree with the commenter who noted that the recent analysis and the estimated impact on emissions is consistent with the previous EPA report in 1989. Our recent analysis confirms that efficiency improvements have the potential to result in environmental benefits that offset (or more than offset) emissions increases from improved availability, but that previous major NSR rules discouraged these improvements.

Regarding the applicability of our analysis to non-utility sectors, we continue to believe that our conclusions are valid for all sectors, and further, that the effects from the electric utility industry dominate those from other sectors. We acknowledge that the results for the SO_2 cap for utilities cannot be extended to non-utilities that are not similarly capped. However, our model runs for NO_x reflected the absence of a cap, and are therefore valid for other uncapped sectors. Thus in the case of industrial boilers, which behave similarly to utilities, we would expect to see similar efficiency improvements and availability improvements occurring in tandem, resulting in either modest increases or decreases. Because the overall emissions from this sector are significantly smaller than for utilities, the modeled effects for utilities are expected to dominate the analysis.

For other industrial sectors, we do not anticipate that emissions increases will result from equipment replacement activities that qualify as RMRR under today's rule. While some efficiency improvements may result, the overall effect of these improvements will not be to induce greater demand and greater emissions, in contrast to the effect shown by the modeling for utilities (*i.e.*, demand for other industrial sectors depends on independent factors). Indeed, without increased demand, efficiency improvements that lower emissions per unit of output would result in a decrease in emissions.

A number of commenters raised concerns that EPA had not analyzed the impact of the final rule on industries other than for electric utilities. We have, thus, supported further efforts to analyze empirically the effects of this rule. This work is included in the Regulatory Impact Analysis (RIA) for the final rule. Even the experts involved in this analysis emphasize that empirical assessments of the costs, emissions, and other economic and environmental effects of this rule are extremely difficult to perform, particularly when generalizing beyond the specific industrial sector and type of facility involved. The analysis would have to simulate a great many decisions made by each plant involving routine maintenance under a variety of policy scenarios. There is simply no credible way to make these assessments for the entire economy or for an entire sector. Hence, with the exception of the electric utility industry model, we relied on a case study approach to gain insights as to how this rule affects particular industrial sectors.

A series of case studies were analyzed by an EPA contractor to estimate the overall impact of the final rule on six different industrial sectors (automobile manufacturing, carbon black manufacturing, natural gas transmission, paper and pulp mills, petroleum refining and pharmaceutical manufacturing). The analysis was designed to examine effects of the final rule, but it is important to note that the case studies were performed prior to decisions on the exact form and content of the final rule. For example, the selection of process units for each of the industries may not be an accurate depiction concerning how a particular industry's operations should be separated into process units under the final rule. As such, none of these characterizations should be taken as EPA's position on appropriate process units for a given industry. (Information on that subject can be found in Section III.F of the preamble and in the final rule for selected industries.) In addition, in costing out replacement activities in the different industries, the contractor made assumptions regarding which costs needed to be included and how multiple replacement activities should be grouped that may not be consistent with the final rule. Again, these assumptions on the part of the contractor should not be interpreted as EPA's conclusions of how their rules should be applied to such replacement activities in these industries.

Even with these caveats, the case studies provide useful insight into the potential effects of the final ERP. The six industries are significant sources of air pollution emissions and are very diverse in terms of their types of operations, their existing maintenance, repair and replacement strategies, and the range of potential replacement costs at some of their process units. This diversity is important because the final rule will impact a great many industrial sectors and individual process units which are extremely varied in terms of their maintenance, repair and replacement strategies. For example, issues related to safety, reliability and availability will vary greatly across these industries. The need to assure that the electricity and natural gas supply is reliable and available is critical to ensuring the safety of the public in the hottest and coldest times of the year, and it is critical to the operation of the nation's infrastructure, to the degree they do not have backup power generation, devoted to public health (*e.g.*, drinking water, sewage treatment, food refrigeration, hospitals). Thus, strategies related to maintenance, repair and replacement at existing facilities are critical to ensure that vital electric utilities and natural gas transmission continue uninterrupted. As we are clarifying what activities fall within the ERP, owners or operators at these facilities will be able to make decisions on when and how to conduct RMRR activities based on engineering judgement.

The case studies conclude that equipment replacement activities vary widely within these industries for the process units selected. Across the industries, the studies estimated that equipment replacement activities could range in percentage by over an order of magnitude. By establishing a threshold at 20 percent of the replacement cost of the process unit, we believe we have set a reasonable standard that allows most replacements to proceed unimpeded as long as the other safeguards are met. At the same time, under the 20 percent threshold, the most capital-intensive replacements would be subject to case-by-case review. The data from these case studies clearly indicate that 20 percent would function well as the dividing line between those replacement activities that automatically qualify under the

ERP and those activities which should be subject to case-by-case review.

The case studies also indicate that replacement activities in these industries should not lead to increased emissions at the sources. Based on the case studies, we believe that replacement with identical or functionally equivalent equipment as the rule requires, will result in equivalent or reduced emissions. The decrease in emissions would result from efficiency improvements that reduce the amount of air pollution emitted per product produced in the process unit. Therefore, if operating levels do not change, then total emissions will decrease with such identical or functionally equivalent equipment replacements.

The case studies looked at a wide range of projects. We have concluded based on this analysis that replacement activities do not generally cause changes in operating levels at the process unit. Instead, other factors, like economic downturns or increased demand for the product of the process unit, will cause operating levels to fluctuate. Efficiency changes, even when they lead to increases in product output from the same raw material input will not lead to increases in emissions unless an independent factor like increased demand for the product also occurs. We strongly support efficiency improvements where they can occur as long as the other safeguards in the rule are met.

Our inability to model economy-wide impacts does not mean we cannot characterize the effects of this rule. In qualitative terms, the case studies further support our conclusion that the old case-by-case approach to RMRR is having perverse effects by discouraging projects that would improve efficiency. As noted elsewhere, efficiency improvements necessarily imply less pollution holding everything else constant. For example, the case study on the pulp and paper industry finds that:

> ''[A]s [safety, reliability and efficiency] activities begin to be reviewed, those that raise * * * questions under the ambiguity of the current rules may be postponed, altered, or simply cancelled. Under the proposed ERP approach, these activities can be tested against a clearer set of criteria, that will allow more activities to be executed.
>
> * * * The new approach provides the regulatory clarity and certainty in making applicability decisions that is completely absent from the current case-by-case approach. Thus, the manner in which mills will handle the processing of equipment replacement activities, with regard to assessing their air permit applicability assessments, will be able to be streamlined. By definition, a ''case-by-case'' approach is simply unworkable for a typical pulp and paper mill, which may have thousands of maintenance and repair related work orders involving equipment replacements executed each year, affecting all areas of mill operations. Clearly, only a small subset of these equipment replacement activities can be evaluated using the complicated and vaguely interpreted multi-factor test inherent with the current case-by-case approach. * * * The proposed ERP approach helps by setting criteria for the routineness determinations. Under the proposed approach, a mill could set up more straight-forward guidelines to be followed throughout an organization that would allow quick and defensible determinations to be made regarding individual maintenance activities.''

Based on the analytical work performed by the contractor for pulp and paper, we expect that, at such facilities, the power boiler would be the most affected by the ERP, as well as an important or even dominant emissions source. We would anticipate that this would be true for many of the inorganic and organic chemical subsectors. In fact, we did not pursue an analysis of the chlor-alkali sector, in large part because the power boiler was the most obvious process unit to analyze, and the issues raised overlapped with the pulp and paper analysis. Thus, it is logical that the conclusions from the case studies would generalize to many other sectors.

Beyond the case studies, there is also a great deal of research and experience that allows for some robust findings. Previous research, such as the articles cited below, supports the following findings:

- *Enhanced efficiency and less pollution in the short run. Holding everything else constant, when a plant's efficiency increases, pollution must go down.* This nation's growing experience with pollution prevention, efficiency enhancements, voluntary environmental programs, and Environmental Management Systems adoption all reinforce the notion that enhanced plant efficiency translates into less environmental pollution.[10] Further, there is an economic incentive to keep plant efficiency high. Proper maintenance and the resulting efficiency enhancements and pollution prevention reduce resource needs and therefore reduce costs.[11] By providing the certainty needed to plan and undertake efficiency investments (economically efficient maintenance) this rule will achieve lower pollution.
- *The rule will allow firms to take advantage of pollution prevention opportunities and new, innovative pollution-reducing technologies.* As technology advances, plants will be able to replace existing components with functionally equivalent components that enhance energy efficiency (and reduce pollution).[12] One example of such an opportunity identified by the EPA contractor in one of the case studies is the replacement of spray guns on a topcoat operation in order to improve the quality of the paint job, while also increasing the transfer efficiency, and decreasing coating and associated solvent usage. This project could be deemed a physical change and have major NSR applicability ramifications if not for the ERP of the RMRR exclusion. Under the current case-by-case approach to RMRR, the facility may forego the change to the newer spray gun design if there is a perceived risk that the determination could be questioned. Under the new ERP approach, the change would proceed more definitively as RMRR, and thus the emission reductions could be realized.
- *While firms can operate existing plants efficiently, the rule preserves powerful incentives within the CAA to adopt ''leap-frog'' technologies and production processes that further reduce costs, increase efficiencies and reduce pollution.* Because of the CAA requirements and economic gains associated with improved efficiency, producers still have an incentive to invest in these clean technologies to replace older facilities.

In addition, a substantial body of research has explored the consequences of environmental regulation that sets more stringent control requirements for new sources. This research explores how differentiated regulation can affect firm behavior both on theoretical and empirical grounds. A listing of some of this literature is included in the RIA for the final rule. This literature provides further evidence that the NSR can easily distort investment and production decisions against more efficient maintenance and replacement.

Therefore, based on the information evaluated, we affirm the overall conclusion of our analysis—that today's rule has no practical effect on the environmental benefits of major NSR in the future. We have presented

[10] By efficiency, we mean unit of input per unit of output, for example, amount of energy needed to produce a specific amount of output. Another example would be the amount of raw material to produce a specific amount of output.

[11] A common example illustrates the point well. When one ''tunes-up'' a car, the automobile gets more miles per gallon, is cleaner burning, and is cheaper to operate.

[12] For example, energy efficiency is not a design parameter to determine functional equivalency for defining routine maintenance. Accordingly, a firm could adopt a more efficient ''functionally equivalent'' technology without fear of triggering NSR provisions.

additional, more detailed supporting information in our final RIA and our response to comments document, both of which can be found in the docket for today's action.

K. Consideration of Other Options

In addition to the cost-based approaches that we proposed, we also asked for comment on age-based and capacity-based approaches, and any other viable option for addressing RMRR.

1. Annual Maintenance, Repair and Replacement Allowance

We are not taking action on the proposed Annual Maintenance, Repair and Replacement Allowance option for the RMRR exclusion, and therefore public comments on this option are not addressed at this time. We will address comments on our proposed Annual Maintenance, Repair and Replacement Allowance if and when we take final action on that proposal.

2. Capacity-Based Option

As mentioned above, we considered the alternative option of developing an RMRR provision based on the capacity of a process unit. Under such an approach, an owner or operator could undertake any activity that does not increase the capacity of the process unit. Basing RMRR on capacity has appeal for several reasons. For starters, an objective of RMRR is to keep a unit operating at capacity and/or availability. In addition, the linkage between capacity and environmental impact is more apparent than that between cost and environmental impact. Finally, this type of approach might, in principle, be easier to use before beginning actual construction than some of the cost-based approaches.

Several commenters were concerned with defining the capacity of a process unit. Capacity may be defined based on input or output. Nameplate capacity of a process unit may vary greatly from the capacity at which the process unit may be able to operate. It may be more appropriate in some industries to measure capacity based on input while in others on output. Commenters felt that a capacity-based approach would not be workable at complex manufacturing sources, because ''capacity'' as a useful shorthand term for the processing capability correlates exactly only with a historical feed or product slate no longer available or made. A number of commenters supported a capacity-based option, generally indicating that a capacity-based option would be simpler and less burdensome to use than the other proposed approaches.

Another large concern of commenters was that a capacity-based approach could prevent facilities from performing activities that make the facilities more efficient. RMRR provisions need to include some form of the other approaches to account for energy efficiency projects at utilities, which could increase output capacity (*i.e.*, production) without necessarily increasing heat input or fuel consumption. Some commenters noted that maximum hourly emissions is a more appropriate surrogate for a change in capacity, because it is consistent with existing NSPS procedures and with averaging periods for ambient air quality monitoring and standards.

We agree that an appropriate capacity-based approach would have to be tailored to various types of sources, with capacity based on input for some and on output for others. As an example, in a review of promulgated and proposed Maximum Achievable Control Technology standards, six of eleven standards measured capacity based on process unit output while five standards based capacity on input. In fact, the NSPS exclusion for increases in production rate at 40 CFR 60.14(e) originally was dependent upon the ''operating design capacity'' of an affected facility. In proposed revisions to the NSPS program published on October 15, 1974, we state (39 *FR* 36948):

> ''The exemption of increases in production rate is no longer dependent upon the ''operating design capacity.'' This term is not easily defined, and for certain industries the ''design capacity'' bears little relationship to the actual operating capacity of the facility.''

We also agree that a capacity-based approach has its limitations, as described by the commenters. We have concluded that the ERP eliminates the need to implement the capacity based approach. We have decided not to finalize a capacity-based approach.

3. Age-Based Option

Under our proposed age-based approach, any process unit under a specified age could undergo any activity that does not increase the capacity of a process unit on a maximum hourly basis without triggering the requirements of the major NSR program. However, the activities could not constitute reconstruction of the process unit; that is, their cost could not exceed 50 percent of the cost of a replacement process unit. The age of the process unit would likely be in the range of 25–50 years. We also proposed that the owner or operator would have to become a Clean Unit as defined at 40 CFR 51.165(c)(3), 51.166(t)(3), and 52.21(x)(3), once the age of a process unit exceeds the age threshold.

Such an approach would provide an owner or operator a clear understanding of RMRR for an extended period of time. It also may provide the owner or operator greater flexibility than under the current system for a limited period of time. Like the capacity-based approach, this approach would, in principle, allow for a fairly simple preconstruction determination of applicability.

Very few commenters expressed any interest in developing this type of approach. Their concerns centered around defining capacity and establishing the age cut-off (because the useful life of equipment is difficult to establish and may vary greatly). Other concerns raised by commenters were that some of the activities that would be allowed at newer sources do not fit within any ordinary meaning of RMRR and some of the activities that would be forbidden at older facilities would come within that meaning, and also that some sources may consciously, and appropriately, engage in aggressive RMRR as a method of maximizing the life span of its process units, and an age-based approach would discriminate against them.

One commenter stated that EPA should establish a normal lifetime, tailored to each industry, beyond which industry would need to install BACT or shut down. This type of approach would obviously require a substantial amount of time and analytical effort.

The age of a source alone is not a legitimate reason to require the addition of pollution control equipment. Age has no direct bearing on a unit's environmental impact; some facilities maintain equipment better than others. We have decided not to promulgate an age-based approach. We have several basic concerns with this approach that we have not been able to reconcile. We also believe that the equipment replacement approach largely addresses the commenters' concerns regarding the age-based approach.

Thus, we have decided not to finalize a rule using this approach.

L. Specific List of Excluded Activities

Several commenters supported the development of lists of activities that are considered RMRR; some of these commenters also supported developing lists of activities that do not qualify as RMRR. Commenters suggested various ways in which such lists could fit into the overall RMRR program. We are concerned, however, that such a list

would have to be implemented through rulemaking, which would require a considerable amount of time, analytical effort, and resources.

A commenter suggested two ways by which we could develop a list of qualifying activities. First, we could review records for ongoing enforcement activity, to identify activities that we have and have not already alleged to be RMRR. There is an ample body of knowledge for electric power plants. Second, we could identify where activities would fall with respect to the cost criteria, then adjust the classification of each activity based on the WEPCO criteria to prepare lists of routine and nonroutine activities.

Some commenters felt that industry-specific lists of routine and nonroutine activities would provide the best interim clarification to major NSR until legislative reform is in place. Other commenters opposed the development of lists of activities that are considered RMRR, contending that such lists would become quickly outdated.

Some commenters requested that certain activities be specifically classified as RMRR. These suggested activities included the following:

- The common practice of changing out the engine core in a combustion turbine when it is due for overhaul (to reduce downtime). The removed engine core is overhauled offline, and is then available to be switched in for the next like-kind engine core that reaches the point of overhaul. Unless the components are upgraded, the heat input remains the same and so does the emissions rate.
- Any change that does not increase the achievable hourly emissions (as determined based on the permit and/or original design parameters) of existing equipment, processes, and emissions units.
- Certain activities, for example, boiler tuning and maintenance, repair and replacement of air pollution equipment or CEMS should be categorically excluded as RMRR.
- Any activity that is part of a long-term service agreement (primarily gas turbines) should be categorically excluded from major NSR.
- Any activity involving steam turbine overhaul work should be categorically excluded from major NSR.

Activities such as the above might be RMRR, but we believe there are simply too many activities in too many industries to effectively improve major NSR implementation through creation of lists. Moreover, lists would be a ''snapshot in time'' that would need to be reviewed and periodically updated for each industry sector. We have consequently decided not to attempt to list activities that are categorically excluded as RMRR.

M. Stand-Alone Exclusion for Energy Efficiency Projects

In the proposal, we acknowledged that certain types of activities that improve energy efficiency would not qualify as RMRR. We solicited comment on whether there was the need for a ''stand-alone'' exclusion for activities that promote energy efficiency.

Many commenters supported a stand-alone exclusion from major NSR for energy efficiency projects. With the following safeguards, they favored specifically excluding from the definition of ''major modification'' activities that promote energy efficiency and/or resource conservation when: (1) The activity results in lower emissions per unit of production or lower energy utilization per unit of production; (2) the percent decrease in emissions or energy utilization per unit of production is greater than the percent increase in maximum hourly emission rates; (3) activity costs do not exceed 50 percent of the replacement value of the process unit; and (4) the activity does not result in an increase in allowable emissions.

Other commenters pointed out that efficiency upgrades will frequently create incentives to further utilize a source and subsequently increase mass emissions. One commenter stated that if activities that result in small efficiency gains can qualify as RMRR, older, dirtier electric generating units will be better able to out-compete newer, much cleaner plants (that have higher costs due to emission controls).

One commenter stated that EPA is incorrect in stating that energy efficiency projects are being discouraged by major NSR, particularly under the new actual-to-projected-actual applicability test. This commenter added that the only projects that are discouraged by major NSR are ones that increase emissions. This commenter felt that the December 2002 final major NSR rules provide a broad range of major NSR exclusions (including revised baseline determinations, Clean Unit designations, pollution control projects, PALS, and combinations of these provisions, as well as an RMRR exclusion) under which energy efficiency projects will certainly occur.

We strongly support efforts to improve energy efficiency at existing power plants. These activities reduce the amount of air pollution emitted per unit of electricity generated. We believe that today's ERP supports energy efficiency projects and that the actual-to-projected-actual applicability test contained in the December 2002 NSR final rules also should remove impediments to energy efficiency projects. Together, these rules will obviate the need for a specified RMRR provision for energy efficiency projects. Thus, at this time we are not finalizing a provision to categorically exclude energy efficiency projects from major NSR.

N. Legal Basis

1. How Does the NSR Program Address Existing Sources and Why Is Today's Rule Consistent With This Approach?

The core of the NSR program is to require preconstruction permits for all new major sources. Congress specifically decided that existing sources generally would not be required to obtain permits. These considerations are the starting point for understanding its application to ''modifications'' and the meaning we should give that term.

The NSR program's scope is closely related to the scope of the NSPS program, created seven years earlier in the CAA Amendments of 1970. In section 111 of the CAA, which sets forth the NSPS provisions, Congress applied the New Source Performance Standards to ''new sources,'' secs. 111(b)(1)(B), 111(b)(4). Congress determined that as a general matter it would not impose the NSPS standards on existing sources, instead leaving to the State and local permitting authorities the decision of the extent to which to regulate those sources through ''State Implementation Plans'' designed to implement National Ambient Air Quality Standards (NAAQS). *See* sec. 110.

Congress followed a similar approach in determining the scope of the major NSR program established by the 1977 Amendments to the CAA. As amended, the CAA specifies that State Implementation Plans must contain provisions that require sources to obtain major NSR permits prior to the point of ''construction'' of a source. Secs. 172(c)(5); 165 (a). By contrast, the CAA generally leaves to State and local permitting authorities in the first instance the question of the extent, means and timetable for obtaining reductions from existing sources needed to comply with National Ambient Air Quality Standards. See secs. 172(c)(1), 161.

NSR's applicability to existing sources to which a ''modification'' is made is an exception to this basic concept. This exception likewise finds its roots in the NSPS program's applicability to ''modifications'' of existing sources. The 1970 CAA made the NSPS program applicable to modifications through its

definition of a ''new source,'' which it defined as ''any stationary source, the construction or modification of which is commenced after the publication of regulations * * * prescribing a[n applicable] standard of performance * * *.'' Section 111(a)(2). Section 111(a)(4), in turn, defined a ''modification'' as ''any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted from such source or which results in the emission of any air pollutant not previously emitted.''

Congress did not further define the terms ''physical change'' or ''change in the method of operation'' in the NSPS program. Therefore we issued regulations to clarify their meaning. As early as our 1971 NSPS regulations, we have made clear that many activities that do not affect the contemplated operation of a unit in a manner consistent with its original design are not physical or operational changes. Specifically, in our 1971 NSPS regulations, we determined that physical or operational changes do not include:

(1) ''Routine maintenance, repair and replacement'' of equipment;

(2) ''An increase in the production rate, if such increase does not exceed the operating design capacity of the affected facility'';

(3) ''An increase in the hours of operation''; and

(4) ''Use of an alternative fuel or raw material if * * * the affected facility is designed to accommodate such alternative use.''

36 FR at 24877 (Dec. 23, 1971). The premise behind characterizing these activities as not being ''changes'' is that they all contemplate that the plant will continue to be operated in a manner consistent with its original design.

The 1977 Amendments to the CAA likewise made the NSR program applicable to ''modifications.'' The original 1977 Amendments did so explicitly only in their provisions dealing with the non-attainment portion of the NSR program, *see* CAA sec. 171(4). But in ''technical and conforming'' amendments to the 1977 Amendments, Congress clarified that it intended the same result with respect to the prevention of significant deterioration provisions, see CAA sec. 169(2)(C).

Notably, Congress did not enact a new definition of ''modification'' in either the original 1977 Amendments or the ''technical and conforming amendments.'' Rather, it incorporated the NSPS definition of ''modification'' by cross-reference. See CAA sec. 169(2)(C); CAA sec. 171(4). In moving the adoption of those amendments, the sponsor (who was also the sponsor of the original 1977 Clean Air Act Amendments and who indicated that the technical amendments had been approved by all members of the original 1977 Amendments conference committee) stated in a summary and statement of intent that he placed in the Congressional Record that this was a deliberate choice. As that summary explained, Congress intended the amendment ''implement[ed] the [1977 Clean Air Act Amendments] conference agreement to cover ''modification'' as well as ''construction'' by defining ''construction'' in part C to conform to usage in other parts of the Act.'' 123 Cong. Rec. 36331 (Nov. 1, 1977). We have understood this to be a reference to our preexisting rules interpreting the term ''modification'' in the NSPS context. 49 FR 43211, 43213 (1984); see also 43 FR 26388, 26394, 26397 (June 19, 1978).

The original 1978 NSR rules concerning modifications that we promulgated after enactment of the 1977 Amendments generally tracked the NSPS approach by specifying that ''routine maintenance, repair and replacement'' was not a change; by specifying that changes in hours of operation and rates of production were not a ''change'; and by using the same basic approach NSPS used to the question of what constitutes an ''increase'' (increase to a source's potential to emit, except that the NSR rule used annual potential to emit while the NSPS program used short-term potential to emit). 43 FR 26388 (June 19, 1978). Even after the D.C. Circuit struck down other portions of our 1978 NSR rules in its original per curiam decision in *Alabama Power Co.* v. *Costle,* 606 F.2d 1068 (D.C. Cir. 1979), we continued to propose to retain the RMRR provision and the ''potential to emit'' approach to emissions increases in our revised rules, although to drop the ''hours of operation and rate of production'' provisions because the ''potential to emit'' provision made them unnecessary. 44 FR 51924, 51937 (September 5, 1979). In our final 1980 NSR rules, however, issued after the D.C. Circuit's final *Alabama Power* decision, 635 F.2d 323 (1980), we changed our approach to the definition of ''increase'' in the NSR context to specify that a change would trigger NSR if it would result in an increase over ''actual annual emissions.'' 45 FR 52676 (August 7, 1980). At the same time, and notably, we restored the provisions stating that increases in hours of operation or production rate were not ''changes.'' *Id.* at 52704.

It is important to understand what we did—and did not—decide in those final 1980 NSR rules. What we did decide was that as a general proposition, we would better serve the purposes of the NSR program if we used ''actual'' rather than ''potential'' emissions as a baseline for determining whether an activity at a new source results in an emissions increase. What we did not decide was that the purposes of the NSR program never allow us to exclude from the definition of ''change'' any activity at a plant that may increase its actual emissions but does not increase its ''potential'' emissions. In particular, for example, we decided to retain the ''hours of operation'' and ''rate of production'' exclusions even though such changes might result in increases in ''actual'' emissions because not having the provisions ''would severely and unduly hamper the ability of any company to take advantage of favorable market conditions.'' *Id.* Similarly, we retained the exclusion for ''routine maintenance, repair and replacement'' even though it too can result in emission increases. Yet there is little doubt that increases in hours of operation and rates of production and RMRR arguably could be understood to fall within the statutory definition of modification, since increases in hours of operation and rates of production certainly may be argued to be changes in the ''method of operation'' of a plant, and RMRR certainly may be argued to be a ''physical change'' to a plant. On balance, however, we rejected that interpretation and determined that the definition of modification should not be read so broadly as to encompass hours of operation or production rate increases, at least so long as they are unrelated to a physical change.

In the revisions to the NSR program we announced last December, we reiterated our adherence to the view that as a general matter we should continue to use ''actual'' rather than ''potential'' emissions in determining what activities constitute ''modifications'' under NSR. We continue to believe that is correct, but we also believe we should amplify our reasons for holding this view and why that view is entirely consistent with the rule we are promulgating today. In determining the scope to give to ''modification,'' we believe it is important to give weight to both aspects of what Congress decided in 1977. Congress decided that generally speaking, existing plants would not be subject to NSR, but that they would be subject to NSR when they made

''modifications.'' It is also important to understand why Congress chose this point at which to impose NSR on existing plants: to avoid the need to impose costly retrofits, but require placement of new control technology at a time when it makes the most sense for it to be installed. *See* H.R. Rep. No. 294, 95th Cong., 1st Sess. 185, *reprinted in* 1977 U.S. Code Cong. & Admin. News at 1254; 116 Cong. Rec. 32,918 (Sept. 21, 1970) (remarks of Sen. Cooper). *See also WEPCO,* 893 F.2d at 909–910; *National-Southwire Aluminum Co.* v. *EPA,* 838 F.2d 835, 843 (6th Cir., Boggs, J., dissenting), *cert. denied,* 488 U.S. 955 (1988). A wholesale exclusion of any activity that restores a plant to its potential to emit from the definition of modification is not consistent with this balance, since there are many activities that might have that effect but the conduct of which would be an extremely effective time for the placement for new control technology.

At the same time, we believe it is also important to give equal weight to the converse proposition that existing plants should not have to install new control technology in the ordinary course of their operations. To require them to do so would fail to give full effect to Congress's decision that existing sources generally would not be required to obtain permits. It would also subject these plants and the consumers who rely on them to enormous dislocation and expense. That is why we believe we have rightly excluded increases in hours of operation and rates of production from the definition of ''change.'' That is also why we believe we have rightly excluded ''routine maintenance, repair and replacement'' of existing plants from that definition.

For similar reasons, we believe today's rule draws an appropriate line of demarcation between replacements that should not be treated as changes, and those as to which further consideration of the question is appropriate. Our rule states categorically that the replacement of components with identical or functionally equivalent components that do not exceed 20% of the replacement value of the process unit and does not change its basic design parameters is not a change and is within the RMRR exclusion. On the other hand, the rule contemplates case-by-case evaluation of identical or functionally equivalent equipment replacements that do not have these characteristics.

We believe this approach is consistent with the intended scope of ''modification'' under the NSR program. The record of this rulemaking demonstrates that there are substantial categories of replacement activities undertaken in order to assure the safety, reliability and efficiency of existing plants that, if conducted at the same time, cost less than the 20-percent replacement cost threshold. It also demonstrates that there are sound business reasons why an owner or operator may find it makes sense to conduct some of these activities at the same time.

On the other hand, given the costs and technical problems associated with installing state-of-the-art pollution controls at existing facilities, we do not believe it plausible that, if faced with the choice of replacing equipment that has a value less than 20 percent of a process unit and having to install those controls, or coming up with another solution—such as repairing the existing equipment or limiting hours of operation so as to be confident that the activity will not trigger NSR—the owner of a source would elect to replace the equipment if he also has to install the state-of-the-art controls. Rather, we believe he will repair the existing equipment or artificially constrain production. Therefore the replacement of that equipment is not, in fact, an opportune time for the installation of such controls. It follows that treating such replacements as an NSR trigger will not lead to the installation of controls. Rather, it will merely create incentives to make a plant less productive than its design capacity would allow it to be.

We do not believe it is the policy of the CAA to seek to promote emissions reductions by forcing new limits on hours of operation or rates of production of existing plants. We made that point clear in 1980 when we determined that we should retain the hours of operation and rate of production exclusions in the NSR context. To the contrary, as we said in promulgating the 1980 rules, Congress's decision to exclude existing sources because of the dislocation that covering them would cause can reasonably be understood as allowing those sources to increase hours of operation or production up to permitted levels as market conditions dictate. We note that this does not leave such activities outside the scope of the CAA: if a State concludes that resulting air quality considerations warrant revision to its SIP to add further limitations to a permit, it may exercise its authority to impose them, even in the absence of anything that constitutes a ''change'' to an existing plant. But we believe that our 1980 conclusion that increases in hours of operation or production at existing plants should not trigger NSR remains the better construction of the CAA. That being the case, we now believe that the fact that such increases may occur after replacement of equipment that does not present an opportune time for the installation of controls should change that conclusion.

To summarize: with respect to existing sources, the purpose of the NSR provisions is simply to require the installation of controls at the appropriate and opportune time. The kind of replacements that automatically fall within the equipment replacement provision established today do not represent such an appropriate and opportune time. Accordingly, and given that it is consistent with the meaning of ''change'' to treat this kind of replacement as not being a ''change,'' we believe excluding them on that basis from the definition of ''modification'' as used in the NSR program is well calculated to serve all of the policies of the NSR provisions of the CAA, and is therefore a legitimate exercise of our discretion under *Chevron, U.S.A. Inc.* v. *NRDC,* 467 U.S. 837 (1984), to construe an ambiguous term. Likewise, we believe this approach is consistent with the holding in the *WEPCO* case, and with some though not all of that case's reasoning.

Today's rule treats the activities excluded from the definition of ''change'' as a category of ''routine maintenance, repair and replacement''. We received many comments as to whether we can and should adopt the ERP as an expansion of the RMRR exclusion. We believe it is appropriate to expand the former RMRR exception. Before promulgation of today's rule, we interpreted the phrase ''routine maintenance, repair and replacement'' to be limited to the day-to-day maintenance and repair of equipment and the replacement of relatively small parts of a plant that frequently require replacement. Today we are expanding the former definition of RMRR through this rulemaking to include other activities covered by the 20 percent cost threshold that are needed to facilitate the efficiency, reliability and safety of affected sources.

We believe it is appropriate to add one final note regarding the fact that this approach represents a change from the approach we have taken in the recent past. As the Supreme Court explained in *Chevron,* where it upheld a considerably more significant shift in the Agency's understanding of Title I of the CAA, to wit, the scope of the term ''stationary source,'' there is nothing inherently suspect about a change of approach of this type by an expert Agency seeking to interpret a technical statutory term so as best to accommodate competing

interests that Congress has charged the Agency with reconciling.

In section 101 of the CAA, Congress stated that Title I of the CAA has a dual purpose: ''to protect and enhance the quality of the Nation's air resources *so as to promote the public health and welfare and the productive capacity of its population*'' (emphasis added). This duality is reiterated in the statement of purpose of the PSD provisions and in the House Report accompanying the 1977 Amendments in connection with the non-attainment provisions. See sec. 160(1) (purposes of the PSD program are, inter alia, ''to protect public health and welfare from any actual or potential adverse effect'' of air pollution and ''to insure that economic growth will continue to occur consistent with the preservation of existing clean air resources''); H.R. Rep. No. 95–294, p. 211 (The ''two main purposes'' of the non-attainment permitting program are ''(1) to allow reasonable economic growth to continue in an area while making reasonable further progress to assure attainment of the standards by a fixed date; and (2) to allow States greater flexibility for the former purpose than EPA's present interpretative regulations afford'').

More specifically, with regard to the question at issue here, Congress directed EPA not to apply NSR preconstruction permitting requirements to existing plants as a general matter, but to apply them to ''modifications.'' Both directives are entitled to receive appropriate weight.

In these circumstances, changes in an Agency's understanding informed by greater experience are not only not surprising, they are to be expected. Effectuating these underlying Congressional commands requires a careful weighing and accommodation of the competing considerations underlying them. Sensitivity to unintended consequences, and a willingness to adjust policies in a manner informed by a better understanding of those consequences, are a central element of the responsibilities of an Agency given such a charge. As the *Chevron* Court explained:

> Our review of the EPA's varying interpretations of the word ''source''—both before and after the 1977 Amendments—convinces us that the agency primarily responsible for administering this important legislation has consistently interpreted it flexibly—not in a sterile textual vacuum, but in the context of implementing policy decisions in a technical and complex arena. The fact that the agency has from time to time changed its interpretation of the term ''source'' does not, as respondents argue, lead us to conclude that no deference should be accorded the agency's interpretation of the statute. An initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis. Moreover, the fact that the agency has adopted different definitions in different contexts adds force to the argument that the definition itself is flexible, particularly since Congress has never indicated any disapproval of a flexible reading of the statute.

467 U.S. at 863–64.

The Court went on to point out:

> In these cases the Administrator's interpretation represents a reasonable accommodation of manifestly competing interests and is entitled to deference: the regulatory scheme is technical and complex, the agency considered the matter in a detailed and reasoned fashion, and the decision involves reconciling conflicting policies. Congress intended to accommodate both interests, but did not do so itself on the level of specificity presented by these cases. * * *
>
> [A]n agency to which Congress has delegated policymaking responsibilities may, within the limits of that delegation, properly rely upon the incumbent administration's views of wise policy to inform its judgments. While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices—resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities. * * *
>
> We hold that the EPA's definition of the term ''source'' is a permissible construction of the statute which seeks to accommodate progress in reducing air pollution with economic growth. 'The Regulations which the Administrator has adopted provide what the agency could allowably view as * * * [an] effective reconciliation of these twofold ends. * * *'

Id. at 865–66 (citations and footnotes omitted). We believe the same reasoning applies here, and makes it entirely appropriate for us to adopt the equipment replacement provision today.

2. Why Today's Rule Appropriately Implements the Clean Air Act's Definition of Modification

As noted above, the modification provisions of the NSR program in parts C and D of title I of the CAA are based on the definition of modification in section 111(a)(4) of the CAA. The term ''modification'' means ''any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.'' As we observed in the notice of proposed rulemaking for this rule, that definition contemplates that you will first determine whether a physical or operational change will occur. If so, then you proceed to determine whether the physical or operational change will result in an emissions increase over baseline levels.

Real-world, common-sense usage of the word ''change'' in ''physical change'' and ''change in the method of operation'' shows that ''change'' is susceptible to multiple meanings. As we have noted previously, ''EPA has always recognized that Congress did not intend that every activity at an existing facility be considered a physical or operational change for purposes of NSR.'' 57 FR 32,314, 32,319 (July 21, 1992). Conceivably, ''change'' could encompass a range of activities from periodically replacing filters in production machinery, to once in-a-lifetime anticipated replacement of a component, to complete replacement of a production unit.

For example, all cars must periodically have their oil ''changed.'' When considered from one perspective, this activity does represent a ''change'' because old oil is removed and new oil is added. From another perspective, however, this activity would not be considered a change because it does not alter any significant characteristic of the car.

More to the point, chemical and pharmaceutical manufacturing operations often are designed, operated, and permitted as ''multi-function'' facilities. These facilities have numerous pieces of equipment (such as storage tanks, reactors, distillation columns, centrifuges, filter dryers, *etc.*) that can be reconfigured to accommodate a wide variety of products and operating conditions. When switching from product X to product Y, a plant can make substantial ''changes'' in the types of equipment used, the processing conditions, and the raw materials, reagents, solvents, and other processing materials. In this case, the same basic equipment is used to make a wide variety of end products. But, as long as the facility is operated as designed and permitted, we would not consider (and have not considered over the 20+ year life of the NSR program) such changes to be physical or operational ''changes'' for purposes of administering the NSR program.

Similarly, manufacturing equipment often is built with expendable components. For example, industrial gas turbines, such as those used to drive compressors on natural gas pipelines, regularly need to have components

replaced as they wear out due to the high temperature and pressure conditions inside the turbine. In fact, these gas turbines are built with the knowledge and expectation that such replacements will be needed. In recognition of this fact, under the New Source Performance Standard for gas turbines, 40 CFR part 60, subpart GG, we have concluded that ''replacement of stator blades, turbine nozzles, turbine buckets, fuel nozzles, combustion chambers, seals, and shaft packings' are not ''changes'' for regulatory purposes. See EPA–450/2–77–017a, background support document for Subpart GG. Such replacements are akin to getting a new set of brakes on a car—not something that happens often, not an activity that is necessarily inexpensive, but plainly an activity that is an expected part of maintaining and operating the facility and one that does not represent an alteration of the affected process unit.

As the preceding examples suggest, identifying activities that are ''changes'' for NSR purposes—and thus potentially trigger the need for an NSR permit—requires the exercise of Agency expertise. The application of agency expertise to the interpretation of this statutory term is the classic situation in which an agency is accorded deference under *Chevron, U.S.A., Inc.* v. *NRDC,* 467 U.S. 837 (1984).

Historically, we have asserted the power to interpret the relevant statutory terms. For example, even though both the NSPS and NSR programs incorporate the definition of ''modification'' from section 111, from the outset EPA has adopted quite disparate readings of the term in our rules. *See* 57 FR 32314, 32316 (July 21, 1992) (WEPCO rule discussion of how emission increases are calculated differently for the NSPS and NSR programs). The NSPS program requires a change to result in an increase in the hourly potential to emit of the facility. 40 CFR 60.14(a)–(b). In contrast, under NSR, we require an increase in annual emissions. *E.g.,* 40 CFR 51.165(a)(1)(x). These disparate tests reflect the Agency's view that the statutory term ''modification'' must be construed with a view to what makes sense in particular statutory context, and are not obvious on their face.

The exclusions from NSR we adopted in 1980 also reflect the exercise of the *Chevron* discretion. Not only did we adopt the RMRR exclusion at that time, but we also adopted exclusions for increases in the hours of operation, fuel changes, and raw material changes. Only the RMRR exclusion arguably could be justified as *de minimis*. For example, by doubling hours of operation, a 500 tpy emitting plant could conceivably double its emissions.[13] The extra 500 tpy is far above any level EPA has ever thought justifiable as *de minimis. E.g.,* 40 CFR 51.166(b)(23)(i) (definition of ''significant''). Nor is it likely that these other exclusions could be based on some inherent power to adopt categorical exclusions from the CAA's commands. *See Alabama Power Company* v. *Costle,* 636 F.2d 323, 359 (D.C. Cir. 1980) (''categorical exemptions * * * are not favored''). Accordingly, these other exclusions must be justified as an exercise of *Chevron* discretion.

As noted previously, in 1977 when Congress incorporated by reference into the NSR program the pre-existing NSPS statutory definition of modification, EPA had already adopted and had been administering regulations and policy under the NSPS program related to the meaning of the term ''modification.'' Our rules and policy provided that certain significant activities did not constitute physical or operational changes under the NSPS program prior to 1977 (or, for that matter, under the NSPS program as administered today). In addition to the gas turbine example provided above, perhaps the best indication that EPA did not consider the terms ''modification'' or ''change'' to cover everything other than *de minimis* activities is the exclusion for production rate increases under the NSPS program. 40 CFR 60.14(e)(2).

Under this provision, projects valued at millions of dollars can be implemented—with no limitations on the nature of the project—without triggering applicable NSPSs. For example, up to 10 percent of the asset value of affected operations at a kraft pulp mill can be invested in a project without triggering the applicable NSPS, 40 CFR part 60, subpart BB. The affected facilities at a kraft pulp mill typically are valued in excess of $100 million. Therefore, an owner or operator can implement projects costing millions of dollars without triggering the applicable NSPS. This holds true regardless of the nature of the project—it can be a ''like-kind'' replacement of the kind addressed by today's rule or it can result in a substantial change in the nature of the operation. Thus, under the NSPS program that existed when Congress enacted NSR and incorporated into NSR the applicable NSPS definitions, projects of substantial cost that result in substantial change in affected facilities were not considered ''changes.'' The same is true under the NSPS program as it stands today.

We recognize that the Agency previously has not specifically asserted that our interpretation of ''change'' and the exclusions from NSR are based on an exercise of *Chevron* discretion. In some instances, such as in a decision of the EAB, *In re: Tennessee Valley Authority,* 9 E.A.D. 357 (EAB 2000), and in briefs in various enforcement-related cases, we have previously interpreted ''change'' such that virtually all changes, even trivial ones, are encompassed by the CAA. Thus, we generally interpreted the exclusion as being limited to *de minimis* circumstances. However, EPA does have the authority to interpret these key terms through rulemaking. Upon further consideration of the history of our actions, the statute, and its legislative history, EPA believes that a different view is permissible, and, for policy reasons discussed above, more appropriate. Therefore, we adopt this view prospectively in today's action.[14]

The argument that our authority to exclude certain activities from being modifications under new source review can only be based on a *de minimis* rationale sometimes relies on the word ''any'' used to modify ''physical change'' and ''change in the method of operation,'' pointing to the word ''any'' in the definition of ''modification'' as a signal from Congress that the term ''change'' must be interpreted as encompassing the broadest possible sense of the term. Such an interpretation is not compelled by the language and legislative history of the statute, as demonstrated by the manner in which we have interpreted the word ''change'' under both the NSPS and the NSR programs.[15]

[13] As discussed below, our regulations provided a comparable exclusion from NSPS at the time of the 1977 Amendments that established the NSR program.

[14] We have taken positions in numerous court filings concerning the proper interpretation and usage of key statutory terms, such as ''physical change'' and ''any physical change.'' These positions were based on permissible constructions of the statute of which the regulated community had fair notice, and correctly reflect the Agency's reasonable accommodation of the Clean Air Act's competing policies in light of its experience at the time it adopted the RMRR exclusion in 1980. The Agency has sought, and has obtained, deference for its interpretations, and, notwithstanding today's adoption of a revised interpretation of the statute and an expansion of the RMRR exclusion, the Agency shall continue to seek deference for those prior interpretations in ongoing enforcement litigation.

[15] We note that the word ''any'' is simply a modifier that does not change the meaning of the word it modifies. For example, using the term ''any'' to modify the word ''car'' does not somehow change or expand the meaning of the word ''car.'' ''Any'' simply means that, once you have decided what a car is, then all objects meeting the definition are encompassed.

Nothing in the appellate case law directly disposes of this issue in a manner that prevents a new interpretation today. Two cases, *Alabama Power* and *WEPCO,* are relied on by some commenters to assert that EPA must interpret ''modification'' and ''change'' expansively and base all exclusions on a *de minimis* rationale. However, in *Alabama Power,* the issue before the court was the emissions increase portion of the definition of ''modification.'' The court would have allowed *de minimis* increases in emissions to be excluded from requirements applying to ''modifications'' under new source review but not emissions increases equal to the thresholds set by statute for new construction. 636 F.2d at 399–400. The court did not have before it the issue of what is a ''change'' and did not decide this issue.

In *WEPCO,* both parties advanced the view that the statute was clear on its face. EPA advanced the view that the term ''modification'' is necessarily broad, and that only *de minimis* departures are appropriate. WEPCO asserted that the plain meaning of the term ''physical change'' allowed for the five large scale rehabilitation projects it contemplated at its Port Washington plant. The *WEPCO* court held that the rehabilitation projects at issue were too large to reasonably conclude that they should not be treated as physical changes. The court's holding that the statute did not require the interpretation advanced by *WEPCO* does not deny EPA the discretion to decide to adopt a different, reasonable interpretation of the term ''modification.''

While the Court in WEPCO decided that the projects in that case were physical changes, the decision in *WEPCO* does not answer the question of where to draw the line between activities that should and should not be considered ''changes.'' Nevertheless, contrary to the suggestions of several commenters, the projects at issue in *WEPCO* would have cost more than the 20 percent of replacement cost threshold selected today and, barring other applicable exclusions, would have been subject to case-by-case review in the PSD program. *See* section III.D above.[16]

Some commenters argued that, to further the purposes of the statute, any interpretation must result in the eventual elimination of so-called ''grandfathered'' facilities. We recognize the need to reduce emissions from many existing plants—regardless of whether they are ''grandfathered'' (because they have never gone through NSR) or whether they have previously gone through NSR but can further reduce their emissions. EPA and States have issued regulations under a variety of statutory provisions to accomplish this goal in the past, and we will continue to do so in the future. We do not believe, however, the modification provisions of the CAA should be interpreted to ensure that all major facilities eventually trigger NSR. In fact, such an interpretation cannot be squared with the plain language of the CAA.

An existing source—whether grandfathered or not—triggers NSR only if it makes a physical or operational change that results in an emissions increase. Thus, a facility can conceivably continue to operate indefinitely without triggering NSR—making as many physical or operational changes as it desires—as long as the changes do not result in emissions increases. This outcome is an unavoidable consequence of the plain statutory language and is at odds with the notion that Congress intended that every major source would eventually trigger NSR. Moreover, there is nothing in the legislative history of the 1977 Amendments, which created the NSR program, to suggest that Congress intended to force all then-existing sources to go through NSR. To the extent that some members of Congress expressed that view during the debate over the 1990 amendments, such statements are not probative of what Congress meant in 1977. *Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.,* 511 U.S. 164, 185–86 (1994), and cases cited.

In deciding to incorporate by reference the statutory definition of ''modification'' in section 111, Congress's intent cannot have been to preclude us from adopting an interpretation of ''modification'' or ''change'' that differs from one that sweeps in all activities at a source. Under the NSPS program, this interpretation did not apply at the time of the 1977 amendments. When the NSPS definition of ''modification'' was adopted as part of the NSR program in 1977, the *Congressional Record* explained that this provision, ''[i]mplements conference agreement to cover ''modification'' as well as ''construction'' by defining ''construction'' in part C to *conform to usage in other parts of the Act.*'' 123 Cong. Rec. 36331 (Nov. 1, 1977) (emphasis added). Although we do not assert that the NSPS interpretation is the only one we could have adopted for NSR purposes (we followed quite a different interpretation from 1980 until today) at the very least it delineates a zone of discretion within which EPA may operate.

Our interpretation today of physical or operational change in a flexible way furthers the purposes of the statute. As noted above, Congress made it clear that the CAA in general, and the NSR program in particular, should be administered in a manner that protects the environment and promotes the productive capacity of the nation. CAA section 101(b)(1). The *Chevron* Court recognized Congress' intent and noted that ''Congress sought to accommodate the conflict between the economic interest in permitting capital improvements to continue and the environmental interest in improving air quality'' when it established the NSR program. *Chevron,* 467 U.S. at 851. Generally, we believe that these goals are best accomplished by providing state and local governments with discretion to make decisions as to what emissions reductions are needed in their jurisdictions to attain and maintain good air quality. *See* CAA section 101(a)(3).

It is now clear that many power plants and industrial facilities must substantially reduce their emissions in order to allow States to meet the stringent Federal air quality standards that the Supreme Court upheld in 2002. Under the CAA, Congress designed a number of regulatory programs that will collectively achieve the necessary reductions. Although the NSR program will effectively limit emissions from new and modified sources, it was not designed to achieve emission reductions from every existing source.

[16] We note that decisions recently were rendered in two of the Agency's pending NSR enforcement cases in the utility sector. In both cases, the Agency asserted that the then existing RMRR exclusion should be applied in a narrow fashion such that only *de minimis* projects should be excluded under that rule. In our case against Ohio Edison in the U.S. District Court for the Southern District of Ohio, the court determined that the disputed projects did not qualify for the existing RMRR exclusion. The Agency sought and received from the court broad deference with regard to the Agency's interpretation of the CAA and the relevant EPA rules. In our case against Duke Energy in the U.S. District Court for the Middle District of North Carolina, the court issued a decision on cross motions for summary judgment. The decision took exception with several legal conclusions reached in the Ohio Edison decision and determined that the then existing RMRR exclusion must be applied from the perspective of what projects are routine within the relevant industrial source category. EPA today is adopting prospectively a new interpretation of the CAA and is finalizing a revision to the RMRR regulation at issue in those cases.

IV. Administrative Requirements for This Rule

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], we must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified us that it considers this an ''economically significant regulatory action'' within the meaning of the Executive Order. We have submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record. All written comments from OMB to EPA and any written EPA response to any of those comments are included in the docket listed at the beginning of this notice under **ADDRESSES**. In addition, consistent with Executive Order 12866, we consulted with the State, local and tribal agencies that will be affected by this rule. We have also sought involvement from industry and public interest groups.

B. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 *FR* 43255, August 10, 1999), requires us 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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. Nevertheless, as described in section II.C of this notice, in developing this rule, we consulted with affected parties and interested stakeholders, including State and local authorities, to enable them to provide timely input in the development of this rule. This rule will not have substantial direct effects on the States, on the relationship between the national government and the State and local programs, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. We expect this rule will result in some expenditures by the States, we expect those expenditures to be limited to $580,000 for the estimated 112 affected reviewing authorities. This estimate reflects the small increase in burden imposed upon reviewing authorities in order for them to revise their State Implementation Plans (SIP). However, this revision provides sources permitted by the States greater certainty in application of the program, which should in turn reduce the overall burden of the program on State and local authorities. Thus, the requirements of Executive Order 13132 do not apply to this rule.

C. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 *FR* 67249, November 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.'' We believe that this rule does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply.

The purpose of today's final rule is to add greater flexibility to the existing major NSR regulations. These changes will benefit reviewing authorities and the regulated community, including any major source owned by a tribal government or located in or near tribal land, by providing increased certainty as to when the requirements of the major NSR program apply. Taken as a whole, today's rule should result in no added burden or compliance costs and should not substantially change the level of environmental performance achieved under the previous rules and guidance.

We anticipate that initially these changes will result in a small increase in the burden imposed upon reviewing authorities in order for them to be included in the State's SIP. Nevertheless, these options and revisions will ultimately provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden on the program on State and local authorities by reducing the number of required permit modifications. In comparison, no tribal government currently has an approved Tribal Implementation Plan (TIP) under the CAA to implement the NSR program. The Federal government is currently the NSR reviewing authority in Indian country. Thus, tribal governments should not experience added burden, nor should their laws be affected with respect to implementation of this rule. Additionally, although major stationary sources affected by today's rule could be located in or near Indian country and/or be owned or operated by tribal governments, such affected sources would not incur additional costs or compliance burdens as a result of this rule. Instead, the only effect on such sources should be the benefit of the added certainty and flexibility provided by the rule.

We recognize the importance of including tribal outreach as part of the rulemaking process. In addition to affording tribes an opportunity to comment on this rule through the proposal, on which two tribes did submit comments, we have also alerted tribes of this action through our website and quarterly newsletter. To this point we have not specifically consulted with tribal officials on this rule, but we are committed to work with any tribal government to resolve any issues that we may have overlooked in today's rules and that may have an adverse impact in Indian country.

D. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

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

potentially effective and reasonable alternatives that we considered.

This rule is not subject to Executive Order 13045, because we do not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. We believe that, based on our analysis of electric utilities, this rule as a whole will result in equal or better environmental protection than currently provided by the existing regulations, and do so in a more streamlined and effective manner.

E. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the requirements of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 1230.14), and a copy may be obtained from Susan Auby, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, by e-mail at auby.susan@epa.gov, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements included in ICR No. 1230.14 are not enforceable until OMB approves them.

The information that ICR No. 1230.14 covers is required for the submittal of a complete permit application for the construction or modification of all major new stationary sources of pollutants in attainment and nonattainment areas, as well as for applicable minor stationary sources of pollutants. This information collection is necessary for the proper performance of EPA's functions, has practical utility, and is not unnecessarily duplicative of information we otherwise can reasonably access. We have reduced, to the extent practicable and appropriate, the burden on persons providing the information to or for EPA. In fact, we feel that this rule will result in less burden on industry and reviewing authorities since it streamlines the process of determining whether a replacement activity is RMRR.

However, according to ICR No. 1230.14, we do anticipate an initial increase in burden for reviewing authorities as a result of the rule changes, to account for revising state implementation plans to incorporate these rule changes. As discussed above, we expect those one-time expenditures to be limited to $580,000 for the estimated 112 affected reviewing authorities. For the number of respondent reviewing authorities, the analysis uses the 112 reviewing authorities count used by other permitting ICR's for the one-time tasks (for example, SIP revisions).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of responding to the information collection; adjust existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. We will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the *Paperwork Reduction Act* (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

F. Regulatory Flexibility Analysis

We determined it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. We have also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) Any small business employing fewer than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of this rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's rule will not have a significant economic impact on a substantial number of small entities because it will decrease the regulatory burden of the existing regulations and have a positive effect on all small entities subject to the rule. This rule improves operational flexibility for owners or operators of major stationary sources and clarifies applicable requirements for determining if a change qualifies as a major modification. We have therefore concluded that today's rule will relieve regulatory burden for all small entities.

G. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We believe these rule changes will actually reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners or operators and clarifying the requirements. Because the program changes provided in the rule are not expected to result in a significant increase in the expenditure by State, local, and tribal governments, or the private sector, we have not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, we are not required to develop a plan with regard to small governments. Therefore, this rule is not subject to the requirements of section 203 of the UMRA.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 *note*) directs us to use voluntary consensus standards (VCS) in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

Although this rule does involve the use of technical standards, it does not preclude the State, local, and tribal reviewing agencies from using VCS. Today's rule is an improvement of the existing NSR permitting program. As such, it only ensures that promulgated technical standards are considered and appropriate controls are installed, prior to the construction of major sources of air emissions. Therefore, we are not considering the use of any VCS in today's rule.

I. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

Today's rule improves the ability of sources to maintain the reliability of production facilities, and effectively utilize and improve existing capacity.

J. Executive Order 12988—Civil Justice Reform

This final rule does not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

V. Effective Date for Today's Requirements

All of these changes will take effect in the Federal PSD program (codified at § 52.21) on December 26, 2003. This means that these rules will apply on December 26, 2003, in any area without an approved PSD program, for which we are the reviewing authority, or for which we have delegated our authority to issue permits to a State or local reviewing authority.

To be approvable under the SIP, State and local agency programs implementing part C (PSD permit program in § 51.166) or part D (nonattainment NSR permit program in § 51.165) must include today's changes as minimum program elements. State and local agencies should assure that any program changes under §§ 51.165 and 51.166 are consistently accounted for in other SIP planning measures. State and local agencies must adopt and submit revisions to their part 51 permitting programs implementing these minimum program elements no later than October 27, 2006. That is, for both nonattainment and attainment areas, the SIP revisions must be adopted and submitted within 3 years from today. The CAA does not specify a date for submission of SIPs when we revise the PSD and NSR rules. We believe it is appropriate to establish a date analogous to the date for submission of new SIPs when a NAAQS is promulgated or revised. Under section 110(a)(1) of the CAA, as amended in 1990, that date is 3 years from promulgation or revision of the NAAQS. Accordingly, we have established 3 years from today's revisions as the required date for submission of conforming SIP revisions.

Today's rule revises the Federal PSD program located at 40 CFR 52.21 to include the new equipment replacement provision of the RMRR exclusion. The part 52 regulations governing Federal permitting programs include the Federal PSD rule at 40 CFR 52.21 as well as the various sections of subparts C through DDD of part 52 that incorporate the Federal permitting program by reference for those jurisdictions where EPA applies part 52.21 as a Federal Implementation Plan because such jurisdictions lack an approved SIP to implement the PSD program. Because today's final rule adds additional paragraphs to the part 52.21 rules, we will be revising the references in subparts C through DDD to appropriately reflect the program that applies. This final action will be taken in a separate **Federal Register** notice and will not change the effective date of today's final changes.

VI. Statutory Authority

The statutory authority for this action is provided by sections 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601). This rulemaking is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Parts 51 and 52

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations.

Dated: August 27, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

■ 2. Section 51.165 is amended:

■ a. By revising paragraph (a)(1)(v)(C)(1).

■ b. By adding paragraphs (a)(1)(xliii) through (xlvi) and paragraph (h).

The revision and additions read as follows:

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(v) * * *

(C) * * *

(*1*) Routine maintenance, repair and replacement. Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (h) of this section;

* * * * *

(xliii)(A) In general, *process unit* means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit.

(B) Pollution control equipment is not part of the process unit, unless it serves a dual function as both process and control equipment. Administrative and warehousing facilities are not part of the process unit.

(C) For replacement cost purposes, components shared between two or more process units are proportionately allocated based on capacity.

(D) The following list identifies the process units at specific categories of stationary sources.

(*1*) For a steam electric generating facility, the process unit consists of those portions of the plant that contribute directly to the production of electricity. For example, at a pulverized coal-fired facility, the process unit would generally be the combination of those systems from the coal receiving equipment through the emission stack (excluding post-combustion pollution controls), including the coal handling equipment, pulverizers or coal crushers, feedwater heaters, ash handling, boiler, burners, turbine-generator set, condenser, cooling tower, water treatment system, air preheaters, and operating control systems. Each separate generating unit is a separate process unit.

(*2*) For a petroleum refinery, there are several categories of process units: those that separate and/or distill petroleum feedstocks; those that change molecular structures; petroleum treating processes; auxiliary facilities, such as steam generators and hydrogen production units; and those that load, unload, blend or store intermediate or completed products.

(*3*) For an incinerator, the process unit would consist of components from the feed pit or refuse pit to the stack, including conveyors, combustion devices, heat exchangers and steam generators, quench tanks, and fans.

(xliv) *Functionally equivalent component* means a component that serves the same purpose as the replaced component.

(xlv) *Fixed capital cost* means the capital needed to provide all the depreciable components. ''Depreciable components'' refers to all components of fixed capital cost and is calculated by subtracting land and working capital from the total capital investment, as defined in paragraph (a)(1)(xlvi) of this section.

(xlvi) *Total capital investment* means the sum of the following: All costs required to purchase needed process equipment (purchased equipment costs); the costs of labor and materials for installing that equipment (direct installation costs); the costs of site preparation and buildings; other costs such as engineering, construction and field expenses, fees to contractors, startup and performance tests, and contingencies (indirect installation costs); land for the process equipment; and working capital for the process equipment.

* * * * *

(h) *Equipment replacement provision.* Without regard to other considerations, routine maintenance, repair and replacement includes, but is not limited to, the replacement of any component of a process unit with an identical or functionally equivalent component(s), and maintenance and repair activities that are part of the replacement activity, provided that all of the requirements in paragraphs (h)(1) through (3) of this section are met.

(1) *Capital Cost threshold for Equipment Replacement.* (i) For an *electric utility steam generating unit,* as defined in § 51.165(a)(1)(xx), the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced. For a process unit that is not an electric utility steam generating unit the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced.

(ii) In determining the replacement value of the process unit; and, except as otherwise allowed under paragraph (h)(1)(iii) of this section, the owner or operator shall determine the replacement value of the process unit on an estimate of the fixed capital cost of constructing a new process unit, or on the current appraised value of the process unit.

(iii) As an alternative to paragraph (h)(1)(ii) of this section for determining the replacement value of a process unit, an owner or operator may choose to use insurance value (where the insurance value covers only complete replacement), investment value adjusted for inflation, or another accounting procedure if such procedure is based on Generally Accepted Accounting Principles, provided that the owner or operator sends a notice to the reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. Unless the owner or operator submits a notice to the reviewing authority, then paragraph (h)(1)(ii) of this section will be used to establish the replacement value of the process unit. Once the owner or operator submits a notice to use an alternative accounting procedure, the owner or operator must continue to use that procedure for the entire fiscal year for that process unit. In subsequent fiscal years, the owner or operator must continue to use this selected procedure unless and until the owner or operator sends another notice to the reviewing authority selecting another procedure consistent with this paragraph or paragraph (h)(1)(ii) of this section at the beginning of such fiscal year.

(2) *Basic design parameters.* The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.

(i) Except as provided in paragraph (h)(2)(iii) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(ii) Except as provided in paragraph (h)(2)(iii) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating

facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(iii) If the owner or operator believes the basic design parameter(s) in paragraphs (h)(2)(i) and (ii) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(iv) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (h)(2)(i) and (ii) of this section.

(v) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(vi) Efficiency of a process unit is not a basic design parameter.

(3) The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.

■ 3. Section 51.166 is amended:

■ a. By revising paragraph (b)(2)(iii)(a).

■ b. By adding paragraphs (b)(53) through (56) and paragraph (y).

The revision and additions read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(b) * * *

(2) * * *

(iii) * * *

(*a*) Routine maintenance, repair and replacement. Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (y) of this section;

* * * * *

(53)(i) In general, *process unit* means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit.

(ii) Pollution control equipment is not part of the process unit, unless it serves a dual function as both process and control equipment. Administrative and warehousing facilities are not part of the process unit.

(iii) For replacement cost purposes, components shared between two or more process units are proportionately allocated based on capacity.

(iv) The following list identifies the process units at specific categories of stationary sources.

(*a*) For a steam electric generating facility, the process unit consists of those portions of the plant that contribute directly to the production of electricity. For example, at a pulverized coal-fired facility, the process unit would generally be the combination of those systems from the coal receiving equipment through the emission stack (excluding post-combustion pollution controls), including the coal handling equipment, pulverizers or coal crushers, feedwater heaters, ash handling, boiler, burners, turbine-generator set, condenser, cooling tower, water treatment system, air preheaters, and operating control systems. Each separate generating unit is a separate process unit.

(*b*) For a petroleum refinery, there are several categories of process units: those that separate and/or distill petroleum feedstocks; those that change molecular structures; petroleum treating processes; auxiliary facilities, such as steam generators and hydrogen production units; and those that load, unload, blend or store intermediate or completed products.

(*c*) For an incinerator, the process unit would consist of components from the feed pit or refuse pit to the stack, including conveyors, combustion devices, heat exchangers and steam generators, quench tanks, and fans.

(54) *Functionally equivalent component* means a component that serves the same purpose as the replaced component.

(55) *Fixed capital cost* means the capital needed to provide all the depreciable components. ''Depreciable components'' refers to all components of fixed capital cost and is calculated by subtracting land and working capital from the total capital investment, as defined in paragraph (b)(56) of this section.

(56) *Total capital investment* means the sum of the following: all costs required to purchase needed process equipment (purchased equipment costs); the costs of labor and materials for installing that equipment (direct installation costs); the costs of site preparation and buildings; other costs such as engineering, construction and field expenses, fees to contractors, startup and performance tests, and contingencies (indirect installation costs); land for the process equipment; and working capital for the process equipment.

* * * * *

(y) *Equipment replacement provision.* Without regard to other considerations, routine maintenance, repair and replacement includes, but is not limited to, the replacement of any component of a process unit with an identical or functionally equivalent component(s), and maintenance and repair activities that are part of the replacement activity, provided that all of the requirements in paragraphs (y)(1) through (3) of this section are met.

(1) *Capital Cost threshold for Equipment Replacement.* (i) For an *electric utility steam generating unit,* as defined in § 51.166(b)(30), the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced. For a process unit that is not an electric utility steam generating unit the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced.

(ii) In determining the replacement value of the process unit; and, except as otherwise allowed under paragraph (y)(1)(iii) of this section, the owner or operator shall determine the replacement value of the process unit on an estimate of the fixed capital cost of constructing a new process unit, or on the current appraised value of the process unit.

(iii) As an alternative to paragraph (y)(1)(ii) of this section for determining

the replacement value of a process unit, an owner or operator may choose to use insurance value (where the insurance value covers only complete replacement), investment value adjusted for inflation, or another accounting procedure if such procedure is based on Generally Accepted Accounting Principles, provided that the owner or operator sends a notice to the reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. Unless the owner or operator submits a notice to the reviewing authority, then paragraph (y)(1)(ii) of this section will be used to establish the replacement value of the process unit. Once the owner or operator submits a notice to use an alternative accounting procedure, the owner or operator must continue to use that procedure for the entire fiscal year for that process unit. In subsequent fiscal years, the owner or operator must continue to use this selected procedure unless and until the owner or operator sends another notice to the reviewing authority selecting another procedure consistent with this paragraph or paragraph (y)(1)(ii) of this section at the beginning of such fiscal year.

(2) *Basic design parameters.* The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.

(i) Except as provided in paragraph (y)(2)(iii) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(ii) Except as provided in paragraph (y)(2)(iii) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(iii) If the owner or operator believes the basic design parameter(s) in paragraphs (y)(2)(i) and (ii) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(iv) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (y)(2)(i) and (ii) of this section.

(v) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(vi) Efficiency of a process unit is not a basic design parameter.

(3) The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.

PART 52—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 52.21 is amended:
■ a. By revising paragraph (b)(2)(iii)(*a*).
■ b. By adding paragraphs (b)(55) through (58) and paragraph (cc).

The revision and additions read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

(b) * * *

(2) * * *

(iii) * * *

(*a*) Routine maintenance, repair and replacement. Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc) of this section;

* * * * *

(55)(i) In general, *process unit* means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit.

(ii) Pollution control equipment is not part of the process unit, unless it serves a dual function as both process and control equipment. Administrative and warehousing facilities are not part of the process unit.

(iii) For replacement cost purposes, components shared between two or more process units are proportionately allocated based on capacity.

(iv) The following list identifies the process units at specific categories of stationary sources.

(*a*) For a steam electric generating facility, the process unit consists of those portions of the plant that contribute directly to the production of electricity. For example, at a pulverized coal-fired facility, the process unit would generally be the combination of those systems from the coal receiving equipment through the emission stack (excluding post-combustion pollution controls), including the coal handling equipment, pulverizers or coal crushers, feedwater heaters, ash handling, boiler, burners, turbine-generator set, condenser, cooling tower, water treatment system, air preheaters, and operating control systems. Each separate generating unit is a separate process unit.

(*b*) For a petroleum refinery, there are several categories of process units: those that separate and/or distill petroleum feedstocks; those that change molecular structures; petroleum treating processes; auxiliary facilities, such as steam generators and hydrogen production units; and those that load, unload, blend or store intermediate or completed products.

(*c*) For an incinerator, the process unit would consist of components from the feed pit or refuse pit to the stack, including conveyors, combustion devices, heat exchangers and steam generators, quench tanks, and fans.

(56) *Functionally equivalent component* means a component that serves the same purpose as the replaced component.

(57) *Fixed capital cost* means the capital needed to provide all the depreciable components. ''Depreciable

components'' refers to all components of fixed capital cost and is calculated by subtracting land and working capital from the total capital investment, as defined in paragraph (b)(58) of this section.

(58) *Total capital investment* means the sum of the following: all costs required to purchase needed process equipment (purchased equipment costs); the costs of labor and materials for installing that equipment (direct installation costs); the costs of site preparation and buildings; other costs such as engineering, construction and field expenses, fees to contractors, startup and performance tests, and contingencies (indirect installation costs); land for the process equipment; and working capital for the process equipment.

* * * * *

(cc) Without regard to other considerations, routine maintenance, repair and replacement includes, but is not limited to, the replacement of any component of a process unit with an identical or functionally equivalent component(s), and maintenance and repair activities that are part of the replacement activity, provided that all of the requirements in paragraphs (cc)(1) through (3) of this section are met.

(1) *Capital cost threshold for equipment replacement.* (i) For an *electric utility steam generating unit,* as defined in § 52.21(b)(31), the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced. For a process unit that is not an electric utility steam generating unit the fixed capital cost of the replacement component(s) plus the cost of any associated maintenance and repair activities that are part of the replacement shall not exceed 20 percent of the replacement value of the process unit, at the time the equipment is replaced.

(ii) In determining the replacement value of the process unit; and, except as otherwise allowed under paragraph (cc)(1)(iii) of this section, the owner or operator shall determine the replacement value of the process unit on an estimate of the fixed capital cost of constructing a new process unit, or on the current appraised value of the process unit.

(iii) As an alternative to paragraph (cc)(1)(ii) of this section for determining the replacement value of a process unit, an owner or operator may choose to use insurance value (where the insurance value covers only complete replacement), investment value adjusted for inflation, or another accounting procedure if such procedure is based on Generally Accepted Accounting Principles, provided that the owner or operator sends a notice to the reviewing authority. The first time that an owner or operator submits such a notice for a particular process unit, the notice may be submitted at any time, but any subsequent notice for that process unit may be submitted only at the beginning of the process unit's fiscal year. Unless the owner or operator submits a notice to the reviewing authority, then paragraph (cc)(1)(ii) of this section will be used to establish the replacement value of the process unit. Once the owner or operator submits a notice to use an alternative accounting procedure, the owner or operator must continue to use that procedure for the entire fiscal year for that process unit. In subsequent fiscal years, the owner or operator must continue to use this selected procedure unless and until the owner or operator sends another notice to the reviewing authority selecting another procedure consistent with this paragraph or paragraph (cc)(1)(ii) of this section at the beginning of such fiscal year.

(2) *Basic design parameters.* The replacement does not change the basic design parameter(s) of the process unit to which the activity pertains.

(i) Except as provided in paragraph (cc)(2)(iii) of this section, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(ii) Except as provided in paragraph (cc)(2)(iii) of this section, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(iii) If the owner or operator believes the basic design parameter(s) in paragraphs (cc)(2)(i) and (ii) of this section is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(iv) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (cc)(2)(i) and (ii) of this section.

(v) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(vi) Efficiency of a process unit is not a basic design parameter.

(3) The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.

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Part III

Department of Health and Human Services

Center for Disease Control and Prevention

HIV/AIDS Surveillance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

HIV/AIDS Surveillance

Announcement Type: New.
Funding Opportunity Number: Program Announcement 04017
Catalog of Federal Domestic Assistance Number: 93.944
Key Dates: Letter of Intent Deadline: None. Application Deadline: January 16, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under the Public Health Service Act sections 301 (42 U.S.C. 241); 318b (42 U.S.C. 247c–2), as amended.

Purpose: The purpose of the program is to monitor the HIV epidemic through core surveillance of HIV/AIDS cases; HIV incidence; HIV behavioral surveillance; capacity building for epidemiologic and program evaluation activities; enhanced surveillance for perinatal prevention; for special evaluations of these HIV Surveillance programs; and supplemental projects to assess surveillance of transmission of atypical strains of HIV, including antiretroviral drug resistant virus; unusual modes of transmission of HIV; and assessments of HIV prevalence. FY 2004 is the first year of a three-year project period. Recipients may implement certain required or supplemental activities in years one, two or three, depending on eligibility criteria and when HIV case surveillance activities have been, or will be implemented. Recipients will need to submit a competitive application for each supplemental project described in Parts IV and V of this announcement in the year in which funds are requested. See further discussion on this subject in Parts IV and V. This program addresses the ''Healthy People 2010'' focus area for HIV.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for HIV/STD/TB Prevention (NCHSTP): Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

Part I. Core Surveillance

AIDS case surveillance is conducted in all States and U.S. Territories, and the cities of Chicago, Houston, Los Angeles, New York, Philadelphia, and San Francisco. HIV infection case surveillance is not yet conducted in all States or territories, but CDC recommends that all areas should conduct HIV infection case surveillance as an integrated component of their HIV/AIDS surveillance activities. The National HIV/AIDS Surveillance System is the primary source of population-based information on persons with HIV/AIDS in the United States.

The primary purpose of providing cooperative agreement funds for the core HIV/AIDS Surveillance program is to assist all State and territorial health departments to conduct the following activities:

1. Monitor the number of annual cases of HIV diagnosed, the prevalence of persons living with HIV infection, and HIV-related morbidity (including AIDS) and mortality in adults, adolescents and children.
2. Monitor perinatal exposure to HIV and HIV infection in infants.
3. Monitor behaviors related to HIV testing, risks/exposure to HIV infection, and access to care in HIV-infected populations.
4. Identify changes in trends of HIV transmission.
5. Assist State and local health departments to use these data as a guide for allocation of many federal resources for HIV treatment, care, and other services provided to HIV-infected persons and affected communities, and for prevention and treatment services planning and evaluation.
6. Evaluate the performance of HIV/AIDS surveillance systems.
7. Implement projects to supplement the information available through HIV and AIDS case reporting to enhance and extend the ability of States and local areas to plan for public health programs.

Part II. HIV Incidence Surveillance

The purpose of HIV Incidence Surveillance is to provide reliable and scientifically valid estimates of the number of newly acquired infections at the local, State, territorial, and national level. The purpose of CDC funding for this activity is to provide support to State, territorial and local health departments for development of the infrastructure in newly funded areas, and expansion of activities in areas previously funded for this activity, to incorporate HIV incidence estimation into HIV Surveillance. The ultimate goal is for States, territories, and the separately funded cities to be able to:

1. Collect and test the diagnostic blood specimens from all newly diagnosed HIV infections reported from public and private laboratories and providers to HIV Surveillance.
2. Collect the HIV testing information needed for the statistical estimates of incidence.
3. Calculate population-based estimates of HIV incidence.
4. Use these to identify emerging epidemics, monitor trends in transmission, target prevention resources and interventions to areas and populations most heavily affected, and evaluate programs designed to prevent the transmission of HIV.

Part III. Capacity Building for Epidemiologic and Program Evaluation Activities

There are multiple sources of data available to health departments that can be analyzed to guide program planning and assess the impact of HIV prevention programs in a health department's jurisdiction. These include surveillance, program evaluation and data from special projects. There are systems and guidances in place for various data sets. Opportunities to use these data are often not exploited to better assess HIV status and prevention efforts in a jurisdiction because of the limited availability of trained and dedicated personnel with the capacity to collectively or comprehensively analyze and synthesize these types of information.

The purpose of providing funds for this activity is to improve the epidemiologic, evaluative, analytic, and dissemination capabilities of health departments that currently have limited resources. The specific purpose of this support is to allow health departments to hire dedicated, professional staff. Staff employed through this funding will assist health departments to develop and implement a more integrated use of these independent, but related data sets by:

1. Analyzing and interpreting HIV/AIDS surveillance and other health-related data to describe the HIV/AIDS epidemic within their jurisdiction in terms of person, place and time for various populations.
2. Producing consolidated epidemiologic profiles that meet the needs of both CDC-supported HIV prevention planning programs and HRSA-supported HIV care planning programs.
3. Collecting, analyzing, interpreting, and disseminating surveillance, program, and other health-related data to assess the effectiveness of HIV prevention efforts.
4. Providing technical assistance to community planning groups on the use of HIV and other public health data for program planning and evaluation.
5. Collaborating with CDC to develop the systematic collection and analysis of

community-related and program data which can be used with HIV/AIDS surveillance data to track progress towards goals identified in CDC's HIV Prevention Strategic Plan *(http://www.cdc.gov/nchstp/od/hiv_plan/default.htm).*

Part IV. Enhanced Surveillance for Perinatal Prevention

The purpose of providing funds for this activity is to target and follow the progress toward maximal reduction of perinatal HIV transmission. Specifically, this support is to allow State and local health departments to evaluate (1) the impact of implementation of efforts to maximally reduce perinatal HIV transmission; (2) prevention failures for perinatal HIV transmission; (3) the efficacy of zidovudine (ZDV) and other antiretroviral medications in preventing perinatal HIV transmission; (4) potential adverse outcomes of perinatal and postnatal antiretroviral therapy; and (5) the Public Health Service recommendations for opportunistic infection prophylaxis by:

1. Conducting medical record reviews of mother/infant pairs and longitudinal follow-up of all HIV exposed children to ascertain knowledge of maternal HIV infection status before birth, HIV incidence, AIDS incidence, and death, the use of maternal and neonatal ZDV and its efficacy in preventing HIV transmission, and the use of other antiretroviral medications.
2. Conducting medical record reviews to evaluate recommendations for opportunistic infection prophylaxis and initiation of HIV evaluation and treatment in children.
3. Assessing potential adverse outcomes of exposure to antiretroviral medications among infected and uninfected children in the short term (*e.g.*, birth defects, ascertained through record reviews and registry matches) and in the long term (*e.g.*, by matching to tumor registries).
4. Matching HIV/AIDS registries to birth registries to ensure complete ascertainment of mother/infant pairs.
5. Collaborating with CDC to track progress towards the maximal reduction of perinatal HIV transmission.

Part V. Laboratory Testing for Recent HIV Infection

The Serologic Testing Algorithm for Recent HIV Seroconversion (STARHS) is the currently accepted method used for estimation of HIV incidence. With STARHS, confirmed HIV-positive samples are analyzed with a Less Sensitive HIV Enzyme-Linked Immunosorbent Assay (LS-EIA) which identifies antibodies at a point later in the course of infection than the routine test. In performance of STARHS, the standard testing methodology for a commercially available HIV Enzyme-Linked Immunosorbent Assay (EIA) is altered by reducing the incubation time and increasing the dilution of the sample according to extremely precise criteria. Quantitative values from these tests are evaluated against control values and cut-off points to estimate the likelihood that that sample was collected from an individual who was infected with HIV within a finite period of time before the sample was collected. Because the testing procedures must be conducted with extreme precision, multiple control samples are run in tandem with each sample run. Other tests to identify recent HIV infection are currently being developed. In order to adopt those for more widespread use, new tests will need to be run on samples tested with the existing method to validate the new methodology.

STARHS has not been approved by the Food and Drug Administration (FDA) for routine use. STARHS is conducted under an Investigational New Drug/Device (IND) authorization from the FDA which allows for testing in controlled settings in which performance is closely monitored and data with regard to unforeseen adverse events and aggregate results are reported through CDC. All IND laboratories are required to participate in a quarterly proficiency testing program administered by CDC. A limited number of laboratories participate in the CDC-sponsored IND.

Since 1999, CDC has supported six health department laboratories to conduct the STARHS on stored, un-linked HIV-positive samples from HIV testing programs and research projects. This testing was for research purposes, therefore, it was not necessary to complete testing and return test results quickly. Laboratories were allowed to hold specimens, run them in batches, and schedule testing to accommodate the time requirements for their other work. For HIV Incidence Surveillance, laboratories will be required to return results to submitting health departments quickly. The current laboratory protocol allows for either manual or automated dilution and processing. For this activity, only laboratories that agree to use automated methods will be supported in order to maximize the number of tests they will be able to process and to optimize the accuracy and consistency of STARHS results. Laboratories will be selected to maximize efficiency, ensure timely availability of test results for all geographic areas and to standardize methodology.

Part VI. Behavioral Surveillance

CDC's HIV/AIDS Strategic Plan has identified that monitoring behaviors that place people at risk for HIV infection is a key element of an integrated surveillance system. Measures of behavior are necessary to quantify progress in the plan's objectives. In addition, the plan identifies that studies of HIV incidence in special populations, including populations at high risk for infection, are an important strategy to provide locally relevant data for prevention resource allocation. The objectives of this program are to develop an ongoing surveillance system to ascertain the prevalence of HIV risk behaviors among groups at high risk for HIV infection for use in developing and directing national prevention services and programs; and to evaluate the impact of a variety of prevention efforts.

This announcement provides an opportunity to capitalize on experience recruiting at-risk individuals from non-healthcare community settings using a scientifically sound methodology to develop an ongoing system for surveillance of behaviors related to HIV acquisition. This system will assess risk behaviors and trends in behaviors over time among adults 18 years old and older at high risk for HIV infection through sexual behavior between men and injection drug use. These studies may be expanded to include high risk heterosexuals. In addition, access to and utilization of HIV prevention programs, including HIV testing, will be assessed. Each funded site will be expected to enroll at least 500 Men Who Have Sex with Men (MSM) and 500 Injection Drug Users (IDUs). Funded sites will also be expected to collaborate with CDC directly funded community-based organizations (CBOs) and CBOs funded by States/cites through the community planning process for allocating Federal HIV prevention funds, schools of public health, universities, ethnographers and behavioral scientists.

Part VII. Core Surveillance in the Pacific Island Jurisdictions

AIDS case surveillance is conducted in all U.S. dependencies, possessions, and independent nations that make up the six Pacific Island jurisdictions referred to as the Pacific Island Jurisdiction AIDS Advisory Group (PIJAAG). These islands and island groups are American Samoa, Guam, Marshall Islands, Palau, the Commonwealth of the Northern Mariana Islands and the Federated States of

Micronesia. HIV infection case surveillance is not yet conducted in all these areas, but CDC recommends that all areas should conduct HIV case surveillance as an integrated component of their HIV/AIDS surveillance activities. However, there are substantial public health, logistical and medical infrastructure challenges to conducting core surveillance in these island jurisdictions.

The objective of this proposal is to support the infrastructure and activities necessary to enable newly identified HIV/AIDS cases to be reported to the Centers for Disease Control and Prevention's Statistics and Data Management Branch. Preparatory to this end, each island jurisdiction must be authorized by local public health law, rule or regulation to collect and report the necessary medical and socio-demographic information to the CDC. A letter, signed by the jurisdiction's senior public health official, must be sent to Dr. Matthew McKenna, Chief for Informatics, HIV Incidence and Case Surveillance Branch (HICSB) declaring the jurisdiction's intent to report previously unidentified HIV/AIDS cases to the CDC. Also a copy of the jurisdiction's legal authority to report HIV/AIDS cases to the CDC will be needed.

The primary purpose of providing cooperative agreement funds for the core HIV/AIDS Surveillance program is to assist all State and territorial health departments to conduct the following activities:

1. Monitor the number of annual cases of HIV diagnosed, the prevalence of persons living with HIV infection, and HIV-related morbidity (including AIDS) and mortality in adults, adolescents and children.
2. Monitor perinatal exposure to HIV and HIV infection in infants.
3. Monitor behaviors related to HIV testing, risks/exposure to HIV infection, and access to care in HIV-infected populations.
4. Identify changes in trends of HIV transmission.
5. Assist territorial and local health departments to use these data as a guide for allocation of many federal resources for HIV treatment, care, and other services provided to HIV-infected persons and affected communities, and for prevention and treatment services planning and evaluation.
6. Conduct basic evaluation and quality control assessment of the surveillance data collected.

Activities

Awardee activities for this program are as follows:

Part I. Core Surveillance

Recipient Activities

1. Plan and conduct HIV/AIDS surveillance activities in collaboration and coordination with CDC, and, where appropriate, with State and local professional associations; health care providers and institutions serving, diagnosing, or providing treatment and care for persons with HIV/AIDS, including laboratories providing HIV, CD4+ lymphocyte and HIV–1 Ribonucleic Acid Determination (*i.e.* viral load) testing; organizations that serve persons at increased risk of HIV/AIDS (*e.g.*, drug treatment facilities, STD clinics, family planning agencies, maternal and infant care programs, comprehensive hemophilia treatment centers, correctional facilities); community groups and organizations, especially those with a racial and ethnic minority membership and focus; and HIV/AIDS service organizations.

a. Active case finding.

At a minimum, all recipients shall conduct active case finding (*i.e.* soliciting case reports in a timely manner directly from potential reporting sources) in large in- and out-patient facilities serving HIV-infected persons and in laboratories, where feasible and permitted by law, and shall conduct a systematic review of death certificates. Other required components of active surveillance programs include educating providers on their reporting responsibilities, establishing on-going communication with all reporting sites and providing them feedback, conducting routine visits to reporting sources, and establishing awareness of and support for surveillance activities. In particular, in areas where a large volume of reports or limited resources preclude timely investigation of new case reports, special efforts shall be made to inform providers of their importance in promptly notifying the health department of any cases with unusual transmission, laboratory or clinical circumstances/characteristics. The minimum information required to report a case of HIV infection or AIDS to CDC's HIV/AIDS Reporting System (HARS) is the alpha-numeric (soundex) code of the patient's name (patient and physician names should not be submitted to CDC); state-assigned patient identifier number; HIV/AIDS diagnosis information, including date(s) of diagnosis; and the patient's date of birth, race/ethnicity, and sex.

Two additional variables that are critical to ascertain are initial CD4 count and mode of HIV exposure. In an effort to better characterize the extent of disease at diagnosis, and the impact of targeted testing efforts on identifying persons early in the course of their infections, information on CD4 count at initial diagnosis shall be collected. This information should be submitted to CDC as part of the case record. Information on the mode of HIV exposure is also essential in order to monitor epidemic trends and target prevention interventions. Therefore, timely follow-up to complete risk history shall be conducted. Funding limitations may preclude complete investigations of all cases, but at a minimum, States are expected to follow-up a representative sample of reported cases to ascertain risk according to a protocol developed by CDC and the recipient.

Where pediatric HIV exposure and infection surveillance is conducted, recipients shall also collect data on maternal HIV test history, prenatal and neonatal antiretroviral therapy, and other variables relevant to the evaluation of recommended actions to prevent perinatal HIV transmission. For areas with the highest burden of perinatal HIV transmission, additional funds are available to conduct enhanced surveillance activities for HIV-infected mothers and their children (See section D, Funding, above; and Part IV, Enhanced Surveillance for Perinatal Prevention, below in this section)

b. Follow-up investigations of cases/populations of special epidemiologic significance.

Recipients shall develop procedures for promptly notifying CDC of unusual occurrences of HIV transmission and for using CDC-developed protocols and criteria to conduct epidemiologic and laboratory investigations of cases that may have rare or previously unidentified modes of HIV transmission, unusual clinical manifestations, or unusual laboratory test results. These include transfusion and transplant-related cases, cases of HIV transmitted in health care or other occupational settings, cases of HIV–2 infection, cases transmitted through female-to-female sexual contact, cases with potentially unusual HIV strain variants, and cases with clinical evidence of HIV infection but negative HIV test results.

Recipients may also propose activities to better describe the epidemic in specific populations of epidemiologic significance or interest (*e.g.* for example, persons diagnosed concurrently with HIV and TB or HIV and STDs), or in collaboration with prevention and care partners to augment the collection of risk behaviors in cases reported initially with no reported risk (NRR) or projects to collect risk behaviors of cases using

novel methods of risk assessment such as computer-assisted interviews.

c. Evaluation of the performance of the surveillance system.

Recipients shall continue to evaluate the attributes of their HIV/AIDS surveillance system according to protocols provided by CDC that have been developed as part of focused pilot projects. Ongoing evaluation will continue regardless of the status of, or procedures used, to conduct HIV/AIDS surveillance (*e.g.* AIDS or HIV reporting, or name or code-based reporting).

All evaluation projects should include critical reviews of surveillance methods and redirection of resources to those case-finding methods that are the most accurate and productive. Using the recommendations published in ''CDC Guidelines for National Human Immunodeficiency Virus Case Surveillance, Including Monitoring for Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome'' (see Attachment A for summary) these evaluations should include routine analysis of surveillance data to discover possible sources of under reporting and delays in reporting, monitoring data quality, and assessing completeness of reporting by statistical methods developed by CDC (*e.g.* multiple source capture-recapture) or comparing surveillance registries with alternate databases that are not routinely used for case finding (*e.g.*, Medicaid databases).

At least once a year, all recipients shall routinely re-abstract demographic, risk, laboratory, and clinical data from a representative sample of records to assess the quality and validity of information collected.

d. Interstate reciprocal notification of newly identified HIV/AIDS cases.

Recipients should routinely interact with other reporting areas using a list of potential inter-State duplicates supplied by CDC to ensure that reciprocal notification of newly identified HIV/AIDS cases, perinatal exposure cases, and deaths from HIV infection is executed. Routine engagement in this activity will minimize the number of duplicate case reports in the national data system. This communication is supported by the Council of State and Territorial Epidemiologists (Position statement 01–ID–04). It should be carried out by appropriately trained and authorized surveillance staff, in a confidential manner consistent with local security, confidentiality and reporting policies and procedures. Recipients will use the same system for reciprocal notification of HIV, AIDS, perinatal HIV exposure and deaths among persons with HIV infection, including provision of appropriate identifying information (*e.g.*, name or other identifier). Currently, because of the diversity and limitations of the coded identifiers used by reporting areas in States engaged in alternatives to confidential, name-based reporting for HIV cases, there is no scientifically validated, systematic way for CDC to identify potential duplicates for HIV cases in those areas. These areas are encouraged to communicate with nearby reporting areas to identify the most accurate and efficient methods for minimizing duplication across State reporting jurisdictions.

e. Analysis and dissemination of HIV/AIDS surveillance data and promoting their uses of prevention and health services planning and evaluation.

All recipients should routinely disseminate reports of aggregate surveillance data for epidemic monitoring and education of the public and reporting sources and should promote uses of HIV/AIDS surveillance data for prevention and health services planning and evaluation. These activities should include: Providing HIV/AIDS surveillance data and ongoing epidemiologic assistance to community planning groups; disseminating surveillance data through publications and presentations; participating in planning and implementation meetings; conducting analyses to monitor trends, assess need for health-care resources, and project the future impact of the disease; and providing feedback to reporting sources on ways in which the surveillance data have been used to promote public health.

f. Conduct activities to improve the quality, efficiency, and productivity of the core surveillance program.

As part of core surveillance (given availability of either increased core funding or a redirection of existing core surveillance funding) all recipients shall also conduct one or more surveillance activities to develop and test new approaches to conducting surveillance whose aim is to improve the quality of the data, develop more efficient methods of case ascertainment, ensure accurate and valid case report information, and maximize the performance of the system. In particular, areas should develop technical information systems that facilitate electronic reporting of HIV and AIDS surveillance data from health care providers and public and private laboratories to health departments. Examples of focused analyses and evaluations of surveillance data that applicants may conduct include:

(1) Assessing how priority populations access or receive referrals to prevention and treatment services in public and private settings (*e.g.*, treatment for HIV infection and prevention of opportunistic infections).

(2) Assessing the association of stage of disease (*i.e.*, HIV or AIDS) with interstate migration.

(3) Better defining trends (through analysis of HARS reports or chart reviews or interviews):

(a) In various populations (*e.g.*, Native Americans, health-care workers, substance-abusing pregnant women).

(b) For various AIDS-defining conditions or opportunistic infections (*e.g.*, Tuberculosis, Mycobacterium Avium Complex (MAC).

(c) In conjunction with other Federal, State, local prevention and care programs (*e.g.*, HRSA Ryan White CARE locations).

g. Reporting of data using CDC standards and software.

Recipients should ensure that data collection forms and electronic data formats used to submit case reports from laboratories, clinical records, and patient interviews contain CDC's recommended standard data elements/questions on HIV testing behaviors, risk/exposure behaviors, and treatment access/adherence behaviors. In addition, during this project period, recipients should report HIV/AIDS case surveillance data to CDC on at least a monthly basis using either standardized software or according to data submission standards established by CDC.

Data from reporting areas using coded identifiers for HIV surveillance will be eligible for inclusion in national surveillance reports after these systems are evaluated using published performance standards (see Attachment A) through the implementation of protocols established by CDC. Areas using coded identifier systems will need to use customized data transfer and storage systems (either electronic or hardcopy) in order to accommodate the diversity of codes, inconsistencies in codes between areas (*e.g.* inability to generate soundex in some areas), and inability of areas using coded reporting to reciprocally notify and de-duplicate cases with other areas using standardized lists generated by CDC. Specific data management systems will be developed by CDC in consultation with the local areas. These areas should continue to report AIDS cases and deaths to CDC using HARS or its identified equivalent, as is current practice.

h. Security.

Consistent with ''Appendix C'' of CDC's ''Guidelines for HIV/AIDS Surveillance,'' applicants must ensure that the program requirements detailed in the Security Standards are attained as indicated by the signature of the Overall Responsible Party (ORP) on the attached form (Attachment B). HIV/AIDS surveillance funds will be restricted unless the signed ORP form has been submitted to CDC.

i. All applicants are required to attend CDC-sponsored conferences and workshops consistent with recipient activities in accordance with the budget allocated.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide training in surveillance methods, study methods, and surveillance program planning and management.

b. Provide laboratory training that includes current scientific and technical information about the practical and the theoretical sensitivity and specificity of the different serological tests.

c. Coordinate and convene conferences, develop routine communications, provide guidelines and standards for the conduct of surveillance program activities, and communicate with recipients to develop, refine, and disseminate HIV/AIDS surveillance program information that describes effective methods to carry out program activities and monitor progress.

d. Provide: (1) Criteria for the surveillance definition of nationally reported HIV infection/disease (including AIDS); (2) prototype (model) case report forms; and (3) assistance in establishing and maintaining software for collecting, transferring and evaluating HIV/AIDS surveillance data.

e. Participate in the analysis and dissemination of information and data gathered from program activities and facilitate the transfer and utilization of information and technology among all States and communities.

f. Provide standardized protocols, data collection forms, data entry capability for core surveillance and time-limited studies, and on a routine basis generate lists of records of potential inter-State duplicate cases to facilitate reciprocal notification and de-duplication of HIV, AIDS, perinatal exposure cases as well as deaths from HIV infection.

g. Assist in the evaluation of the overall effectiveness of program operations, including the impact of surveillance data on the development of public policy and on targeting and evaluating HIV Prevention Community Planning activities.

h. Assist States to better use the national HIV/AIDS surveillance data provided to CDC by States for public health policy formulation; to obtain and allocate federal resources for HIV/AIDS surveillance, prevention, and care; and to evaluate national public health recommendations. Promote and facilitate coordination of CDC surveillance data and activities with other CDC programs and other agencies of the federal government.

i. Provide technical assistance in the area of information technology to assure that reporting areas using electronic transfer of HIV/AIDS surveillance data: (1) Adhere to appropriate confidentiality and security procedures; (2) execute the necessary data management and analytic procedures to assure data integrity and accuracy; and (3) provide guidance to grantees in obtaining equipment that possesses the necessary technologic capabilities to process and transfer data using either CDC provided software or according to standards developed by CDC for reporting to the national system. Supplemental funds may be provided by CDC contingent on the availability of funds and the magnitude of the identified requirements for information technology improvements in areas that do not currently have adequate infrastructure to manage data according to current or emerging CDC specifications.

j. Disseminate national surveillance data for public health research purposes through routine reports, articles in books and peer-reviewed journals, and presentations.

k. Maintain a secure and confidential national HIV/AIDS surveillance database.

Part II. HIV Incidence Surveillance

Recipient Activities

a. Collaborate with CDC, laboratories, providers and affected communities to develop the capacity to conduct population-based HIV incidence surveillance.

b. Collaborate with CDC (and other funded project sites) in project design, implementation, and evaluation.

c. Collaborate with CDC in the development of area specific protocols that demonstrate the ability to link HIV case data to laboratory specimens, and to HIV testing history information to meet the statistical data requirements for HIV incidence estimates.

d. Collaborate with public and commercial HIV testing laboratories (within and outside the state) to secure an aliquot of serum from original diagnostic HIV tests and have it shipped to the state public health laboratory or an appropriately designated lab that is authorized to store specimens for the area health department.

e. Identify, in a timely fashion, which diagnostic specimens represent HIV infection cases new to the State HIV Surveillance system.

f. Prepare and transport aliquots of serum from the original diagnostic HIV test of new HIV infection cases from the state public health laboratory to a CDC designated STARHS testing laboratory.

g. Obtain adequate information on HIV testing history from a sufficient number of persons with newly identified, recent HIV infections, reported from private and public providers to allow for HIV incidence estimation. The sources and methods for acquiring this testing history information, and the procedures for linking, or unlinking, these data from surveillance records with personal identifiers when computing incidence estimates will be developed collaboratively with CDC.

h. In some areas results from investigational tests such as STARHS may be linked to identifying information on individual patients. These protocols must be approved by a local IRB, and undergo review by CDC and the Food and Drug Administration (FDA) before they can be implemented.

i. On at least a monthly basis, report to CDC the data necessary to conduct incidence surveillance using either standardized software or according to data submission standards provided by CDC.

j. Areas conducting HIV incidence surveillance have the unique capacity to identify active transmission of atypical strains of HIV, including antiretroviral drug resistant virus. As part of incidence surveillance, areas may collaborate with CDC to develop procedures for obtaining the appropriate specimens to monitor transmission of such atypical strains.

k. Maintain a secure environment to protect the security and confidentiality of data obtained during this surveillance activity.

l. All applicants are required to attend CDC-sponsored conferences and workshops consistent with recipient activities in accordance with the budget allocated.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide training in HIV incidence surveillance and estimation methodology.

b. Provide laboratory training that includes current scientific and technical information required to obtain, ship, and process specimens according to existing standards of safety in order to obtain reliable results for incidence estimation.

c. Coordinate and convene conferences, provide guidelines, provide technical assistance for development as well as review and approval of protocols, develop materials such as model consent forms and procedural standards for the conduct of incidence surveillance program activities. CDC will communicate regularly with recipients to develop, refine, and disseminate HIV information that describes effective methods to carry out program activities and monitor progress.

d. Provide support in the form of technical assistance, and where necessary and available, supplemental funding to establish and maintain information systems adequate for collecting, transferring and evaluating HIV incidence surveillance data.

e. Provide technical assistance for activities designed to assess and monitor the active transmission of atypical strains of HIV, including antiretroviral resistant virus.

f. Participate in the analysis and dissemination of information and data from these program activities.

g. Assist in the evaluation of the overall effectiveness of program operations, including the impact of incidence data on the development of public policy and on targeting and evaluating HIV Prevention Community Planning activities.

h. Maintain a secure and confidential national data system for HIV Incidence Surveillance and estimation.

i. Coordinate the identification and interaction between areas supported to conduct HIV incidence surveillance and designated CDC STARHS laboratories.

j. Conduct at least one site visit during a program announcement funding period to each grantee to assess progress toward meeting program objectives and provide such technical assistance as is necessary as determined by the grantee and CDC.

k. Provide technical assistance in the area of information technology to assure that reporting areas using electronic transfer of HIV/AIDS surveillance data: (1) Adhere to appropriate confidentiality and security procedures; (2) execute the necessary data management and analytic procedures to assure data integrity and accuracy; and (3) provide guidance to grantees in obtaining equipment that has the necessary technologic capabilities to process and transfer data using either CDC provided software or according to standards developed by CDC for reporting to the national system. Supplemental funds may be provided by CDC contingent on the availability of funds and the magnitude of the identified requirements for information technology improvements in areas that do not currently have adequate infrastructure to manage data according to current or emerging CDC specifications.

1. Coordinate with recipients and private and public health laboratories to promote the efficient transport and processing of diagnostic specimens for identification of newly diagnosed persons and execution of STARHS, or other CDC approved testing for recent HIV infections.

Part III. Capacity Building for Epidemiologic and Program Evaluation Activities

Recipient Activities

a. Employ and sufficiently support trained staff who will develop or enhance the recipient's capacity to plan and conduct epidemiologic and program evaluation activities in collaboration and coordination with CDC, and state and local HIV prevention and care community planning groups; and

b. Promote uses of the HIV/AIDS surveillance, program, and other health-related data for the planning and evaluation of HIV prevention and care services. These uses should address two components:

(1) Epidemiologic activities. These activities should include providing or recommending the use of HIV/AIDS and other public health surveillance data. Activities should also include the analysis, interpretation, and presentation of these data in describing the HIV/AIDS epidemic in the recipient's jurisdiction in terms of socio-demographic, geographic, behavioral, and clinical characteristics for use in the epidemiologic profile for HIV prevention and care community planning.

(2) Program evaluation activities. These activities should include collecting, analyzing, and reporting process and outcome data that can be used:

(a) To assess the effectiveness of various types of interventions.

(b) To monitor achievement of the health department's goals and objectives.

(c) To provide program data to CDC in appropriate and useful formats so that data may be aggregated by CDC to monitor progress in achieving the goals and objectives of its strategic plan.

(d) To assess the impact of HIV prevention efforts in health department jurisdictions.

c. All applicants are required to attend CDC-sponsored conferences and workshops consistent with recipient activities in accordance with the budget allocated.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Develop and promote the use of standard guidelines for development of epidemiologic profiles and program evaluation for HIV prevention and care community planning.

b. Assist recipients to better use HIV/AIDS surveillance, program, and other health-related data for HIV prevention and care community planning and to evaluate HIV prevention program effectiveness.

c. Collaborate with recipients to facilitate the use of surveillance, program, and other health-related data to monitor achievement of CDC and HRSA prevention and care planning goals and objectives.

d. Assist recipients to use surveillance, evaluation, and other health-related data to assess the impacts of HIV prevention efforts (e.g., to inform policy and service delivery issues).

e. Collaborate with grantees to ensure appropriate transfer of data.

Part IV. Enhanced Surveillance for Perinatal Prevention

Recipient Activities

Implement and continue surveillance for perinatal HIV exposure and pediatric HIV infection by performing the following activities:

a. Conduct medical record review of mother/infant pairs and longitudinal follow-up of all HIV exposed children to ascertain knowledge of maternal HIV infection status before birth, HIV incidence, AIDS incidence, and death, the use of maternal and neonatal ZDV and its efficacy in preventing HIV transmission, and the use of other antiretroviral medications.

b. Conduct medical record review to evaluate recommendations for opportunistic infection prophylaxis and initiation of HIV evaluation and treatment in children.

c. Assess potential adverse outcomes of antiretroviral exposure among infected and uninfected children in the short term (*e.g.*, birth defects,

ascertained through record reviews and registry matches) and in the long term (*e.g.*, by matching to tumor registries).

d. Match HIV/AIDS registries to birth registries to ensure complete ascertainment of mother/infant pairs.

e. Regularly report data to CDC in a secure manner using CDC-provided forms and software.

f. All applicants are required to attend CDC-sponsored conferences and workshops consistent with recipient activities in accordance with the budget allocated.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide training in surveillance methodology, study methodology, and in program planning and management.

b. Provide laboratory training that includes current scientific and technical information about the practical and the theoretical sensitivity and specificity of the different serological tests.

c. Develop, refine, and disseminate HIV/AIDS surveillance program information that describes effective methods to carry out program activities and monitor progress.

d. Provide: (1) Criteria for the surveillance definition of nationally reported HIV infection/ disease; (2) case report forms; and (3) assistance in establishing and maintaining the computerized HARS.

e. Participate in the analysis and dissemination of information and data gathered from program activities and facilitate the transfer and utilization of information and technology among all States and communities.

f. Provide standardized protocols, data collection forms, and computer software.

g. Assist in the evaluation of the overall effectiveness of program operations, including the impact of enhanced perinatal surveillance data on the development of public policy and on targeting and evaluating HIV Prevention Community Planning activities.

h. Provide standard data collection forms, questionnaires, and computer software for the supplemental surveillance projects.

i. Disseminate national perinatal surveillance data for public health research purposes through routine reports, articles, and presentations.

j. Maintain a secure and confidential national HIV/AIDS surveillance database.

Part V. Laboratory Testing for Recent HIV Infection

Recipient Activities

a. Conduct testing according to the protocols and requirements stipulated in the existing CDC IND agreement.

b. Establish local procedures for specimen testing and processing.

c. Conduct quality control for each run, and on an ongoing basis, participate in CDC's quality assurance program. Establish quality criteria for inclusion or exclusion of testing runs.

d. Establish protocols for collaborating health departments for the preparation and shipping of specimens. Laboratories may specify the type of vial and conditions for acceptable specimens, designate the days of the week that specimens will be received, specify how specimens will be labeled (label type, numbering system, barcoding), shipped, and the format for packing lists.

e. Return test results to submitting health department within seven days of receipt of specimen.

f. Develop data management systems for tracking specimens, raw data including control values and specimen results consistent with the IND protocol.

g. Ensure the confidentiality of data and specimens.

h. Obtain, from collaborating health departments, protocols and documentation of institutional review board approval (or non-research determination) that allowed for the initial specimen collection and for incidence testing. Track testing results by protocol for required reports.

i. Conduct testing for other CDC supported research projects.

j. Establish mechanism for tracking all costs (staff time, project resources and reagents) associated with testing for specimens not associated with national HIV incidence.

k. All applicants are required to attend CDC-sponsored conferences and workshops consistent with recipient activities in accordance with the budget allocated.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide protocols for conducting tests for recent HIV infection.

b. Facilitate the distribution or designation of assigned collaborating health departments to ensure optimal work loads for funded laboratories and optimal ability to return results in a timely manner.

c. Provide proficiency testing program.

d. Provide resources to collaborating health departments for the collection, processing and shipping of specimens to funded laboratories.

e. Provide technical assistance to laboratories on testing methods.

f. Provide computer software for interpretation of testing results, quality control and for tracking results for required reports.

VI. Behavioral Surveillance

Recipient Activities

a. Collaborate with CDC and other funded project sites in the design, implementation and evaluation of proposed activities. Participate in required planning meetings with other funded sites and CDC at an out of state location to be determined by CDC and grantees.

b. Collaborate with CDC and other funded sites to develop a multi-site protocol and questionnaire.

c. Collaborate with CDC in the development of site specific operational plans.

d. Engage Community Based Organizations (CBOs) funded directly by CDC or by States/cities through the Community Planning process, behavioral scientists, ethnographers, schools of public health, or universities in the formative research and questionnaire development.

e. Collaborate with local HIV/AIDS prevention program to assess exposure to and use of HIV prevention programs.

f. Maintain a secure environment to protect the security and confidentiality of data obtained in this activity.

g. Report project data to CDC in a timely manner according to established protocols for data collection, storage and transfer.

h. Disseminate study data for use in state/local prevention, and in treatment services planning and evaluation.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Lead the development of a standardized multi-site protocol and questionnaire.

b. Facilitate the development of site-specific operational plans.

c. Provide training in the methodology (including formative research), program planning and management.

d. Provide technical assistance to support implementation of agreed upon methods to accomplish project objectives.

e. Provide assistance in establishing and maintaining the computerized

database to record information collected in this activity.

f. Participate in the analysis and dissemination of data. Conduct and/or coordinate analyses of the multi-site data and distribute information to support national HIV prevention efforts.

g. Lead the development of computer programs to evaluate performance indicators and data quality.

h. Assist in the evaluation of the overall effectiveness of program operations. Provide timely feedback on reported data for quality assurance purposes.

i. Maintain a secure and confidential national database.

Part VII. Core Surveillance in the Pacific Island Jurisdictions

Recipient Activities

Plan and conduct HIV/AIDS surveillance activities in collaboration and coordination with CDC, and, where appropriate, with professional associations; health care providers and institutions serving, diagnosing, or providing treatment and care for persons with HIV/AIDS, including facilities or organizations providing HIV, CD4+ lymphocyte and HIV–1 Ribonucleic Acid Determination (*i.e.* viral load) testing; organizations that serve persons at increased risk of HIV/AIDS (*e.g.*, drug treatment facilities, STD clinics, family planning agencies, maternal and infant care programs, correctional facilities); community groups and organizations. Specific areas with laboratories capable of providing confirmatory testing services (*i.e.* Western Blot or IFA) should indicate a willingness and describe their capacity to serve as central data coordination areas by working with other island jurisdictions that submit specimens for such confirmatory testing. These descriptions should include a process for assuring compliance with security and confidentiality requirements.

Collaboration with CDC includes attendance at meetings and workshops that address recipient HIV/AIDS surveillance activities described in this announcement. In accordance with available funds, all applicants should plan to attend CDC-sponsored conferences and workshops consistent with recipient activities.

a. Active case finding

At a minimum, all recipients shall conduct active case finding (*i.e.* soliciting case reports in a timely manner directly from potential reporting sources) in appropriate in-patient and out-patient facilities serving HIV-infected persons and in laboratories, where feasible and permitted by law, and shall conduct a systematic review of death certificates. Other required components of active surveillance programs include educating providers on their reporting responsibilities, establishing on-going communication with all reporting sites and providing them feedback, conducting routine visits to reporting sources, and establishing awareness of and support for surveillance activities. The minimum information required to report a case of HIV infection or AIDS to CDC's HARS is the alpha-numeric (soundex) code of the patient's name (patient and physician names should not be submitted to CDC); state-assigned patient identifier number; HIV/AIDS diagnosis information, including date(s) of diagnosis; and the patient's date of birth, race/ethnicity, and sex.

An additional variable that is critical to ascertain is the initial CD4 count. In an effort to better characterize the extent of disease at diagnosis, and the impact of targeted testing efforts on identifying persons early in the course of their infections, information on CD4 count at initial diagnosis shall be collected. This information should be submitted to CDC as part of the case record. Information on the mode of HIV exposure is also essential in order to monitor epidemic trends and target prevention interventions. Therefore, timely follow-up to complete risk history shall be conducted.

b. Follow-up investigations of cases/populations of special epidemiologic significance. Recipients shall develop procedures for promptly notifying CDC of unusual occurrences of HIV transmission and for using CDC-developed protocols and criteria to conduct epidemiologic and laboratory investigations of cases that may have rare or previously unidentified modes of HIV transmission, unusual clinical manifestations, or unusual laboratory test results. These include transfusion and transplant-related cases, cases of HIV transmitted in health care or other occupational settings, cases of HIV–2 infection, cases transmitted through female-to-female sexual contact, cases with potentially unusual HIV strain variants, and cases with clinical evidence of HIV infection but negative HIV test results.

c. Evaluation of the performance of the surveillance system.

Recipients shall continue to assess the quality of their HIV/AIDS surveillance system and the data generated from this set of activities. Assessment will continue regardless of the status of, or procedures used, to conduct HIV/AIDS surveillance (*e.g.* AIDS or HIV reporting, or name or code-based reporting).

Evaluation activities should include critical reviews of surveillance methods and redirection of resources to those case-finding methods that are the most accurate and productive. Using the recommendations published in ''CDC Guidelines for National Human Immunodeficiency Virus Case Surveillance, Including Monitoring for Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome'', assessments should include routine analysis of surveillance data to discover possible sources of under reporting and delays in reporting, monitoring data quality. At least once a year, recipients shall routinely re-abstract demographic, risk, laboratory, and clinical data from a sample of records to assess the quality and validity of information collected.

d. Inter-island and inter-state reciprocal notification of newly identified HIV/AIDS cases.

Recipients should routinely interact with other reporting areas to assure coordinate reporting between the island jurisdictions and ensure that reciprocal notification of newly identified HIV/AIDS cases, perinatal exposure cases, and deaths from HIV infection is executed. Routine engagement in this activity will improve the efficiency in reporting to CDC and minimize the number of duplicate case reports in the national data system. This communication is supported by the Council of State and Territorial Epidemiologists (Position Statement 01-ID–04). It should be carried out by appropriately trained and authorized surveillance staff, in a confidential manner consistent with local security, confidentiality and reporting policies and procedures. Recipients will use the same system for reciprocal notification of HIV, AIDS, perinatal HIV exposure and deaths among persons with HIV infection, including provision of appropriate identifying information (*e.g.*, name or other identifier).

e. Analysis and dissemination of HIV/AIDS surveillance data and promoting their uses of prevention and health services planning and evaluation.

All recipients should routinely disseminate reports of aggregate surveillance data for epidemic monitoring and education of the public and reporting sources and should promote uses of HIV/AIDS surveillance data for prevention and health services planning and evaluation. These activities should include: providing HIV/AIDS surveillance data and ongoing epidemiologic assistance to community planning groups; disseminating surveillance data through publications and presentations;

participating in planning and implementation meetings; conducting analyses to monitor trends, assess need for health-care resources, and project the future impact of the disease; and providing feedback to reporting sources on ways in which the surveillance data have been used to promote public health.

f. Reporting of data using CDC standards and software.

Recipients should ensure that data collection forms used to submit case reports from laboratories, clinical records, and patient interviews contain CDC's recommended standard data elements/questions on HIV testing behaviors, risk/exposure behaviors, and treatment access/adherence behaviors.

g. Security

Consistent with ''Appendix C'' of CDC's ''Guidelines for HIV/AIDS Surveillance,'' recipients must ensure that the program requirements detailed in the Security Standards are attained as indicated by the signature of the Overall Responsible Party (ORP) on the attached form. HIV/AIDS surveillance funds will be restricted unless the signed ORP form has been submitted to CDC.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide training in surveillance methods, study methods, and surveillance program planning and management.

b. Provide laboratory training that includes current scientific and technical information about the practical and the theoretical sensitivity and specificity of the different serological tests.

c. Coordinate and convene conferences, develop routine communications, provide guidelines and standards for the conduct of surveillance program activities, and communicate with recipients to develop, refine, and disseminate HIV/AIDS surveillance program information that describes effective methods to carry out program activities and monitor progress.

d. Provide: (1) Criteria for the surveillance definition of nationally reported HIV infection/disease (including AIDS), (2) prototype (model) case report forms, and (3) assistance in establishing and maintaining software for collecting, transferring and evaluating HIV/AIDS surveillance data.

e. Participate in the analysis and dissemination of information and data gathered from program activities and facilitate the transfer and utilization of information and technology among all States and communities.

f. Assist in the evaluation of the overall effectiveness of program operations, including the impact of surveillance data on the development of public policy and on targeting and evaluating HIV Prevention Community Planning activities.

g. Assist areas to better use the national HIV/AIDS surveillance data provided to CDC by areas for public health policy formulation; obtaining and allocating federal resources for HIV/AIDS surveillance, prevention, and care; and evaluation of national public health recommendations. Promote and facilitate coordination of CDC surveillance data and activities with other CDC programs and other agencies of the federal government.

h. Provide technical assistance in the area of data storage and management to assure that reporting areas: (1) Adhere to appropriate confidentiality and security procedures; and (2) execute the necessary data management and analytic procedures to assure data integrity and accuracy.

i. Disseminate national surveillance data for public health research purposes through routine reports, articles in books and peer-reviewed journals, and presentations.

j. Maintain a secure and confidential national HIV/AIDS surveillance database.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Part I. Core Surveillance

Fiscal Year Funds: 2004.

Approximate Total Funding: $34,000,000.

Approximate Number of Awards: 65.

Approximate Average Award: $500,000.

Floor of Award Range: $9,000 to $4,000,000.

Ceiling of Award Range: $4,000,000.

Anticipated Award Date: April 1, 2004.

Budget Period Length: 9 months.

Project Period Length: 2 years and 9 months.

Considerations for Funding Levels: All technically acceptable applications will be funded. The following items are general considerations that will affect decisions on funding levels.

1. Greatest consideration will be given to areas with an HIV case reporting system as of the due date of this application.

2. Areas that do not meet criterion one, but have a written plan with established regulations or laws that will enable HIV case reporting to be in place as of April 1, 2004 will receive greater consideration than areas with no immediate plans for implementation of such a reporting system.

3. The presence of at least one Ryan White Title I Eligible Metropolitan Area (EMA) within the jurisdiction of the applicant.

4. The applicant's description of:

(a) Surveillance evaluation activities that are in place.

(b) Information from surveillance evaluation activities demonstrating that the HIV case reporting system meets the minimum performance standards for HIV case reporting published in ''CDC Guidelines for National Human Immunodeficiency Virus Case Surveillance, Including Monitoring for Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome''. These standards are summarized in Attachment A (as posted with this announcement on the CDC Web site.)

5. Additional programmatic consideration will be based on increases or decreases in the volume of reported cases of HIV or AIDS and their implications for HIV/AIDS surveillance program activities.

Part II. HIV Incidence Surveillance

Fiscal Year Funds: 2004.

Approximate Total Funding: $15,000,000.

Approximate Number of Awards: 35.

Approximate Average Award: $250,000.

Floor of Award Range: $130,000 to $790,000.

Ceiling of Award Range: $790,000.

Anticipated Award Date: April 1, 2004.

Budget Period Length: 9 months.

Project Period Length: 2 years and 9 months.

Consideration for Funding Levels: All technically acceptable applications will be funded. Funding levels will be determined by a formula using the highest new annual AIDS case count estimated for either of the two most recent calendar years available. Additional programmatic consideration will be based on trends in reported cases of HIV and the implications for HIV Incidence surveillance program activities.

Part III. Capacity Building for Epidemiologic and Program Evaluation Activities

Fiscal Year Funds: 2004.

Approximate Total Funding: $2,100,000.

Approximate Number of Awards: 21.

Approximate Average Award: $100,000.
Floor of Award Range: None.
Ceiling of Award Range: $100,000.
Anticipated Award Date: April 1, 2004.
Budget Period Length: 9 months.
Project Period Length: 2 years and 9 months.
Consideration for Funding Levels: All technically acceptable applications will be funded.

Part IV. Enhanced Surveillance for Perinatal Prevention

Fiscal Year Funds: 2004.
Approximate Total Funding: $1,800,000.
Approximate Number of Awards: 20.
Approximate Average Award: $82,000.
Floor of Award Range: $30,000 to $200,000.
Ceiling of Award Range: $200,000.
Anticipated Award Date: April 1, 2004.
Budget Period Length: 9 months.
Project Period Length: 2 years and 9 months.

Funding Preferences

Because Part IV is competitive, applications for activity under this Part will be evaluated by an Objective Review Panel. Some applicants may not be funded.

The following items are general considerations that will affect decisions on funding levels:

1. Greatest preference will be given to areas that receive categorical funding from CDC for perinatal prevention program activities.
2. Secondary preference will be given to areas that possess an authorized reporting system for pediatric HIV exposure as well as adult, adolescent, and pediatric HIV infection.
3. Additional programmatic funding considerations will be based on the estimated number of HIV infected women giving birth (Source: 1994 Survey of Childbearing Women) and its implications for HIV/AIDS surveillance program activities.

Part V. Laboratory Testing for Recent HIV Infection

Fiscal Year Funds: 2004.
Approximate Total Funding: $800,000.
Approximate Number of Awards: 2 to 3.
Approximate Average Award: $320,000.
Floor of Award Range: $270,000 to $400,000.
Ceiling of Award Range: $400,000.
Anticipated Award Date: April 1, 2004.
Budget Period Length: 9 months.
Project Period Length: 2 years and 9 months.

Funding Preferences

Because Part V is competitive, applications for activity under this Part will be evaluated by an independent review panel (formerly Objective Review Panel). Some applicants may not be funded.

Preference will be given to sites that achieve the best distribution and representation of geographic regions (*e.g.*, Northeast, South, and West).

Preference will be given to areas that demonstrate the greatest degree of automation in sample processing and testing.

Part VI. Behavioral Surveillance

Fiscal Year Funds: 2004.
Approximate Total Funding: $10,000,000.
Approximate Number of Awards: 25.
Approximate Average Award: $400,000.
Floor of Award Range: $350,000 to $450,000.
Ceiling of Award Range: $450,000.
Anticipated Award Date: April 1, 2004.
Budget Period Length: 9 months.
Project Period Length: 2 years and 9 months.

Consideration for Funding

All technically acceptable applications will be funded.

Part VII. Core Surveillance in the Pacific Island Jurisdictions

Fiscal Year Funds: 2004.
Approximate Total Funding: $100,000.
Approximate Number of Awards: 6.
Approximate Average Award: $17,500.
Floor of Award Range: $10,000 to $25,000.
Ceiling of Award Range: $25,000.
Anticipated Award Date: April 1, 2004.
Budget Period Length: 9 months.
Project Period Length: 2 years and 9 months.

Considerations for Funding Levels

All technically acceptable applications will be funded. The following items are general considerations that will affect decisions on funding levels.

1. Greatest consideration will be given to areas that have a functional laboratory physically located on an island within the funded island jurisdiction that is either currently able, or could, with a reasonable investment in the appropriate equipment, accept, process, and distribute results for confirmatory HIV diagnostic tests. This laboratory should be able to execute Western Blot or immunofluoresence assay (IFA) tests. The health department on an island jurisdiction with such a facility should be able to serve as a central data collection center that coordinates available clinical information on cases confirmed through processing of specimens from other island jurisdictions.
2. The next greatest consideration will be given to areas with an HIV case reporting system as of the due date of this application.
3. Areas that do not meet criterion one, but have a written plan with established regulations or laws that will enable HIV case reporting to be in place as of April 1, 2004 will receive greater consideration than areas with no immediate plans for implementation of such a reporting system.
4. Additional programmatic consideration will be based on increases or decreases in the volume of reported cases of HIV or AIDS and their implications for HIV/AIDS surveillance program activities.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

Eligible Applicants

Part I. Core Surveillance

Applications may be submitted by health departments of States, U.S. territories or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the six independently-funded city health departments of Chicago, Houston, Los Angeles, New York City, Philadelphia, and San Francisco. All eligible applicants for core HIV/AIDS surveillance activities will be funded. Funding will include activities that expand the uses and improve the quality of HIV/AIDS surveillance data to more effectively guide public health policy and provide relevant information necessary to direct and evaluate prevention and care activities.

Part II. HIV Incidence Surveillance

In order to ensure execution of this complex project, and provide estimates for incidence that possess adequate

statistical precision, eligible sites must possess HIV reporting systems, and they must have a sufficient number of reports on new, annual HIV diagnoses.

Therefore, eligibility is limited to applicants previously funded for this activity as part of the supplemental awards provided through Program Announcement 00005. States will be eligible regardless of the AIDS case count if there is an independently funded city health department within the State that has either been previously funded, or will be funded under the criteria described below.

New applicants eligible for these funds will include those areas which will have HIV case reporting as of April 1, 2004, and have, according to the National AIDS Reporting System maintained by CDC, at least 300 new AIDS cases in either of the calendar years during the budget period.

The known eligible sites are: Alabama, Arizona, California, Chicago, Colorado, Connecticut, District of Columbia, Florida, Georgia, Houston, Illinois, Indiana, Kentucky, Los Angeles, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York State, New York City, North Carolina, Ohio, Oklahoma, Pennsylvania, Philadelphia, Puerto Rico, San Francisco, South Carolina, Tennessee, Texas, Virginia, and Washington.

Part III. Capacity Building for Epidemiologic and Program Evaluation Activities

Recipient health departments must have sufficient disease burden for analytic activities to provide information with sufficient statistical and epidemiologic precision.

Therefore, assistance will be provided to moderate morbidity States reporting from 240 to 1500 AIDS cases from July 2000 through June 2001, (Centers for Disease Control, HIV/AIDS Surveillance Report, 2000;13(no.1):6) and States or territories previously funded for fewer than five of the following supplemental surveillance projects.

Projects include the following and correspond to the appropriate sections of Part II of FY2000's Program Announcement 00005 and Activities One through Four of FY2001's Program Announcement 00005B: (1) Adult/Adolescent Spectrum of Disease (ASD); (2) Survey of HIV Disease and Care (SHDC); (3) Survey of HIV Disease and Care plus Interview Supplement (SHDC+); (4) Supplement to HIV/AIDS Surveillance (SHAS); (5) New Supplemental Interview Projects; (6) Enhanced Surveillance for Perinatal Prevention; (7) Alternate Approaches; (8) Regional Technical Assistance Centers; (9) HIV Testing Survey; and (10) Estimation of HIV incidence.

Known eligible applicants are: Alabama, Arizona, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Virginia.

Part IV. Enhanced Surveillance for Perinatal Prevention

This is a complex activity that requires substantial resources, commitment on the part of the affected surveillance program, and a sufficient number of events to provide reasonably precise assessments of the effectiveness of perinatal prevention efforts.

Therefore, eligible applicants are limited to the high-morbidity areas (estimated 60 or more HIV-positive women giving birth—Source: 1994 Survey of Childbearing Women) previously funded by CDC for Enhanced Perinatal Surveillance, or to areas that have received categorical funding from CDC for perinatal HIV prevention program activities.

Eligible applicants should have implemented, or plan to implement, HIV surveillance for adults and children (including reporting HIV-exposed infants) as an extension of their AIDS surveillance activities, by April 1, 2004. If this has not occurred, the applicant may propose to continue to conduct these activities in selected facilities serving large numbers of HIV-infected women and their infants using established research (*i.e.*, IRB) procedures for case ascertainment.

Known eligible applicants are: Alabama, California, Chicago, Connecticut, Delaware, District of Columbia, Florida, Georgia, Houston, Illinois, Los Angeles, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, New York, New York City, North Carolina, Pennsylvania, Philadelphia, Puerto Rico, Ohio, Tennessee, Texas, Virginia, and South Carolina.

Part V. Laboratory Testing for Recent HIV Infection

Because this is a technically sophisticated technique, only laboratories that are already participating in the IND with prior experience conducting large numbers of STARHS tests and documented proficiency will be considered.

Part VI. Behavioral Surveillance

Eligibility will be limited to the State or local health departments which include the top 26 Metropolitan Statistical Areas (MSA's) by number of people living with AIDS at the end of 2000 as reported in ''HIV/AIDS Surveillance Supplemental Report,'' (2002;8(No.2:18–19)).

These are the directly funded city health departments of Los Angeles, CA; San Francisco, CA; Chicago, IL; New York City, NY; Philadelphia, PA; Houston, TX; and, the State health departments containing the following MSAs: Phoenix, AZ; San Diego, CA; Denver, CO; New Haven, CT; Washington, DC; Miami, and Ft. Lauderdale, FL; Atlanta, GA; New Orleans, LA; Boston, MA; Baltimore, MD; Detroit, MI; St. Louis, MO; Las Vegas, NV; Newark, NJ; Nassau-Suffolk, NY; San Juan, PR; Dallas, TX; Norfolk, VA; and, Seattle, WA.

Projects will be supported only within the MSA listed and only within the geographic bounds of the funded entity (where MSAs extend beyond the jurisdiction of the eligible state or city health department). Recruitment venues may be limited to the geographic subdivision (*e.g.*, city, county, health district) within the MSA with the highest AIDS morbidity where it would be impractical to conduct surveillance in the entire area.

Part VII. Core Surveillance in the Pacific Island Jurisdictions

Applications may be submitted by health departments of American Samoa, Guam, Marshall Islands, Palau, the Commonwealth of the Northern Mariana Islands and the Federated States of Micronesia.

All technically acceptable applicants for core HIV/AIDS surveillance activities will be funded. Funding will include activities that facilitate the development and improvement in the quality of HIV/AIDS surveillance data to more effectively guide public health policy and provide relevant information necessary to direct and evaluate prevention and care activities.

Other Eligibility Requirements: None.

Cost Sharing or Matching: Matching funds are not required for this program.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

How to Obtain Application Forms: To apply for this funding opportunity use application form PHS 5161–1. Forms are available on the CDC Web site, at the

following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

This program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If there are discrepancies between the application form instructions and the program announcement, adhere to the guidance in the program announcement.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Content and Form of Submission

Application: Applications for activities under Section I, II, III, VI, and VII will receive a Technical Acceptability Review. Part IV and Part V will be evaluated separately by an independent and separate objective review panel. To facilitate this review, submit separate and complete applications for each activity under Parts I, II, III, IV, V, VI, and VII for which you are applying, including separate budgets and narrative justifications, that can stand alone as an application for review purposes.

You must submit a signed original and two copies of your application forms. You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

Part I. Core Surveillance

- Maximum number of pages: 30 pages double spaced, including up to five pages of program plans and budgets for years 2005 and 2006, excluding reports and appendices. Applications with narratives in excess of 30 pages will be returned to the applicant and not considered for funding.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: 1 inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Format:

In developing this Part of the application, your narrative must follow the format below:

1. Program Need and Resources.
2. Collaboration and Use of Data.
3. Objectives.
4. Program Plan and Methods for Implementation.
5. Program Evaluation Plan.
6. Project Management and Staffing Plan.
7. Budget.
8. Attachments.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. Describe proposed active case-finding efforts, follow-up of priority cases, and activities that promote uses of HIV and AIDS surveillance data for prevention planning.

2. Describe procedures for critically reviewing surveillance methodologies to promote efficient and effective use of resources, disseminating data for public health purposes, ensuring that the surveillance program contributes to the goals and public health mission of the health department, using surveillance data to evaluate the effectiveness of State/local prevention efforts, policies, and programs, and using surveillance data to target and evaluate proposed community-based interventions.

Also, describe proposed activities that will facilitate the efficiency, reliability, completeness of variables and accuracy of HIV/AIDS surveillance data. Examples of such activities include procedures that facilitate the identification and investigations of cases of public health importance (e.g. atypical or variant HIV sub-types or strains), with specific outcomes and co-morbidities (e.g., persons diagnosed concurrently with HIV and TB or HIV and STDs), or collaborations with prevention and care partners (e.g., projects to assess the availability of data on risk behaviors in Prevention Counseling and Referral Systems [PCRS], or assessment of the validity of CD4 or viral load reporting as a marker of receiving regular care and treatment of HIV).

3. If HIV case surveillance is, or will soon be implemented, and case reports are used to facilitate voluntary prevention referral services [e.g. PCRS], or conduct registry matching with other public health programs in the health department (e.g., tuberculosis, STD), document steps to ensure that such practices are consistent with the Security and Confidentiality Standards (as published in ''Appendix C'' of the Guidelines for HIV/AIDS Surveillance) and consistent with CDC and State or local IRB requirements for secondary uses of surveillance data.

4. PCRS can be conducted without linkage to surveillance information. Some areas may elect to link surveillance information to PCRS. In areas that link surveillance reporting and PCRS activities, CDC recommends that these activities should be evaluated to assure that the programmatic objectives of PCRS are attained without unnecessarily compromising community and provider support for surveillance program activities. These evaluations should be executed in partnership with HIV prevention programs. Applicants should document that such evaluations are jointly funded and conducted by the surveillance and HIV/AIDS prevention program staff.

5. Describe existing evaluation activities to assess the performance attributes of the HIV/AIDS surveillance system according to published CDC recommendations (Attachment A). This description should include the methods and results associated with efforts to limit the number of inter-state duplication of HIV, AIDS, perinatal exposure and HIV infection deaths across States, and intra-state reporting areas through reciprocal notification of cases. Provide documentation that the applicant will collaborate with CDC to conduct evaluations during the period of this cooperative agreement according to established and validated protocols developed by CDC.

6. Describe State laws, rules, or regulations pertaining to the protection or release of surveillance information; and physical security of hard copies and electronic files containing confidential surveillance information; any laws, rules, regulations, or health department policies that require or permit the release of patient identifying information collected under the HIV/AIDS surveillance system to entities outside of the public health department and measures the health department has taken to ensure that the confidentiality of individuals reported to the surveillance system is protected from further or unlawful disclosure. As part of the application, you must submit a signed copy of the form (Attachment B) designating the ORP and attesting that

all Program Requirements as stipulated in the Security Standards in Appendix C of the ''Guidelines for HIV/AIDS Surveillance'' have been attained.

7. Provide a description of the personnel, and the level of support provided through CDC funding for each staff person involved with HIV/AIDS core surveillance activities. A description of the experience, training, credentials and activities of these staff members should be included. Curriculum vitae should be included as attachments to the application for those staff members occupying supervisory, leadership, and advanced technical or scientific positions.

8. Budget

a. In the travel category, include a total for local travel and a total for out-of-state travel.

b. The following information is required for all proposed contracts: name of contractor, period of performance, method of selection (e.g., competitive or sole source), description of activities, justification for subcontracting, and itemized budget.

c. Submit a single budget and justification for core surveillance Recipient Activities.

Following receipt of your FY 2004 award, CDC may request additional activity- or project-specific budgetary information.

Part II. HIV Incidence Surveillance

- Maximum number of pages: 20 double spaced, including up to five pages of program plans and budgets for years 2005 and 2006 excluding reports and appendices. Applications with narratives in excess of 20 pages will be returned to the applicant and not considered for funding.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: 1 inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Format:

In developing this Part of the application, your narrative must follow the format below:

1. Program Plan.
2. Objectives.
3. Methods for Implementation.
4. Program Evaluation Plan.
5. Budget.
6. Attachments.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. Describe the characteristics of the HIV reporting system including regulations or statutes that authorize the collection of HIV data, length of time it has been in place, major sources of reports, whether laboratory reporting exists, and if so, if electronic laboratory reporting is used. This description must also verify that diagnosed HIV infections are reported in a timely manner.

2. Describe the potential ability of the surveillance system to coordinate with laboratory partners, including public health laboratories and commercial laboratories responsible for HIV testing in the state, to obtain aliquots of blood for STARHS testing.

3. How the recipient will collaborate with CDC to assure appropriate and efficient preparation and transport from the lab of diagnosis to the public health lab, and then from the public health lab to reference laboratories for STARHS testing.

4. Describe how HIV testing histories will be obtained (either before or after STARHS testing) from persons identified as recently infected by the STARHS assay, or its equivalent. The strategies for acquiring these data should include a diverse sample of persons from public and private facilities to assure representative and adequately precise population-based estimates for incidence.

5. Describe how HIV case data will be linked to results from laboratory specimens, and to HIV testing history information.

6. In addition to linking STARHS results to information in the HIV reporting system, in some settings a set of specimens will be tested in an unlinked fashion. Describe how specimens from such individuals will be anonymized, and data for this component of the surveillance system will be managed.

7. Describe the number, activities, level of support and qualifications of the personnel who will be involved in the HIV Incidence Surveillance program.

8. Budget

a. In the travel category, include a total for local travel and a total for out-of-state travel.

b. The following information is required for all proposed contracts: name of contractor, period of performance, method of selection (*e.g.*, competitive or sole source), description of activities, justification for subcontracting, and itemized budget.

c. Submit a single budget and justification for HIV Incidence Surveillance Recipient Activities.

Following receipt of your FY 2004 award, CDC may request additional activity- or project-specific budgetary information.

Part III. Capacity Building for Epidemiologic and Program Evaluation Activities

- Maximum number of pages: 15 double-spaced pages including up to five pages of program plans for years 2005 and 2006, excluding reports and appendices. Applications with narratives in excess of 15 pages will be returned to the applicant and not considered for funding.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: 1 inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Format:

In developing this Part of the application, your narrative must follow the format below:

1. Program Need and Resources.
2. Plan and Objectives.
3. Methods.
4. Staffing.
5. Budget.
6. Attachments.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

Describe how staff hired for this project will:

1. Provide on-going assistance in the development and use of the epidemiologic profile, program, and other health-related data for HIV prevention and care community planning.

2. Assist HIV prevention and care community planning groups with evaluation activities.

3. Describe the number, and type of activities, the level of support and qualifications of the personnel who will be involved in the HIV Incidence Surveillance program.

4. Budget

a. In the travel category, include a total for local travel and a total for out-of-state travel.

b. The following information is required for all proposed contracts: name of contractor, period of performance, method of selection (*e.g.*, competitive or sole source), description of activities, justification for subcontracting, and itemized budget.

c. Submit a single budget and justification for Capacity Building for Epidemiologic and Program Evaluation Activities Recipient Activities. Following receipt of your FY 2004 award, CDC may request additional activity- or project-specific budgetary information.

Part IV. Enhanced Surveillance for Perinatal Prevention

- Maximum number of pages: The narrative should be no more than 15 double-spaced pages, including up to five pages of program plans and budgets for years 2005 and 2006, excluding reports and appendices. Applications with narratives in excess of 15 pages will be returned to the applicant and not considered for funding.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: 1 inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Format:

In developing this Part of the application, your narrative must follow the format below:

1. Program Plan.
2. Objectives.
3. Methods.
4. Evaluation.
5. Proposed Data Uses.
6. Staffing.
7. Budget.
8. Attachments.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. Describe the current ability of surveillance activities to collect information on all HIV exposed infants and HIV infected mothers. Applicants that will not implement HIV reporting to include HIV exposure reporting by April 1, 2004 and apply for a time-limited research project must submit evidence that the proposed activity will be approved by an IRB as required by CDC.

2. Describe the methods that will be used in identifying and linking data on HIV exposed infants and HIV infected mothers; conducting systematic chart reviews to complete abstraction forms and HIV/AIDS case report forms; conducting longitudinal follow-up of HIV exposed infants to ascertain infection status and initiation of HIV related treatment and care; and assessing short-and/or long-term outcomes in HIV exposed infants.

3. Describe the methods that will be used in evaluating the Enhanced Surveillance of Perinatal Prevention activities, to include a description of the timeliness and completeness of data collection and submission of data to CDC.

4. Describe how the data from Enhanced Surveillance of Perinatal Prevention will be coordinated with and used to improve perinatal prevention activities.

5. Describe the number, activities, level of support and qualifications of the personnel who will be involved in the Enhanced Surveillance of Perinatal Prevention.

6. Budget

a. In the travel category, include a total for local travel and a total for out-of-state travel.

b. The following information is required for all proposed contracts: name of contractor, period of performance, method of selection (*e.g.*, competitive or sole source), description of activities, justification for subcontracting, and itemized budget.

c. Submit a single budget and justification for Enhanced Surveillance of Perinatal Prevention Activities. Following receipt of your FY 2004 award, CDC may request additional activity-or project-specific budgetary information.

Part V. Laboratory Testing for Recent HIV Infection

- Maximum number of pages: The narrative should be no more than 15 double-spaced pages printed on one side, including up to five pages of program plans and budgets for years 2005 and 2006 excluding reports and appendices. Attachments should not exceed an additional 25 pages, including budget and budget narrative. Required forms do not count toward page limits. Applications with narratives in excess of 15 pages will be returned to the applicant and not considered for funding.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: 1 inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Format:

In developing this Part of the application, your narrative must follow the format below:

1. Technical Competence.
2. Capacity.
3. Evaluation.
4. Staffing.
5. Budget.
6. Attachments.

VI. Behavioral Surveillance

- Maximum number of pages: The program narrative should be no more than 15 double-spaced pages. Attachments should not exceed an additional 25 pages, including budget and budget narrative. Required forms do not count toward page limits. Applications with narratives in excess of 15 pages will be returned to the applicant and not considered for funding.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: 1 inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Format:

In developing this Part of the application, your narrative must follow the format below:

1. Program Plan.
2. Objectives.
3. Methods.
4. Evaluation.
5. Proposed Data Uses.
6. Staffing.
7. Budget.
8. Attachments.

Part VII. Core Surveillance in the Pacific Island Jurisdictions

- Maximum number of pages: The narrative should be no more than 15 double-spaced pages, including up to five pages of program plans and budgets for years 2005 and 2006, excluding reports and appendices. Applications with narratives in excess of 30 pages will be returned to the applicant and not considered for funding.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: 1 inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Format:

In developing this Part of the application, your narrative must follow the format below:

1. Program Need and Resources.
2. Collaboration and Use of Data.
3. Objectives.
4. Program Plan and Methods for Implementation.
5. Program Evaluation Plan.
6. Project Management and Staffing Plan.
7. Budget.
8. Attachments.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. Describe proposed plans for developing active case-finding efforts, follow-up of priority cases, and activities that promote uses of HIV and AIDS surveillance data for prevention planning.

2. Describe procedures for critically reviewing surveillance methodologies to promote efficient and effective use of resources; disseminating data for public health purposes; ensuring that the surveillance program contributes to the goals and public health mission of the

health department; using surveillance data to evaluate the effectiveness of prevention efforts, policies, and programs; and using surveillance data to target and evaluate proposed community-based interventions.

3. Describe existing or proposed assessment activities to improve the performance attributes of the HIV/AIDS surveillance system. This description should include the methods to improve the completeness of reporting, limit the number of inter-island duplicates of HIV, AIDS, and promote the accuracy of the data.

4. In specific areas where there is laboratory capacity to perform confirmatory testing (*i.e.* Western Blot or IFA) describe the capacity to serve as central data coordination area through collaboration with other island jurisdictions that submit specimens for such confirmatory testing. These descriptions should include a process for assuring compliance with security and confidentiality requirements.

5. Describe State laws, rules, or regulations pertaining to the protection or release of surveillance information; physical security of hard copies and electronic files containing confidential surveillance information; any laws, rules, regulations, or health department policies that require or permit the release of patient identifying information collected under the HIV/AIDS surveillance system to entities outside of the public health department and measures the health department has taken to ensure that the confidentiality of individuals reported to the surveillance system is protected from further or unlawful disclosure. As part of the application, you must submit a signed copy of the form (Attachment B) designating the ORP and attesting that all Program Requirements as stipulated in the Security Standards in Appendix C of the ''Guidelines for HIV/AIDS Surveillance'' have been attained.

6. Provide a description of the personnel, and the level of support provided through CDC funding for each staff person involved with HIV/AIDS core surveillance activities. A description of the experience, training, credentials and activities of these staff members should be included. Curriculum vitae should be included as attachments to the application for those staff members occupying supervisory, leadership, and advanced technical or scientific positions.

7. Budget

a. In the travel category, include a total for local travel and a total for out-of-state travel.

b. The following information is required for all proposed contracts: name of contractor, period of performance, method of selection (*e.g.*, competitive or sole source), description of activities, justification for subcontracting, and itemized budget.

c. Submit a single budget and justification for core surveillance Recipient Activities. Following receipt of your CY 2004 award, CDC may request additional activity-or project-specific budgetary information.

Funding Restrictions:

Funding restrictions, which must be taken into account while writing your budget for parts I–VII are as follows:

- Funds are awarded for a specifically defined purpose described in this announcement and may not be used for any other purpose or program.
- Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities.
- Funds may not be used to supplant State or local health department funds available for HIV Prevention and Surveillance.
- Funds may not be used to provide direct medical care or prevention case management.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Submission Date, Time, and Address: Application Deadline Date: January 16, 2004.

Application Submission Address: Submit your application by mail or express delivery service to:

Technical Information Management–PA# 04017, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged. CDC will not be sending post cards acknowledging receipt of applications.

Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

V. Application Review Information

Review Criteria: You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

A Technical Acceptability Review will be conducted by CDC for Parts I, II, III, VI, and VII. Parts IV and V will involve Objective Review Panels. The individual ''Parts'' are further discussed below.

Part I. Core Surveillance

The following criteria will be used to evaluate applications for their technical acceptability:

1. Program Need and Resources: The extent to which the applicant describes the requirements for, and activities of, the HIV/AIDS surveillance system that includes a presentation of existing strengths and limitations. The extent to which this overview includes: the program need in terms of HIV/AIDS morbidity (*i.e.,* delineation of the annual number of HIV/AIDS cases and case rates); extent and level of funding devoted to prevention, treatment, and care programs in the area that require HIV/AIDS surveillance data for resource allocation and program planning; uses of surveillance data, including linkages to public health program activities such as PCRS; ability to analyze data that allows for the identification of trends in emerging modes of HIV transmission (by various demographic indicators and behaviors); all existing and potential sources of HIV/AIDS cases; a description of HIV/AIDS reporting procedures and resources in the area including a presentation of data items currently collected; ongoing quality assurance procedures to promote data quality; sources of funding beyond federal monies provided by CDC; the flow of data through the reporting system; existing policies and procedures that are written and implemented for security, confidentiality, data dissemination and surveillance procedural activities; educational and training activities undertaken to develop and enhance the skills of surveillance staff and staff in reporting facilities; a copy of the most recent annual surveillance report; State legislation and/or regulations pertaining to the reporting, collection, uses and dissemination of HIV/AIDS surveillance data.

2. Collaboration and Use of Data: The extent to which the applicant describes past, current, and proposed collaboration with: the relevant HIV/AIDS organizations and agencies within the reporting area; CDC, and other States or national organizations involved in coordinating and assuring the quality, completeness, and accuracy of HIV/AIDS surveillance data; locally and Federally-funded prevention, treatment and care programs such as the CDC prevention programs or the Ryan White Care Act; and the extent HIV/AIDS surveillance data are used to assist public and private partners (*e.g.,* community planning groups, AIDS Service Organizations) as a guide for allocating HIV prevention and care resources, and as a means to evaluate the success of their intervention programs.

3. Proposed Objectives: The extent to which program objectives are: specific, measurable, time-phased, and realistic; related to recipient activities, program purpose and program activities; derived from needs identified in the resources and needs assessment; and consistent with national HIV/AIDS surveillance program objectives.

4. Program Plan and Methods for Implementation: The extent to which the applicant adequately describes the procedures and methods to be used to accomplish the program objectives for their surveillance program; and describes how program plans and procedures will facilitate achievement of national objectives for HIV/AIDS surveillance.

5. Program Evaluation Plan: The applicant provides an evaluation plan that is appropriate for measuring progress toward program area and national HIV/AIDS surveillance objectives; the plan should include a specified time-line and methods for identifying promoters and barriers to program success.

6. Project Management and Staffing Plan: The extent to which proposed staffing, organizational structure, staff experience and background, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff indicate ability to carry out the purposes of the program.

7. Budget: The budget is reasonable, clearly justified, consistent with the demonstrated need and proposed activities, and likely to lead to program success.

Part II. HIV Incidence Surveillance

1. Program Plan: The degree to which the applicant provides evidence of their understanding of the project goals and conceptual background through the presentation of a coherent plan that describes all the necessary activities and personnel needed to conduct HIV Incidence surveillance. Quality of plans for conducting data analysis and presentation showing how data have been and will be used to improve state and local HIV prevention programs and HIV services and care.

2. Objectives: The extent to which the objectives are specific (with time frames), realistic, and address the required recipient activities.

3. Methods for Implementation: The extent to which the applicant demonstrates the technical capability to conduct the project using the appropriate data collection and analytic methods. Specific technical capabilities to be reviewed for each project include: The ability to identify new HIV infections reported to the surveillance system in a timely manner; collaboration with laboratory partners, including public health laboratories and commercial laboratories responsible for HIV testing in the state, to obtain aliquots of blood for STARHS testing; preparation and transport of specimens to reference laboratories for STARHS testing; obtainment of sufficient HIV testing history information; linkage of HIV case data to laboratory specimens, and to HIV testing history information; and in areas that execute unlinked STARHS, the extent to which the methods are feasible and appropriate.

4. Program Evaluation Plan: The applicant provides an evaluation plan that is appropriate for measuring progress toward program area and national HIV Incidence surveillance objectives; the plan should include a specified time-line and methods for identifying promoters and barriers to program success.

5. Budget: The budget is reasonable, clearly justified, consistent with the demonstrated need and proposed activities, and likely to lead to program success.

Part III. Capacity Building for Epidemiologic and Program Evaluation Activities

1. Program Need and Resources: The extent to which the applicant describes the need for resources to achieve the purpose. The detail should include how awardees will collaborate with public and private partners (such as, HIV prevention and care community planning groups and AIDS service organizations) to use surveillance, program, and other health-related data to enhance community planning, evaluation, and monitoring achievement of goals and objectives.

2. Plan and Objectives: The extent to which the applicant describes its plan for achieving the purpose, including presentation of goals, objectives, activities, and time frames along with narrative discussion. The narrative discussion should include:

a. Objectives for the collection, use, analysis, interpretation of surveillance, program, and other health-related data to enhance epidemiologic and program evaluation activities.

b. Discussion of the ''Recipient Activities'' outlined above.

3. Methods: The extent to which the applicant describes how surveillance and other health-related data will be used to improve epidemiologic and program evaluation activities, including,

but not limited to, prevention and care community planning, assessment of prevention program effectiveness, and the monitoring of goals and objectives. Requests should include discussion of various data sets and specific studies that may be available to assist with assessment of the impact of HIV prevention activities in the jurisdiction.

4. Staffing: The extent to which the qualifications, duties, responsibilities, and time allocation of proposed staff (including potential contractors) are discussed, and how these attributes are justified and appropriate to accomplish the purpose and implement the recipient activities. Discussion should include the degree to which proposed staff will be able to provide appropriate scientific oversight as well as programmatic and administrative support for the proposed activities.

5. Budget: Budgets will be assessed to ensure they are reasonable, clearly justified, consistent with the demonstrated need and proposed activities, and likely to lead to program success.

Part IV. Enhanced Surveillance for Perinatal Prevention

Note: Applications submitted for this Part will be reviewed by an independent objective review panel appointed by CDC that will evaluate each application against the following criteria:

1. Methods (25 points): The extent to which the applicant demonstrates technical capability to conduct the project using the appropriate data collection and analytic methods. Specific methods for accomplishing the following technical activities should be described:

a. Identifying and linking data on related infected mothers and HIV exposed children.

b. Conducting systematic chart reviews, abstraction forms and HIV/AIDS case report forms.

c. Conducting longitudinal follow-up of HIV-exposed infants to ascertain infection status and initiation of HIV related treatment and care.

d. Past ability to conduct the project including a description of the timeliness and completeness of data collection and submission on mother-infant pairs.

2. Program Plan (20 points): The extent to which the applicant provides a clear and feasible plan for enhancing surveillance activities for children and women by expanding core perinatal surveillance by collecting data:

a. On all children born to HIV-infected women (including zidovudine (ZDV) and other antiretroviral therapy used during pregnancy, at labor or delivery, and to the neonate; opportunistic infection prophylaxis; initiation of HIV evaluation and care; HIV infection status; and short as well as long-term outcomes in antiretroviral exposed and unexposed children).

b. On HIV-infected women who deliver a live infant, to assess the counseling and therapy they received during pregnancy, the date of their HIV diagnosis, dates of initiation of prenatal care, dates of initiation of ZDV and other antiretroviral therapy, pregnancy outcomes, stage of HIV disease, and HIV risk behaviors.

c. Applicants that will not implement HIV reporting by April 1, 2004 and apply for a time-limited research project must submit evidence that the proposed activity will be approved by an IRB as required by CDC.

3. Objectives (15 points): The extent to which the objectives are specific (with time frames), realistic, and address the required recipient activities.

4. Evaluation (15 points): The extent to which realistic plans for evaluation of project activities have been developed, and the quality of such plans. Includes a description of the timeliness of the system and the completeness of ascertainment of mother-infant pairs.

5. Proposed Data Uses (15 points): The extent to which data have, or will, assist in HIV prevention and care activities, so that these data are used for formulating public health strategies and targeting resources. In areas that received categorical CDC funding for perinatal prevention activities, the extent to which the applicant describes how the data from this system will be coordinated with and be used to improve these activities.

6. Staffing (10 points): The extent to which proposed staffing, organizational structure, staff experience and background, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff indicate ability to carry out the purposes of the program.

7. Budget (not scored): The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. All budget categories should be itemized.

Part V. Laboratory Testing for Recent HIV Infection

Note: Applications submitted for this Part will be reviewed by an independent objective review panel appointed by CDC that will evaluate each application against the following criteria:

1. Technical Competence (40 points): Ability to perform the assay for incident HIV infection with an extremely high degree of reliability, as evidenced by previous successful proficiency conducting this test and demonstrated satisfactory participation in the CDC quality assurance program for this test. Applicants should include quality control charts from actual testing conducted over the most recent three months.

2. Capacity (40 points): Ability to process and test at least 6,000 specimens per month, using acceptable automated testing equipment and protocols. Ability to track receipt of specimens and report results within seven days of receipt of specimen using appropriate data and specimen management systems. Availability of adequate, dedicated laboratory space and equipment for receipt, testing and short-term storage of a large volume of specimens.

3. Staff capabilities and Project Oversight (20 points): Demonstrates inclusion of scientific oversight as appropriate for the complexity of the proposed activities, as evidenced by: (a) Project administration plans; (b) ability to recruit, hire, and train appropriate number and type of personnel to conduct a large number of highly complex tests; and (c) qualifications, research and laboratory experience of the staff who will participate in this project documented in attached CVs of key staff. This includes evidence of ability to collaborate and conduct testing for external, collaborating organization (*e.g.*, documentation from state health departments for which they have conducted testing in the past) including attached letters of support from current collaborators and a letter from the State or City health department human resources office director confirming their ability to recruit and hire appropriate staff within three months of the start of the funding.

4. Budget (Not scored): The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Part VI. Behavioral Surveillance

The technical acceptability of the application will be evaluated based on the following criteria:

1. The degree to which the applicant provides evidence of their understanding of the project protocol and objectives. The extent to which plans for evaluation of project activities have been developed and are realistic. Quality of plans for data analysis and presentation showing how data have been and will be used to improve state and local HIV prevention programs and HIV services and care.

2. The extent to which the applicant provides evidence of their ability to implement study methodology. The extent to which the applicant provides evidence of their ability to recruit/sample 500 MSM and 500 IDUs within the budget period.

3. The quality of the applicant's plan to develop, implement and administer the project operations and the degree to which the objectives and time schedules are reasonable, time-phased and appropriate for accomplishing project activities. The quality of the applicants plan to address Recipient Activities outlined in Section E (1). The degree to which the applicant has met the CDC policy requirements regarding the inclusion of ethnic, racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes' racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. The degree to which the qualifications, duties, responsibilities, and time allocation of proposed staff (including potential contractors), are justified and appropriate to accomplish study objectives. The degree to which the proposed staff will be able to provide appropriate scientific oversight, as well as programmatic and administrative support for the proposed activities. The extent to which collaborating entities (*e.g.*, HIV prevention programs, community groups, community gatekeepers, CBOs, behavioral scientists) are appropriate (*i.e.*, meet specific needs), sufficient, promote project objectives, and document their ability in letters of support.

6. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Part VII. Core Surveillance in the Pacific Island Jurisdictions

The following criteria will be used to evaluate applications for their technical acceptability:

1. Program Need and Resources: The extent to which the applicant describes the requirements for, and activities of, the HIV/AIDS surveillance system that includes a presentation of existing strengths and limitations. The extent to which this overview includes: The program need in terms of HIV/AIDS morbidity; extent and level of funding devoted to prevention, treatment, and care programs in the area that require HIV/AIDS surveillance data for resource allocation and program planning; uses of surveillance data; ability to analyze data that allows for the identification of trends in emerging modes of HIV transmission (by various demographic indicators and behaviors); existing and potential sources of HIV/AIDS cases; a description of HIV/AIDS reporting procedures if they are in place; ongoing quality assurance procedures to promote data quality; sources of funding beyond federal monies provided by CDC; existing policies and procedures that are written and implemented for security, confidentiality, data dissemination and surveillance procedural activities; educational and training activities undertaken to develop and enhance the skills of surveillance staff and staff in reporting facilities; a copy of the most recent annual surveillance report; area legislation and/or regulations pertaining to the reporting, collection, uses and dissemination of HIV/AIDS surveillance data.

2. Collaboration and Use of Data: The extent to which the applicant describes past, current, and proposed collaboration with: The relevant HIV/AIDS organizations and agencies within the reporting area; locally and Federally-funded prevention, treatment and care programs such as the CDC prevention programs or the Ryan White Care Act; and the extent HIV/AIDS surveillance data are used to assist public and private partners (*e.g.*, community planning groups, AIDS Service Organizations) as a guide for allocating HIV prevention and care resources.

3. Proposed Objectives: The extent to which program objectives are: specific, measurable, time-phased, and realistic; related to recipient activities, program purpose and program activities; derived from needs identified in the resources and needs assessment; consistent with local and national HIV/AIDS surveillance program objectives.

4. Program Plan and Methods for Implementation: The extent to which the applicant: Adequately describes the procedures and methods to be used to accomplish the program objectives for their surveillance program; describes how program plans and procedures will facilitate achievement of national objectives for HIV/AIDS surveillance.

5. Program Evaluation Plan: The applicant provides an evaluation plan that is appropriate for measuring progress toward program area and national HIV/AIDS surveillance objectives; the plan should include a specified time-line and methods for identifying promoters and barriers to program success.

6. Project Management and Staffing Plan: The extent to which proposed staffing, organizational structure, staff experience and background, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff indicate ability to carry out the purposes of the program.

7. Budget: The budget is reasonable, clearly justified, consistent with the demonstrated need and proposed activities, and likely to lead to program success.

Review and Selection Process: A Technical Acceptability Review will be conducted by CDC for Parts I, II, III, VI, and VII. Parts IV and V will involve Objective Review Panels.

VI. Award Administration Information

Award Notices: If your application is to be funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Administrative and National Policy Requirements: 45 CFR Part 74 and 92.

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–7 Executive Order 12372
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

Additionally, CDC recognizes that HIV/AIDS surveillance data are critical to the development and implementation of HIV/AIDS prevention programs and that responsiveness to the needs of prevention program managers and Community Planning Groups (CPGs) requires the commitment of resources and personnel that are funded under the surveillance cooperative agreement. These activities include analyzing and interpreting surveillance data, preparing reports for use by the CPGs, and conducting other related activities that directly improve and support HIV prevention activities. HIV Prevention Cooperative Agreement funds may be used to support unmet HIV/AIDS surveillance activities described above or projects to address data gaps or unmet State or local needs for supplemental surveillance or serosurveillance data, provided there is concurrence of CPGs and approval by the CDC Grants Management Official.

Reporting Requirements

You must provide CDC with an original, plus two copies of the following reports:

1. Interim Progress Report will be submitted annually and will be due on the date (usually in the late summer of the year preceding the budget period)

indicated in your Notice of Grant Award from CDC. The Interim Progress Report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Requested amount for the continuation award, to be submitted in accordance with your projected level of funding for the 2005 and 2006 budget periods.

e. Detailed line item budget and justification for the amount requested.

f. Modifications/adjustments concerning changes to support proposed subcontracts, if any.

g. A description of any programmatic and staffing changes. Please submit a listing of your current staff and an organizational chart in support of your CDC program.

2. Annual Progress Report is due 90 days after the end of each budget period. The Annual Progress Report for years 2004, 2005 and 2006 should cover the entire budget period.

Annual progress reports will include a data requirement that demonstrates measures of effectiveness. (See the beginning of section ''H. Evaluation Criteria'' for the definition of measures of effectiveness.)

The progress report must include the following for each program, function, or activity involved:

a. A description of the program accomplishments and a comparison of actual accomplishments with the objectives established in the work plan for the funding period.

b. Other pertinent information that includes, but is not limited to analysis and explanation of unexpected delays or high costs of performance.

c. A listing of presentations and publications produced by, supported by, or related to program activities.

3. Annual Financial Status Report, no more than 90 days after the end of the budget period.

4. Final financial and performance report for the entire project period (2004–2006), no more than 90 days after the end of the project period.

Send all reports to the Grants Management and Contracting Officer identified in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For business management and budget assistance in the states, contact: Carlos Smiley, Grants Management and Contracting Officer, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2722, E-mail address: *anx3@cdc.gov.*

For business management and budget assistance in the territories, contact: Vincent Falzone, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2763, E-mail: *vcf6@cdc.gov.*

For program technical assistance with Parts I–IV and VII of this announcement, contact: Debra Hayes-Hughes, Deputy Chief, Surveillance Branch, Division of HIV/AIDS Prevention-Surveillance and Epidemiology, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–47, Atlanta, GA 30333, Telephone Number (404) 639–2050, E-mail address: *dsh1@cdc.gov.*

For program technical assistance with Parts V and VI of this announcement, contact: Ken A. Bell, Deputy Chief, Behavioral and Clinical Surveillance Branch, Division of HIV/AIDS Prevention-Surveillance and Epidemiology, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–46, Atlanta, GA 30333, Telephone Number (404) 639–2970, E-mail address *kbell@cdc.gov.*

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–26837 Filed 10–24–03; 8:45 am]

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Federal Register

Monday,
October 27, 2003

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 44 and 52

Federal Acquisition Regulation; Subcontracts for Commercial Items and Commercial Components; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 44 and 52

[FAR Case 2002–021]

RIN 9000–AJ75

Federal Acquisition Regulation; Subcontracts for Commercial Items and Commercial Components

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 require that the clause regarding Subcontracts for Commercial Items and Commercial Components be inserted in solicitations and contracts other than those for commercial items.

DATES: Interested parties should submit comments in writing on or before December 26, 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.2002–021@gsa.gov.* Please submit comments only and cite FAR case 2002–021 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. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. Please cite FAR case 2002–021.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR 44.403 by requiring the use of the clause at 52.244–6, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts other than those for commercial items.

The current clause prescription requires use of the clause in solicitations and contracts for ''supplies or services'' other than commercial items. It is not clear whether this includes solicitations and contracts for construction.

The revised clause prescription clarifies that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts. The rule also amends the clause language to clarify that, within the context of 52.244–6, a commercial item would include commercial construction materials but would not include construction itself.

This is not a significant regulatory action and, therefore, as 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 it is a clarification of existing policy. Inclusion of FAR clause 52.244–6 reduces the number of flowdown clauses required in subcontracts for commercial items and commercial components. 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 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 2002–021), 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 44 and 52

Government procurement.

Dated: October 21, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 44 and 52 as set forth below:

1. The authority citation for 48 CFR parts 44 and 52 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 44—SUBCONTRACTING POLICIES AND PROCEDURES

2. Revise section 44.403 to read as follows:

§ 44.403 Contract clause.

The contracting officer shall insert the clause at 52.244–6, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts other than those for commercial items.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

§ 52.213–4 [Amended]

3. Amend section 52.213–4 by revising the date of the clause to read ''(Date)''; and removing ''(Apr 2003)'' from paragraph (a)(2)(vi) and adding ''(Date)'' in its place.

4. Amend section 52.244–6 by revising the date of the clause; and in paragraph (a) by revising the definition ''Commercial item'' to read as follows:

§ 52.244–6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (DATE)

(a) * * *

Commercial item has the meaning contained in the clause at 52.202–1, Definitions, and includes commercial construction materials but does not include construction itself.

* * * * *

[FR Doc. 03–26953 Filed 10–24–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Monday,
October 27, 2003

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11 and 91

Reduced Vertical Separation Minimum in Domestic United States Airspace; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11 and 91

[Docket No. FAA–2002–12261; Amendment Nos. 11–49 and 91–276]

RIN 2120–AH68

Reduced Vertical Separation Minimum in Domestic United States Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule permits the initiation of Reduced Vertical Separation Minimum (RVSM) flights in the airspace over the contiguous 48 States of the United States, the District of Columbia, Alaska, that portion of the Gulf of Mexico where the Federal Aviation Administration (FAA) provides air traffic services, the San Juan Flight Information Region (FIR), and the airspace between Florida and the San Juan FIR. The RVSM program allows the use of 1,000-foot vertical separation at certain altitudes between aircraft that meet stringent altimeter and autopilot performance requirements. This rule also requires any aircraft that is equipped with Traffic Alert and Collision Avoidance System version II (TCAS II) and flown in RVSM airspace to incorporate a version of TCAS II software that is compatible with RVSM operations. The FAA is taking this action to assist aircraft operators to save fuel and time, to enhance air traffic control flexibility, and to enhance airspace capacity.

EFFECTIVE DATE: This final rule is effective November 26, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Swain, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 800 Independence Ave, SW., Washington, DC 20591, telephone (202) 385–4576.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this document and of a chart showing the affected airspace through the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*.

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the *Government Printing Office's* Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

The Reduced Vertical Separation Minimum (RVSM) Program

The term ''flight level'' (FL) describes a surface of constant atmospheric pressure related to a reference datum of 29.92 inches of mercury. Flight levels are stated in three digits that represent thousands of feet. Flight levels are separated by specific pressure intervals. Rather than adjusting altimeters for changes in atmospheric pressure, pilots base altitude readings above the transition altitude (18,000 feet in the United States) on this standard reference. Thus FL 290 represents the pressure surface equivalent to 29,000 feet based on the 29.92 inches of mercury datum; FL 310 represents 31,000 feet, and so on.

The RVSM program allows the vertical separation standard that is applied below FL 290 to be applied between FL 290 and FL 410. Below FL 290, air traffic controllers can assign Instrument Flight Rules (IFR) aircraft to flight levels that are separated by 1,000 feet. Above FL 290, however, unless RVSM standards are implemented, the vertical separation minimum is 2,000 feet and IFR aircraft must be assigned to flight levels separated by 2,000 feet.

The 2,000-foot minimum vertical separation restricts the number of flight levels available above FL 290. During peak periods, these flight levels can become congested. When all RVSM flight levels (FL 290–410) are utilized, six additional flight levels are available: FL 300, 320, 340, 360, 380, and 400. Increasing the number of flight levels available in the U.S. domestic airspace is projected to provide enhancements to aircraft operations similar to those gained in the North Atlantic (NAT) and Pacific (PAC) (*i.e.*, mitigation of fuel penalties attributed to the inability to fly optimum altitudes and tracks, and enhanced controller flexibility for air traffic control).

Summary of the Notice of Proposed Rulemaking (NPRM) Published on May 10, 2002, and the Supplemental Notice of Proposed Rulemaking (SNPRM) Published on February 28, 2003

The NPRM published on May 10, 2002 (67 FR 31920) proposed to implement RVSM from FL 290 through FL 410 over the contiguous U.S. and Alaska, and the portion of the Gulf of Mexico where the FAA provides air traffic services. This reduced vertical separation minimum would only be applied between those aircraft that meet stringent altimeter and autopilot performance requirements. The FAA (''we'') proposed the action to assist aircraft operators to save fuel and time, to enhance air traffic control flexibility, and to provide the potential for enhanced airspace capacity. The NPRM outlined the FAA plan during the pre- and post implementation phases to monitor the program to ensure that RVSM safety standards are maintained and that aircraft altitude-keeping performance meets RVSM standards.

We subsequently revised the proposal in an SNPRM published on February 28, 2003 (68 FR 9818). We added a proposal to implement RVSM from FL 290 through FL 410 in Atlantic High Offshore airspace, Gulf of Mexico High Offshore airspace, and in the San Juan Flight Information Region (FIR). This supplement to the NPRM proposed to better define RVSM airspace off the eastern and southern coasts of the United States and harmonize RVSM airspace off the east coast of the U.S. between adjoining airspaces in the domestic U.S., Atlantic High Offshore, and the New York Oceanic FIR. We also proposed to remove the proposal in the NPRM that would have permitted part 91 turbo-propeller aircraft to operate in domestic RVSM airspace with a single RVSM compliant altimeter.

With air traffic levels increasing annually, FAA airspace planners and their international counterparts have established programs to implement RVSM as a primary measure to enhance air traffic management and aircraft operating efficiency. The RVSM program has been implemented in oceanic airspace in the North and South Atlantic, the Pacific, the South China Sea, and in the portion of the West Atlantic Route System (WATRS) that is in the New York Oceanic Flight Information Region. The RVSM program has also been implemented in the continental airspace of Australia and Europe.

Aircraft Operating in U.S. Airspace Already Approved for RVSM

Approximately 38 percent of flights in U.S. airspace are already conducted by aircraft that have been approved for RVSM operations. Approximately 5,400 aircraft of U.S. registry have been FAA-approved for RVSM operations under the existing RVSM regulation. Many U.S. operators have obtained RVSM approval for these aircraft so they can be flown in airspace outside the U.S. where RVSM has been implemented.

Existing and New Regulations: Criteria for Aircraft and Operator Approval

Part 91, Section 91.706 (Operations within airspace designed as Reduced Vertical Separation Minimum Airspace) and part 91, Appendix G (Operations in Reduced Vertical Separation Minimum (RVSM) Airspace) contain the FAA requirements for aircraft and operator approval for RVSM operations outside the U.S. They have been applied to operations outside the U.S. since they were published in April of 1997. The objective of this rulemaking is to add Section 91.180 (Operations Within Reduced Vertical Separation Minimum Airspace in the United States) and amend Part 91 Appendix G Section 8 (Airspace Designation) so that part 91 Appendix G standards can be applied within the domestic U.S and the other airspaces being added to Appendix G, Section 8.

Domestic RVSM Implementation Plan

We have selected January 20, 2005, as the target date to implement RVSM between FL 290 and FL 410 in the airspace described in this rulemaking. When RVSM is implemented, to fly in RVSM airspace civil operators and aircraft must comply with the RVSM standards of part 91 with only limited exceptions.

In accordance with part 91, Appendix G, Section 5 (Deviation Authority Approval), the FAA may accommodate the following noncompliant operators in RVSM airspace:

- The FAA may accommodate unapproved aircraft conducting air ambulance flights using a Lifeguard call sign as described in the Aeronautical Information Manual.
- In accordance with the FAA/Department of Defense (DoD) Memorandum of Understanding, the FAA may accommodate unapproved DoD aircraft.
- Unapproved aircraft may be allowed to climb through RVSM flight levels without intermediate level off to operate above RVSM airspace at FL 430 and above, traffic permitting and
- After coordination and consultation provided for in Appendix G, Section 5, the FAA may accommodate flights conducted for aircraft certification and development and customer acceptance purposes.

When such aircraft operate in RVSM airspace, their lack of RVSM approval status will be displayed to FAA controllers and the controllers will apply a 2,000-foot vertical or the appropriate lateral or longitudinal separation standard.

Safety

Since its initial implementation in the North Atlantic in March 1997, RVSM has proven to be safe in both oceanic and continental operations. To date approximately 10 million flights representing 19 million flight hours have been conducted safely in RVSM airspace worldwide.

FAA personnel will apply the experience they have gained in safely implementing RVSM in other areas to the domestic U.S. implementation program. To date, they have served as implementation program managers in three major oceanic areas and have played significant leadership roles in developing and implementing standards and programs under which RVSM could be implemented safely.

In preparation for RVSM implementation in the domestic U.S., FAA Flight Standards and Air Traffic specialists and safety analysts have reviewed the elements contributing to RVSM safety. They concluded that U.S. RVSM operations will meet the level of safety endorsed by the International Civil Aviation Organization and adopted in other regions in the world. In addition, in the period leading up to implementation and during the post-implementation period, they will continue to evaluate the elements of RVSM safety against the accepted level of safety.

Exploration of Tactical RVSM

We explored allowing controllers to apply ''tactical RVSM'' prior to the target RVSM implementation date. We have decided not to pursue this initiative. It has been found to present unacceptable difficulties related to scheduling and completing document updates and controller and pilot training. Application of tactical RVSM would have allowed controllers to use 1,000-foot vertical separation between FL 290 and FL 410 prior to the target implementation date, at the controller's discretion, if both passing aircraft were RVSM approved.

Specific Airspace Issues

Coordination with Mexico and Canada. We are coordinating RVSM implementation plans with the civil aviation authorities of Canada and Mexico. RVSM was implemented in Northern Canadian Domestic airspace in April 2002, and Canada is planning to implement RVSM in Canadian Southern Domestic airspace at the time that it is implemented in the U.S.

Gulf of Mexico, San Juan FIR and Florida-San Juan FIR Airspace. The airspace in the Gulf of Mexico, the San Juan FIR, and the airspace between the San Juan FIR and Florida have been included in this final rule. Inclusion of this airspace in the final rule allows the FAA to harmonize operations between RVSM airspace in the domestic U.S., RVSM airspace already established in the New York Oceanic FIR and the San Juan FIR.

Hawaiian Airspace. The airspace of the Hawaiian Islands is surrounded by Pacific Oceanic RVSM airspace. RVSM approved aircraft operate to and from Hawaiian airspace, however, there is currently no plan to require RVSM approval for all aircraft to operate within that airspace. Instead, 1,000-foot vertical separation is applied between FL 290 and FL 410 when two passing aircraft are both RVSM approved and 2,000-foot vertical or horizontal separation is applied if either of the passing aircraft is not RVSM approved.

TCAS II Version 7.0 Requirement. A significant majority of the aircraft that operate in the domestic U.S. at and above FL 290 are already required to be equipped with TCAS II, Version 6.04a. Requirements for aircraft TCAS equipage are published in 14 CFR parts 121, 125, 129, and 135. These requirements were revised in a final rule published in April 2003 and are discussed in detail in the TCAS section of the Discussion of Comments. Approximately 85% of domestic operations above FL 290 are conducted by large jet aircraft operating under parts 121, 129, or 135. An FAA Airworthiness Directive published in 1994 mandates TCAS II, Version 6.04a, for all TCAS II installations.

Part 91, Appendix G, section 2, paragraph (g) states that ''after March 31, 2002, unless otherwise authorized by the Administrator, if you operate an aircraft that is equipped with TCAS II in RVSM airspace, it must be a TCAS II that meets TSO C–119b (Version 7.0), or a later version.'' This provision was adopted on December 10, 2001 (66 FR 63888). Version 7.0 incorporates Traffic Alert and Resolution Advisory thresholds that mitigate unnecessary

alerts when 1,000-foot vertical separation is applied above FL 290. Version 7.0 generally requires a software modification that is not a major system modification. The cost for this modification has been accounted for in the cost/benefit analysis.

Eligibility of Turbo-propeller Aircraft Operated Under Part 91 and Equipped with a Single RVSM Compliant Altimeter. In the NPRM, we proposed operational and airworthiness criteria for turbo-propeller aircraft operated under part 91 to conduct RVSM operations when equipped with a single RVSM compliant altimeter. In the SNPRM, we proposed withdrawing this option. After considering the SNPRM comments, we have not adopted the provision in this final rule. For the past six years, standards applied worldwide have called for aircraft to be equipped with two RVSM compliant altimeters. We have concluded that different criteria for turbo-propeller aircraft operated under part 91 to conduct RVSM operations should not be adopted. We have determined that adopting this provision would add unnecessary complications to air traffic control in the airspace that borders Canada and Mexico. Those countries have informed us that they will not adopt the provision. We also believe that it is in the best interests of U.S. operators and manufacturers to harmonize with global RVSM standards unless there is adequate justification for a difference. Since the proposal would affect only 0.3 percent of domestic operations, we have concluded that the minor benefit provided is not warranted when considering the major benefits provided by sharing common standards for RVSM operations and air traffic control with neighboring countries and of continued harmonization with global RVSM standards.

Amendment to VFR and IFR Cruising Altitudes At and Above FL 290. This rule revises part 91, Section 91.159 (VFR cruising altitude or flight level) and Section 91.179 (IFR cruising altitude or flight level). The revision to Section 91.159 eliminates reference to VFR flight levels above FL 180. Airspace above FL 180 is established as Positive Control Airspace where aircraft must maintain the altitude or flight level assigned by ATC.

The revision to Section 91.179 revises the altitudes or flight levels that are considered to be appropriate for IFR flight in uncontrolled airspace above FL 290 in airspace where RVSM is implemented. In accordance with RVSM regulations, this revision will provide flight levels that are separated by 1,000 feet vertically based on the direction of flight.

Revision to Deviation Authority Requirements. The rule revises part 91 Appendix G, Section 5 (Deviation Authority Approval). The revision deletes the requirement to submit requests 48 hours in advance in order to operate non-compliant aircraft under a deviation. The revision calls for the request to be submitted in a time and manner acceptable to the FAA. This revision allows us to publish in the Aeronautical Information Manual and appropriate FAA orders procedures and processes that are acceptable in different scenarios and circumstances. We intend to grant deviation authority only in limited circumstances because the presence of unapproved aircraft could affect traffic flow and increase controller workload.

Discussion of Comments

We received 79 comments during the NPRM comment period (67 FR 31920, May 10, 2002) and eight comments during the SNPRM comment period (68 FR 9818, February 28, 2003). The FAA response to comments received on both the NPRM and the SNPRM are provided in the discussion of comments below. During the SNPRM comment period, comments were received from Boeing and Viking Transport. Neither of these comments addressed the two specific issues raised in the SNPRM. Both addressed issues only in the underlying NPRM. The issues in these two comments were considered with similar comments received during the original NPRM period.

Some comments supported the proposed domestic RVSM program and implementation date. Included in the organizations that provided comments supporting the proposal or supporting with minor comments were the Air Transport Association (ATA), United Airlines, American Airlines, Federal Express, American Trans Air, The Boeing Company, Cessna Aircraft Company, the Department of Defense, the Air Traffic Control Association (ATCA), and the Port Authority of New York and New Jersey.

Some comments requested major changes in the domestic RVSM implementation program or expressed reservations. Many of these proposed to delay implementing RVSM for a year or more or to implement RVSM in vertical or geographical phases. Organizations making these proposals included the National Business Aviation Association (NBAA), the General Aviation Manufacturers Association (GAMA), the Aircraft Electronics Association (AEA), and the Aircraft Owners and Pilots Association (AOPA).

Some commenters expressed opposition to implementing RVSM in the United States. These included a number of small operators.

Some commenters provided comments that expressed concerns about safety or what we would require operators to do before they could operate in RVSM airspace. These included organizations such as the Airline Pilots Association (ALPA), the Allied Pilots Association (APA), and the Coalition of Airline Pilots Association (CAPA).

No SNPRM commenters opposed adding Gulf of Mexico and Atlantic High Offshore and San Juan FIR airspace to the list of RVSM airspaces published in part 91, Appendix G, Section 8.

Most SNPRM comments supported the SNPRM proposal to withdraw the proposal made in the NPRM to allow turbo-propeller aircraft operated under part 91 to equip for RVSM operations with a single RVSM compliant altimeter. Two SNPRM comments opposed withdrawal of the NPRM proposal for part 91 turbo-propeller aircraft.

We also received comments from the National Transportation Safety Board (NTSB) and the Regional Airlines Association (RAA), among others.

Air Traffic Services Issues

1. A number of commenters recommended that the FAA should implement RVSM in the National Airspace System (NAS) in vertical phases. For example, one recommendation was to use one of the following two implementation plans:

a. Implement between FL 350–390 in December 2004; then implement in all RVSM flight levels (FL 290–410) in December 2005 or

b. Implement between FL 310–410 in December 2004; then implement between FL 290–410 in 2010

FAA Response: We discussed in the NPRM the option to implement RVSM in phases. The NPRM noted testing and simulation that caused us to decide against implementing RVSM in vertical phases. Extensive simulation testing of various phased implementation possibilities resulted in significantly increased controller workload and an increased level of operational complexity directly related to phase-in scenarios such as those recommended in the comments. These scenarios were shown to increase the potential for error for controllers. The ''Final Report for Domestic Reduced Vertical Separation Minimum (DRVSM) Initial Simulation''

is posted on the federal docket. It can found by searching docket number 12261 at *http://dms.dot.gov.*

2. A commenter recommended that the FAA should implement RVSM between FL 290–370 in December 2004 to allow access to higher flight levels for non-compliant aircraft.

FAA Response: We did not accept this recommendation for two reasons. First, during the simulation testing, an increase of non-compliant aircraft transitioning through RVSM flight levels to fly above RVSM airspace increased complexity of ATC operations and increased the potential for controller error. The proposal to implement between FL 290–410 provides for a limited number of operations at or above FL 430. Second, topping RVSM flight levels at FL 370 would make two flight levels (380 and 400) unavailable at implementation. This loss would diminish benefits in terms of fuel savings and improvements to air traffic controller flexibility to manage aircraft.

3. Some commenters recommended that we should implement RVSM only on designated routes or in certain areas.

FAA Response: We concluded that this proposal is not feasible for the same reasons that a vertical phase-in of RVSM flight levels is not feasible. A plan that would provide multiple areas within domestic U.S. airspace where the vertical separation standards would change between 2,000 feet to 1,000 feet would add an unacceptable amount of complexity to air traffic control and increase controller workload and the potential for controller error.

4. Some commenters, including ALPA and APA, opposed tactical implementation, citing concerns about complexity and safety. They also raised a question about applying the monitoring program before full implementation.

FAA Response: We explored allowing controllers to apply ''tactical RVSM'' prior to the target RVSM implementation date. We have decided not to pursue this initiative. It has been found to present unacceptable difficulties related to scheduling and completing document updates and controller and pilot training. Application of tactical RVSM would have allowed controllers to use 1,000-foot vertical separation between FL 290 and FL 410 prior to the target implementation date, at the controller's discretion, if both passing aircraft were RVSM approved.

5. A Congressman asked us to re-evaluate our plan to implement RVSM in all Alaskan airspace. One operator, Security Aviation, made a similar request. More specifically, the Congressman and Security Aviation requested us to consider implementing in Alaska on only designated routes or areas. The rationale was that RVSM invoked large costs to small Alaskan operators and that operation below FL 290 invoked operational penalties.

FAA response: We believe RVSM implementation in Alaska should proceed on the same date and with the same implementation plan that we are adopting for the lower 48 states and Canadian Southern Domestic airspace. We do not believe RVSM can or should be implemented in Alaskan airspace differently than the surrounding RVSM airspace. RVSM is currently mandated in oceanic airspace to the west and south of Alaska and in Canadian Northern Domestic airspace to the east. In addition, Canadian authorities plan to implement RVSM in Canadian Southern Domestic airspace in January 2005 in conjunction with implementation in the U.S.

In summary, we believe we should implement RVSM in Alaskan airspace in conjunction with the domestic U.S. and Canada for the following reasons:

a. Alaskan RVSM operations cannot be considered in isolation. Alaska is surrounded on three sides by existing RVSM airspace. Operators flying between those airspaces and Alaskan airspace are required to meet RVSM standards. If we do not implement RVSM in Alaska in conjunction with the U.S. lower 48 states and Canada, it will deny benefits to these operators.

b. Implementing a single vertical separation standard in Alaska mitigates problems related to air traffic control complexity and to the potential for controller error both within Alaskan airspace and for operations between Alaska and adjoining RVSM airspace.

c. This rule does not affect operations below FL 290. Operators that now operate below FL 290 can continue to operate as they do currently. Operators that now operate above FL 290 that do not elect to obtain RVSM authority can continue to operate below FL 290. Operation below FL 290 appears feasible since typical leg lengths for flights originating and terminating within Alaska are relatively short duration (1 to 2 hour flights).

6. ATA asked us to implement RVSM in the San Juan FIR and Miami Offshore airspace where the FAA provides air traffic control. The objective would be to align this airspace with RVSM airspace already planned or implemented in adjoining airspace.

FAA Response: We concluded that this proposal had merit and made a proposal in a Supplemental NPRM (SNPRM). The SNPRM proposed to include Atlantic High Offshore, Gulf of Mexico High Offshore Airspace, and the San Juan FIR airspace as RVSM airspace in part 91, Appendix G, Section 8 (Airspace Designation). A number of SNPRM commenters supported and no SNPRM commenters opposed the proposal. We have adopted the SNPRM proposal in the final rule.

7. APA recommended that we should require RVSM in Hawaiian airspace at and above FL 290.

FAA Response: We do not believe that it is necessary to mandate RVSM in Hawaiian airspace at this time. Hawaiian airspace has operated successfully in its present configuration as transition airspace between adjoining flight information regions where RVSM is mandated since February 2000.

8. One commenter recommended that we should consider Domestic RVSM in the Airspace Re-design program.

FAA Response: We are considering RVSM in the High Altitude Redesign program.

9. GAMA, Bombardier, Raytheon and Cessna recommended that provisions be made in the rule for accommodation of non-compliant aircraft flown for flight testing for certification, new aircraft production and customer acceptance purposes.

They requested rule language as follows:

- Accommodate air ambulance flights using Lifeguard call sign as detailed in AIM.
- Provide for flight in RVSM airspace under special flight permit or standard certificate of airworthiness of non-compliant experimental, new production flight test, new production aircraft flown for customer acceptance purposes
- Provide for experimental and new production aircraft to climb to FL 430 without ''traffic permitting'' caveat

They also proposed that the FAA designate useable airspace within proximity to aircraft manufacturers.

FAA Response: We believe that the language in part 91, Appendix G, Section 5 (Deviation Authority Approval), will provide for FAA authorization of operation of non-compliant aircraft in RVSM airspace. We recognize that the organizations that made this proposal are seeking assurance that they will be able to fly non-compliant aircraft in RVSM airspace for the purposes of flight-testing for certification and customer acceptance purposes. We recognize that this is an important provision for aircraft manufacturers to conduct their business. We believe that Section 5 enables aircraft manufacturers to work with local ATC Centers to develop

procedures to accommodate their activity.

10. The ALPA and APA request detail on ATC procedures for wake turbulence, mountain wave, and guidance on pilot actions for aircraft contingencies such as aircraft system malfunction.

FAA Response: We have established an RVSM Procedures Work Group to review existing procedures and to develop or revise procedures for ATC in the RVSM environment. We have also established a Mountain Wave Activity (MWA) effort that includes representatives from the Air Route Traffic Control Centers where MWA occurs. We will develop procedures and circulate them for comment. We plan to complete this process in the February 2004 timeframe.

11. A number of commenters raised concerns about the increase of enroute traffic below FL 290 after RVSM is implemented. These concerns relate to the concern that a number of aircraft and operators will not complete RVSM compliance work by the proposed implementation date and will be required to operate below FL 290. The concern is that ATC will not be able to effectively manage this increase of traffic at lower levels.

FAA Response: We have played a significant role in implementing RVSM in four major areas of the world. In each of these implementation programs, we projected the number and percentage of flights that would and would not be conducted by RVSM compliant aircraft on the date and time of initial RVSM implementation. The purpose of this effort was to gain confidence that there would not be a major disruption to air traffic control after RVSM was implemented. In this effort, ATC organizations identified a percentage of flights that they believed could be effectively managed below FL 290.

In the Domestic RVSM planning process, we have made the same effort. We have projected the percentage of flights that will be conducted by RVSM compliant aircraft in January 2005. We project that RVSM compliant aircraft will conduct approximately 90 percent of flights in January 2005. We believe that the approximately 10 percent of flights that may be conducted by non-compliant aircraft can be effectively managed for operations below FL 290.

We have conducted traffic simulations to assess the effect of 5 to 15 percent of flights now operating above FL 290 being required to operate below FL 290 and have found the situation to be manageable. We have the option of changing the vertical limits of air traffic sectors if experience indicates that it is necessary to enhance air traffic control.

12. Some commenters raised concerns that RVSM would induce a significant traffic increase that would affect controller staffing and workload.

FAA Response: Domestic RVSM implementation should not induce an immediate significant increase in air traffic. Experience in previous RVSM implementation programs has shown this to be the case. In addition, the implementation of RVSM has been shown to decrease controller workload. RVSM adds an additional six flight levels to control air traffic. Simulations have shown that by providing an additional six flight levels where aircraft can be operated, RVSM decreases the need for controller intervention to vector aircraft and to climb or descend aircraft to provide separation.

13. One commenter questioned the capability of the Air Traffic Control (ATC) system to accommodate RVSM-induced traffic increases.

FAA Response: First, domestic RVSM should not induce an immediate, significant increase in traffic. ATC systems are adequate to accommodate the projected gradual increase in traffic. Prior to implementation, we will modify ATC systems for operation in an RVSM environment. We are modifying the conflict alert for the application of 1,000-foot vertical separation between FL 290–410. We are modifying controller displays to show the controller when a non-compliant aircraft is in the airspace. We are modifying the flight plan system so that the appropriate information in the equipment block of the operator's flight plan can be displayed to the controller.

14. The NTSB recommended that we should conduct comprehensive controller training that includes simulator training.

FAA Response: We plan to conduct controller training that will include classroom, Computer Based Instruction, and Dynamic Simulation (DYSIM) training.

15. A commenter questioned whether RVSM would enable ATC to more effectively control traffic in weather situations.

FAA Response: It is common in air traffic operations for aircraft to be routed around areas where thunderstorms or severe turbulence is present. The additional six flight levels that RVSM will provide will significantly enhance air traffic control's capability to accomplish this task. The six additional flight levels provide more airspace where aircraft can operate and be separated from other aircraft.

16. One commenter expressed concern that the phrase ''Traffic Permitting'' attached to the provisions for non-RVSM compliant Lifeguard flights in RVSM airspace and non-compliant aircraft access to FL 430 would limit such flights.

FAA Response: We intend to accommodate Lifeguard flights to the degree possible. ''Traffic permitting'' simply provides a caveat that the controller may not accommodate such a flight in the event that it cannot be conducted within acceptable safety parameters.

Airworthiness: RVSM Compliance Including Aircraft RVSM Compliance Package Availability

1. A number of commenters raised a concern that aircraft RVSM compliance packages would not be available for all aircraft.

FAA Response: RVSM operations started in the North Atlantic in March 1997. Since that time the FAA and other civil aviation authorities have approved RVSM compliance packages for the large airline and air cargo type aircraft and business aviation type aircraft that conduct the significant majority of operations in domestic airspace. In general, the aircraft manufacturers develop and obtain certification authority approval of compliance packages for aircraft types that they manufacture. Some independent aircraft engineering organization have also developed compliance packages.

We maintain a list of approved RVSM engineering packages on our RVSM documentation Web site. These packages generally take the form of Service Bulletins or Supplemental Type Certificates. The list shows available packages for both large transport aircraft and small commercial and general aviation type aircraft. Using this list of approved packages, we estimate that currently 97.4 percent of all flights are conducted by aircraft with approved RVSM engineering packages. We have observed a significant increase in the availability of RVSM packages in 2002 and anticipates further increase in 2003.

Operators retain the option of having their aircraft approved as a Non-group aircraft. The operator can obtain a Supplemental Type Certificate that applies to a single aircraft or to a small group of aircraft.

Compliance packages are being developed for aircraft that have not previously been available. As an example, non-manufacturer engineering organizations are now developing compliance packages for the Learjet 20 Series. Until recently, there had not been a compliance package projected for

those aircraft. We anticipate that the options for modifying aircraft to RVSM standards will continue to increase as the RVSM implementation date approaches.

2. A commenter was concerned that a large volume of non-group approvals will be required for types of aircraft that are used in general or business aviation. A related concern was that FAA Aircraft Certification Office resources would not be adequate to handle the demand.

FAA Response: We are identifying RVSM focal points for each of the Aircraft Certification Offices (ACO) to facilitate the process for RVSM compliance package approval. We recognize the potential increase in the volume of work required for aircraft used in general aviation or business aviation work and are preparing for it.

Our plan for proceeding with domestic RVSM implementation is based on proceeding with RVSM implementation when a significant majority of the flights are RVSM compliant. Based on experience in previous RVSM implementation programs, we recognize that a percentage of aircraft and operators may not be ready at the time of implementation.

3. A commenter expressed concern that FAA Flight Standards field office resources will be inadequate.

FAA Response: We recognize that Flight Standards (AFS) field offices will be required to assess a large volume of operators seeking RVSM authority. In preparation for RVSM, we are taking the following steps: First, AFS is enhancing and expediting communication between RVSM program leads at FAA Headquarters, in Regional Offices, in Flight Standards District Offices, and in Certificate Management Offices. Headquarters leads are meeting with already designated Regional program leads and RVSM focal points are being designated in each AFS field office. Second, AFS is enhancing existing guidance to make it clearer, more complete, and more user friendly. As an example, AFS is updating the RVSM documentation Web site to more specifically address issues related to operations under part 91. Third, AFS is working with regional offices to identify AFS field offices that may require additional support.

4. A commenter was concerned that there could be a limited availability of parts that would hinder an operators' capability to meet RVSM compliance standards.

FAA Response: In the course of planning the Domestic RVSM program, we raised the question of parts availability with aircraft and avionics manufacturers. Parts availability was not cited as a problem in these discussions.

5. NATA stated that there is inadequate repair station capacity for the volume of aircraft to be worked on for RVSM compliance and that no formal survey of capacity had been conducted.

FAA Response: We have considered the availability of engineering facilities for small and large aircraft, and small and large operators. Many large operators use company owned and operated engineering facilities. Other operators use independent engineering facilities such as repair stations or aircraft manufacturer service centers. While we did not conduct a formal survey of engineering capacity, we did consult with operators and aircraft manufacturers to project the capability of operators to bring their aircraft into RVSM compliance by January 2005. We found the following:

- Some aircraft manufacturers and repair stations have expanded their engineering facilities to meet the demands of the RVSM program.
- In 2002 and 2003, aircraft manufacturer service center and repair station facilities were underutilized for RVSM work.
- Many operators are completing RVSM engineering during scheduled maintenance to avoid costs associated with removing them from service to complete RVSM work.

Based on consultation with the operator community, we have concluded that:

- A large percentage of aircraft operated by large airplane operators will be RVSM compliant by the January 2005 timeframe.
- If a large number of small aircraft operators plan to complete aircraft engineering work within the 12 month period prior to RVSM implementation, they will risk not having aircraft work completed by January 2005 and may have to operate below FL 290 until they obtain RVSM authority.

We project that RVSM compliant aircraft will conduct approximately 90 percent of flights by January 2005. We believe that it is in the best interest of the majority of operators to implement RVSM as soon as feasible.

6. NPRM proposal to allow turbo-propeller aircraft operated under part 91 to equip with a single RVSM compliant altimeter. Some NPRM commenters, including Cessna, supported the proposal while others, including ALPA and APA, opposed it. The FAA re-considered the NPRM proposal and published an SNPRM in February 2003 with a request for comment by April 14, 2003. The SNPRM proposed to withdraw the provision to allow turbo-propeller aircraft operated under part 91 to conduct RVSM operations using aircraft equipped with a single RVSM compliant altimeter. Most SNPRM comments supported withdrawing the proposal. However, two organizations opposed it. The SNPRM comments are summarized below with our response.

a. Most commenting organizations concurred with the proposal to withdraw the single RVSM-compliant altimeter provision.

FAA Response: In this final rule, we have not adopted the provision to allow turbo-propeller aircraft operated under part 91 to conduct RVSM operations using aircraft equipped with a single RVSM-compliant altimeter. For the past six years, standards applied worldwide have required aircraft to be equipped with two RVSM compliant altimeters. We have concluded that different criteria for turbo-propeller aircraft operated under part 91 to conduct RVSM operations should not be adopted.

b. Two commenters opposed withdrawal of the single RVSM compliant altimeter provision for part 91 turbo-prop aircraft. One commenter stated that operators should retain the ability to determine how their aircraft are equipped. That commenter also stated that standards for RVSM operations in the United States should not be affected by those adopted in other countries including those countries with airspace adjoining the U.S.

FAA Response: First, since March 1997, RVSM operations have been shown to be safe and beneficial in both oceanic and continental airspace. We believe it is critical to RVSM safety that aircraft used in RVSM operations comply with common standards for equipage, system error and performance. We have published those standards in part 91 Appendix G. Aircraft that have not complied with Appendix G have shown altitude-keeping errors that are incompatible with RVSM safety. Second, when new standards are adopted for operations such as RVSM, we believe that we must, to the extent possible, attempt to adopt standards that are common to neighboring countries and other countries worldwide. We have determined that adopting the single RVSM compliant altimeter provision would add unnecessary complications to air traffic control in the airspace that borders Canada and Mexico. Those countries have informed us that they will not adopt the provision. We also believe that it is in the best interests of U.S. operators and

manufacturers to harmonize with global RVSM standards unless there is adequate justification for a difference in our regulations. Common country, region and global standards enable operators to fly across boundaries without incurring operational limitations or penalties. Common standards also enable aircraft manufacturers to sell products to operators in other countries and regions without requiring special aircraft system modifications. We have concluded that, since the proposal would affect only 0.3 percent of domestic operations, the minor benefit provided does not justify a difference from international standards when considering the major benefits provided by sharing common standards for RVSM operations and air traffic control with neighboring countries and of continued harmonization with global RVSM standards.

c. One commenter believed that if we did not retain the single RVSM compliant altimeter provision then we should raise the floor of RVSM airspace to flight level 300 so that turbo-propeller aircraft could operate at flight level 290.

FAA Response: To allow non-RVSM aircraft to operate at FL 290 would require us to raise the floor of RVSM airspace to FL 310, not FL 300. Above FL 290, 2,000-foot vertical separation is required between aircraft unless the aircraft are RVSM compliant. If we were to allow non-RVSM aircraft to operate at FL 290, FL 300 could not be used since it does not provide 2,000-foot vertical separation when non-RVSM aircraft are involved. The loss of one of the six new flight levels provided by RVSM would limit RVSM benefits for the significant percentage of the operator community that is preparing for RVSM implementation.

7. ATA asked for a single source of material for RVSM programs.

FAA Response: We established an RVSM Documentation Web page to provide ready access to RVSM regulations and to RVSM guidance. Official documents related to RVSM are available from that Web page at *http://www.faa.gov/ats/ato/rvsm_documentation.htm*. In addition, these documents can be obtained from FAA Flight Standards District Offices and Certificate Management Offices.

Benefits

1. A number of commenters expressed concern that RVSM will not alleviate delay or holding problems in the terminal area and will, in fact, exacerbate the situation by increasing arriving and departing traffic.

FAA Response: First, the implementation of RVSM will not automatically lead to a significant traffic increase in the short to mid term in either the enroute or the terminal area. The near doubling of flight levels will not lead to a near doubling of the number of airframes that operate in the national airspace system (NAS). Air traffic at FAA air route traffic control centers is projected to increase at an average annual rate of 2.0 percent. RVSM will enhance air traffic's capability to manage this increase efficiently. Second, the enhancements to enroute operations stand on their own merit. They are estimated to account for approximately $800,000 annual savings as a result of reduced ground delays. Also, we do not believe that we should make no effort to enhance enroute operating efficiency until additional enhancements to terminal area operations are made. Third, domestic RVSM is a project in the NAS Operational Evolution Plan (OEP). It is in the En Route Congestion section of the OEP. The NAS OEP also contains projects that address Arrival/Departure Rate problems including runway capacity and terminal area problems. The domestic RVSM project should not be considered in isolation, but as an element of OEP projects that are addressing: Arrival/Departure Rate, En Route Congestion, Airport Weather Conditions, and En Route Severe Weather.

2. One commenter stated that fuel savings is not an adequate justification for Domestic RVSM implementation.

FAA Response: The Regulatory Impact Analysis cites both quantitative and qualitative benefits to domestic RVSM implementation. Fuel savings due to enhanced access to more fuel-efficient flight levels is quantified. We forecast 5.3 billion dollars in fuel savings from January 2005 through January 2016. The analysis also cites qualitative benefits to air traffic control. These benefits include increased controller flexibility, enhanced sector throughput allowing more aircraft to operate on time and fuel efficient routes, reduced controller workload allowing them to control traffic more efficiently, enhanced flexibility to allow aircraft to cross intersecting routes, mitigation of traffic congestion at conflict points, and potential for enhanced overall enroute airspace capacity in the long term.

3. One commenter stated that domestic RVSM benefits will not be significant to small operators.

FAA Response: We recognize that the aircraft utilization rate for small operators is significantly lower than that for larger operators and therefore small operators accrue RVSM benefits at a lower rate. We believe that RVSM provides significant enhancements to daily operations in the National Airspace System (NAS) and provides benefits to the operators that conduct the significant majority or approximately 90 percent of operations in the NAS. We are considering the overall benefit to the majority of operators as well as the overall enhancement to NAS operations.

Costs Including Downtime Issues

1. A number of commenters stated that they believed the average cost to modify aircraft to comply with RVSM standards will be in the $200,000–$300,000 range.

FAA Response: In the Regulatory Impact Analysis we have estimated the costs to modify individual aircraft types for RVSM compliance. The range of modification costs for individual airframes varies from less than $100 for some aircraft types up to $175,000 to $235,000 for a small number of older aircraft types.

2. Comments were made that the costs of operation below FL 290 should be considered in the Benefit/Cost analysis. Also, comments were made that raised issues related to range limitation and fuel burn costs below FL 290.

We have examined operations below FL 290. We anticipate that approximately 10 percent of daily flights in the NAS that are currently operated above FL 290 may operate below FL 290 in the initial period of domestic RVSM implementation. We have examined the time of flight in NAS operations and the affect of operating below FL 290 on aircraft range and fuel burn and have posted the study entitled ''An Examination of Range and Fuel-Burn Penalties Associated With Operating Business Jet Type Aircraft Beneath Proposed Domestic Reduced Vertical Separation Minimum (DRVSM) Airspace'' in the public docket. You can find the public docket on the Internet at *http://dms.dot.gov.* Search for docket number 12261. For this analysis, we first examined five older small commercial/ general aviation aircraft types with high modification costs under the assumption that some operators may elect to operate these aircraft types below FL 290 rather than incur RVSM modification costs. We next examined all business jet aircraft types operated under 14 CFR part 135. We reached the following conclusions in the study:

- We estimate the average annual cost of operation below FL 290 per airframe to be $1,147.

• The average fuel penalty for business jet aircraft operated under part 135 is 7.15 percent.

• Eight percent of operations flown prior to DRVSM above FL 290 could no longer be flown without a fuel stop due to range penalties associated with operating below FL 290.

Other factors that the FAA considered were:

• Average flight time at enroute cruise was 1.9 hours for aircraft used in commercial operations and 1.4 hours for aircraft used in general aviation operations.

• Time at enroute cruise was 2 hours or less for 82 percent of general aviation flights.

3. Some commenters stated that after comparing RVSM aircraft modification costs to the residual value of the aircraft, they could not justify modifying certain aircraft types.

FAA Response: Operators have two basic options. They can upgrade their aircraft to comply with RVSM standards or they can operate their aircraft below FL 290 or, if capable, above FL 410. We recognize that in some cases operators may decide for economic reasons not to pursue RVSM compliance.

4. Some commenters stated that DRVSM will significantly impact the part 135 on-demand charter industry.

FAA Response: We support DRVSM implementation because it provides significant benefits to NAS operations and to the operators that conduct the significant majority of flights in NAS airspace. We recognize that some operators will have to make economic decisions on whether to retain an aircraft and operate it below FL 290 or to modify it to RVSM standards so that it can operate above FL 290. Based on our analysis of operations below FL 290, it appears that operation below FL 290 is a viable option for some operators if they choose not to modify their aircraft.

5. One commenter stated that if it did not modify its aircraft for RVSM there would be a significant negative impact on the residual value of the aircraft.

FAA Response: RVSM is a worldwide program. RVSM has already been implemented in the North and West Atlantic, Pacific and Western Pacific, Europe, Australia, and Northern Canada. In addition, there are implementation groups established for the Middle East, the Caribbean, and South America. We believe that the aviation community must recognize the global nature of RVSM and plan accordingly. The residual value of aircraft is not a primary consideration in this rulemaking.

6. One commenter proposed that the costs to small operators should be subsidized either by the Airport and Airways Trust fund or by the airlines.

FAA Response: A proposal to subsidize small operators by either the airlines or by the Airport and Airways Trust Fund was not proposed in the NPRM and is beyond the scope of this rulemaking.

7. Some commenters stated that the Regulatory Impact Analysis needs to be updated and the modification costs for small aircraft should be re-estimated and should include the out of service cost during the period the aircraft are undergoing modification.

FAA Response: The Regulatory Impact Analysis that is summarized in this document and published in full in the DOT Docket includes updated costs and benefit estimates. We have estimated the number of aircraft that may be out of service for RVSM modification. We have also estimated costs related to the loss of revenue when certain aircraft are out of service undergoing RVSM modification. Many operators have scheduled RVSM compliance work to be completed during scheduled aircraft inspections to avoid the cost of additional out of service time for RVSM modification.

8. RAA stated that it did not believe that RAA operators were considered in the NPRM Regulatory Impact Analysis.

FAA Response: RAA operator costs were considered in the Regulatory Impact Analysis that was included with the NPRM in the DOT Docket and are considered in the Regulatory Impact Analysis included with this final rule.

9. One commenter stated that operators were unable to accurately assess the costs related to monitoring of aircraft altitude keeping.

FAA Response: We assessed operator costs associated with monitoring in the Regulatory Impact Analysis published in conjunction with the NPRM and the final rule. In that assessment, the FAA estimated that operator costs associated with monitoring of the DRVSM fleet would be approximately $4.3 million. For this assessment, we projected that the GPS-based Monitoring System (GMS) would monitor a portion of the RVSM fleet and the ground based Aircraft Geometric Height Monitoring Element would monitor those not monitored by the GMS. The $4.3 million in monitoring costs are not significant when compared to estimated fleet upgrade costs of $735 million. Operators have two options for obtaining information on monitoring systems and procedures. They can obtain information by accessing the FAA RVSM Web site at *http://www.faa.gov/ats/ato/rvsm1.htm.* They can obtain the same information by contacting one of the Flight Standards District Offices in their area.

Implementation Program: Necessity To Implement, Implementation Scenarios, Planned Implementation Date

1. A number of aviation organizations and some individuals provided comments supporting the implementation plan and schedule published in the NPRM. These commenters opposed proposals to vertically phase-in RVSM flight levels. Commenters cited significant public benefit and benefit to the national interest. They cited proven benefits in areas outside the United States, including reduced operating costs (time, fuel efficiency) and enhanced air traffic control.

FAA Response: We acknowledge these comments and have considered them in our evaluation of the DRVSM implementation plan.

2. The ATA proposed that the FAA should change the target implementation date to a more suitable Aeronautical Information Regulation and Control (AIRAC) date of January 20, 2005. The ATA's rationale for this proposal is that the AIRAC date in December 2004 is December 23. Since this date is just before a major holiday, ATA proposed that the FAA should target January 20, 2005 as the date to implement DRVSM.

FAA Response: We understand the benefits of this proposal and will use January 20, 2005 for planning purposes. The AIRAC dates are agreed dates when changes to aeronautical information are made for flight planning and also for aircraft navigation databases. We agree that January 20, 2005 is a more practical date to implement DRVSM.

3. Federal Express proposed that the implementation date for DRVSM be harmonized with the Enhanced Ground Proximity Warning System (EGPWS) on March 31, 2005 so that aircraft modification schedules for the two programs could be coordinated.

FAA Response: We have projected that RVSM compliant aircraft will conduct ninety percent of flights by January of 2005. We believe this is an appropriate time to implement DRVSM.

4. RAA asserts that 85% of regional jets will be required to be RVSM compliant on the DRVSM implementation date.

FAA Response: We are tracking RVSM compliance of operators and aircraft types. Since regional jets are a significant fleet in domestic operations, we are closely tracking the status of the regional jet fleet. As stated previously, we believe that we should implement DRVSM when approximately 90 percent

of flights are RVSM compliant and we must consider benefits to overall NAS operations.

5. A number of commenters proposed that the FAA should delay implementing DRVSM. Dates proposed included: Late 2005, 2006, and 2010. The rationale for the proposed delays included request for more time for operators to complete aircraft compliance work, suggestion that RVSM should be delayed until airport capacity projects were completed, limitations to repair station capacity, and concern for operator log jam in the final year.

FAA Response: We have chosen a target implementation date on which we project approximately 90 percent of flights in the NAS to be conducted by RVSM compliant aircraft. For each year of delay, we estimate that approximately $394 million dollars in fuel savings will be lost. In addition, air traffic control enhancements such as enhanced controller flexibility and decreased workload, mitigation of traffic congestion at conflict points, and increased sector throughput will also be delayed. We believe that those operators that do not obtain RVSM authority by the implementation date can operate viably below FL 290 until they obtain RVSM authority.

Also, based on past experience, we believe that a delay in the target implementation date will only result in many operators delaying their own plans to obtain RVSM authority.

For these reasons, we believe that January 20, 2005, should remain the target date for Domestic RVSM implementation.

6. A number of commenters stated that many operators would not start work to obtain RVSM authority until the final rule is published. Since we intend to publish the final rule in June 2003, those operators will only have 18 months to complete the work.

FAA Response: We cannot compel compliance with any rulemaking action until the final rule takes effect; however, there is no prohibition in an operator taking action based on an NPRM. Many operators, including operators that conduct a major percentage of NAS operations, already have significant parts of their fleets RVSM compliant or have begun work to obtain RVSM compliance. In operator surveys conducted during development of the NPRM many operators indicated the intention of having their fleets RVSM ready by late 2004. Many major operators have expressed support for the implementation date stated in the NPRM. Delaying DRVSM implementation would deny benefits to operators that have aggressively pursued RVSM programs.

7. Some operators opposed DRVSM implementation due to costs and a perception of limited benefits.

FAA Response: We have shown quantified benefits for fuel savings and qualitative benefits for ATC enhancements. The benefit/cost ratio for the period 2002 to 2016 is approximately 6 to 1. RVSM has provided significant benefits in other major world airspaces. We believe that DRVSM is justified.

8. Comments were made questioning the need for aircraft to complete the RVSM compliance process. The commenters proposed that non-compliant aircraft should be allowed to operate at RVSM flight levels.

FAA Response: The FAA and other civil aviation authorities conducted studies of aircraft altitude-keeping performance in preparation for developing regulations and standards for RVSM operation. These studies showed that altitude-keeping at RVSM flight levels was not standardized. The tolerance for errors greater than 300 feet in RVSM airspace is very small. The studies showed that the aircraft population exhibited large errors at an unacceptable rate.

The aircraft RVSM compliance standards published in part 91 Appendix G were established to ensure safety in RVSM operations.

Maintenance

1. Some commenters believe there should be separate rulemaking for RVSM Maintenance program requirements. AEA recommended that we should remove RVSM maintenance requirements from part 91, Appendix G and related FAA RVSM guidance material and publish them in regulations with more general applicability. The rationale was that RVSM operations would become standard operation rather than a special operation.

FAA response: Since initial RVSM implementation in the North Atlantic five years ago, basic standards for maintenance programs have been provided in part 91, Appendix G. In addition, specific provisions for aircraft RVSM systems have been published in the RVSM compliance packages approved by certification authorities for individual aircraft types or groups.

First, RVSM requirements apply to operations between FL 290–410, inclusive. They do not apply to aircraft operating below FL 290. Second, we acknowledge that RVSM may become the standard worldwide in the future for operations between FL 290–410 and in the future it may be appropriate to consider placing RVSM maintenance requirements in other regulations. At this time, however, RVSM maintenance program requirements are published in Appendix G.

2. AEA states that there is a lack of direction and standardization from FAA Headquarters for maintenance programs.

FAA Response: We have chosen not to arbitrarily limit the ways an operator or the industry may meet RVSM requirements. Since different equipment solutions, based on different error budgets and component tolerances are being used by applicants, maintenance programs will vary.

A single maintenance requirement has been placed on aircraft obtaining RVSM authorization. The requirement is to maintain the aircraft within the specifications of Appendix G. The elements of the maintenance programs are developed during certification of an aircraft's altitude keeping performance. We have chosen not to limit an operator or the industry to a single method of compliance, therefore, elements of the maintenance program will vary.

3. NATA questioned the assertion that RVSM maintenance costs are not significant.

FAA Response: There are two major elements in maintenance programs related to RVSM required aircraft systems. The first is requirements established by aircraft and avionics manufacturers for the basic certification of the aircraft. The second is maintenance requirements approved by certification authorities in the RVSM compliance package for individual aircraft types.

Since March 1997, we have granted RVSM authority to hundreds of operators and approximately 5,400 aircraft including approximately 3,700 general aviation aircraft. Operators have not cited maintenance costs as a major factor in the initial five years of RVSM operations. We anticipate that maintenance costs will lower as service center availability and experience expands.

Military Operations

1. The Department of Defense (DoD) said that it is necessary for the FAA to accommodate the operation of DoD aircraft that could not meet RVSM standards in order to assist the DoD accomplish its operational mission.

FAA Response: The DoD has elected, to the extent possible, to modify its aircraft to meet RVSM standards so that they can operate safely without special accommodation in RVSM airspace. Most large DoD transport and tanker aircraft are already RVSM compliant. The

percentage of flights in the NAS by DoD fighter and bomber aircraft that are unable to meet RVSM standards is projected to be less than 1 percent.

The FAA recognizes the critical nature of the DoD mission to national defense, recognizes that some DoD aircraft types are unable to meet RVSM standards, and plans to accommodate non-compliant DoD aircraft by applying 2,000 foot vertical separation or the appropriate horizontal separation standard to those aircraft. The FAA and DoD already have agreed procedures to coordinate the operation of DoD aircraft on special operations such as formation flights and have developed similar agreements in a joint FAA/DoD Memorandum of Understanding for RVSM operations.

2. ALPA stated that the rule language should be amended to state that non-compliant military aircraft would be provided increased separation.

FAA Response: Part 91, Appendix G, Section 5 provides the basic standards for operation of non-compliant aircraft in RVSM airspace. Section 5 permits deviations for a specific flight if air traffic control determines that the aircraft may be provided ''* * * appropriate separation * * *''. Controller handbooks define appropriate separation in these circumstances as 2,000 feet vertical separations or the applicable horizontal separation standard.

3. ALPA proposed that the word ''civil'' be removed from the proposed Section 91.180 to ensure the compliance of military aircraft with RVSM standards.

FAA Response: The FAA and DoD have entered into a Memorandum of Understanding that details DoD obligations in RVSM operations in the NAS. The military has used the standards of part 91, Appendix G to approve its aircraft for RVSM operations since the 1997 implementation of RVSM. The FAA/DoD MOU provides adequate assurance that this will continue to be the case.

Miscellaneous

1. One commenter proposed that vertical separation could be provided by GPS.

FAA Response: The geometric height above the earth provided by GPS is not compatible with the pressure flight level displays provided by pressure altimeters. The geometric height of pressure levels is not constant, but varies during the flight. Since aircraft altitude-keeping and performance are based on pressure levels world-wide, an evolution to altitude-keeping and vertical separation based on GPS is not possible at this time.

Monitoring

1. ALPA raised concerns related to the adequacy of monitoring resources and requested more information on the location and schedule for ground-based Aircraft Geometric Height Measurement Element (AGHME) units.

FAA Response: We are planning for AGHME units to be deployed in September of 2003. The FAA Technical Center is conducting studies to establish the most effective location for the units and the number of units necessary to provide adequate coverage. We will inform the aviation community as these studies progress.

We now have 40 portable GPS-based Monitoring Units (GMU) available to conduct monitoring and will acquire 40 enhanced GMUs starting in 2003.

2. ALPA raised concerns that certain operator's may not participate in the monitoring program.

FAA Response: Each operator is required to participate in the monitoring program as a condition for obtaining RVSM authority. Since 1997, operators have recognized the importance of monitoring programs and have participated in the programs.

3. One commenter questioned the need for independent monitoring considering RVSM airworthiness standards.

FAA Response: The monitoring programs are designed to give authorities an independent assessment of aircraft altitude-keeping performance in a given airspace. The monitoring program has identified aircraft types and individual aircraft that were not performing to RVSM standards. Based on monitoring information, in a small number of cases, the FAA and other authorities have found it necessary to remove RVSM authority for an aircraft type, to revise the aircraft RVSM compliance package, or to require aircraft inspection and maintenance. We believe that monitoring is a valuable tool to confirm that RVSM operations are conducted to standards.

Operational Issues

1. A commenter suggested that there is a need for a separate Letter of Authorization (LOA) for domestic-only operators.

FAA Response: We believe that the current LOA format can be used to grant multiple authorities for operation in special areas of operation, including the domestic United States. We do not believe it is necessary to develop a separate LOA for domestic RVSM only. In addition, we have published expanded guidance to explain the use of the LOA.

2. A commenter questioned the practice of engaging the autopilot during RVSM operations.

FAA Response: Since 1997, it has been standard practice to engage the autopilot during RVSM operations unless the pilot deems it necessary to do otherwise. Performance standards are established for autopilot systems used in RVSM operations. The purpose of these standards is to ensure acceptable altitude-keeping in RVSM airspace.

3. Several commenters expressed the concern that the FAA should take steps to enhance field inspector training and better standardize processes

FAA Response: We believe that an effort is necessary to enhance training, guidance, and standardization for Flight Standards District Offices (FSDOs). We are dedicating resources to accomplish this task.

4. NBAA proposed that operators be granted provisional authority to conduct RVSM operations for 90 days while FSDOs complete the evaluation of the operator's application.

FAA Response: We do not agree with this proposal. We believe that each operator's application must be thoroughly evaluated to ensure aircraft compliance and program compliance before the operator conducts RVSM operations.

5. One commenter suggested that the process for an operator acquiring a previously RVSM approved aircraft to obtain LOA should be simplified.

FAA Response: We will examine this situation and clarify and simplify the authorization process in this situation.

6. A commenter questioned the necessity to re-issue an LOA to part 91 operators every two years. The rationale was that RVSM would become the standard for daily operations after DRVSM implementation.

FAA Response: We believe that this requirement should be reviewed as part of a post implementation review. We will coordinate with industry to address this issue in the year following DRVSM implementation.

Safety Issues—General

1. Several commenters expressed the concern that the FAA must perform an adequate safety analysis before DRVSM implementation.

FAA Response: The ICAO Review of the General Concept of Separation Panel (RGCSP), which included FAA representatives, conducted a safety analysis on U.S. domestic operations in the course of developing the worldwide requirements for aircraft altitude-keeping performance. The RGCSP

determined that the busiest enroute airspace in the U.S. and the world was that between Albuquerque and Los Angeles. Operations in this high traffic density airspace were analyzed using Collision Risk Modeling. This analysis provided the basis for aircraft altimeter accuracy and autopilot performance requirements that are published in part 91, Appendix G, and in the ICAO RVSM Manual.

The Separation Standards Group (ACB–310) at the FAA William J. Hughes Technical Center provides safety analysis capabilities for FAA programs reducing the separation between aircraft. ACB–310 personnel have participated in or lead the Safety and Monitoring (SAM) Groups in all of the RVSM implementation programs in oceanic airspace except the South Atlantic. The SAM groups have been responsible for completing safety analysis in each individual area of operation. ACB–310, in coordination with FAA Flight Standards and Air Traffic will be responsible, prior to DRVSM implementation, for updating the safety analysis for DRVSM airspace.

2. A commenter expressed the concern that the Target Level of Safety (TLS) should be stringent enough to protect NAS safety.

FAA Response: We have adopted the TLS endorsed by ICAO and used to assess RVSM implementation safety worldwide.

3. APA expressed the concern that increased or better navigation accuracy in the vertical and horizontal planes increases risk when pilot or controller errors occur.

FAA Response: The Collision Risk Model (CRM) accounts for aircraft navigation accuracy. Navigation accuracy is one of the major elements considered in the CRM to assess airspace system safety.

4. A number of commenters expressed a concern that RVSM may have been a factor in the July 2002 mid-air collision in Europe.

FAA Response: The German Federal Bureau of Aircraft Accidents Investigation is conducting the investigation into the July 2002 mid-air collision in Europe. The investigation is still underway, however, neither the RVSM program nor the 1,000-foot vertical separation standard appear to have been a factor. The aircraft were correctly established at their assigned altitude of FL 360 and were separated horizontally. When their paths converged, the controller attempted to issue a clearance for one of the aircraft to descend so that the aircraft would be separated vertically. When that aircraft descended, it did so in conflict with its TCAS Resolution Advisory (RA) to climb and descended into another aircraft. The second aircraft was following its TCAS RA to descend. It appears that this scenario could have occurred as it did under the conventional vertical separation rules that were applied prior to European RVSM implementation in January 2002. RVSM does not appear to have been a factor and RVSM operations have continued in European airspace.

5. AOPA proposed that non-compliant aircraft should be allowed to climb to and above FL 290 if required to avoid weather.

FAA Response: We are making provision for non-compliant aircraft to climb through RVSM airspace without intermediate level off to operate above RVSM airspace. The AOPA proposal would allow non-compliant aircraft to climb into RVSM airspace on a regular basis and operate there for a sustained period of time. We oppose this proposal because we have found in simulations that increasing the number of non-compliant aircraft in RVSM airspace significantly increases controller workload, complicates air traffic control, and increases the potential for controller and pilot error.

When warranted by the circumstances, the pilot retains the option under existing regulations to take the action necessary to protect the safety of the aircraft.

6. An individual proposed that aircraft should fly random vertical paths rather than standard flight levels.

FAA Response: Air Traffic Control, air traffic conflict alert systems, vertical separation standards, pilot and controller procedures, and aircraft operations are based worldwide on aircraft accurately maintaining cleared flight level and track. The DRVSM project is intended to introduce a new vertical separation standard into the existing operational environment. It is not within the scope of the DRVSM project to implement random vertical paths into NAS operations.

7. One commenter raised a concern about non-compliant aircraft operating without authorization at RVSM flight levels.

FAA Response: RVSM programs provide protection against aircraft operating at RVSM flight levels without authorization in several ways. First, FAA regulations require aircraft and operators to have FAA authorization before flying in RVSM airspace. Second, part 91, Appendix G, Section 4 requires operators to correctly annotate the flight plan filed with ATC with the RVSM status of their aircraft. Third, the operator's RVSM status is displayed to the controller so that the correct vertical separation will be applied. Fourth, the Separation Standards Group (ACB–310) at the FAA Technical Center tracks both individual airframes and operators on an RVSM Approvals Database and periodically compares the database to airframes observed operating in RVSM airspace to identify unauthorized aircraft. Fifth, the FAA investigates any operators found operating in RVSM airspace without authority.

8. The NTSB recommended that the FAA should track wake turbulence events in the post implementation period.

FAA Response: Wake turbulence may occur when one aircraft is trailing another by 10–12 miles on the same track and is 1,000 feet below another. It may also occur if two aircraft pass each other in opposite directions on the same track separated by 1,000 feet. The occurrence of wake turbulence is dependant on wind direction and atmospheric conditions at the time that the aircraft pass.

Since the initial RVSM implementation in 1997, wake turbulence has generally been found to be moderate or less in magnitude and has affected crew and passenger comfort rather than safety. Pilots are able to avoid wake turbulence in airspace such as the U.S. where direct pilot-controller communications are available by requesting a flight level change, a minor track offset, or a track change.

Wake turbulence has not been a factor in the past year of RVSM operations in Europe.

Before we implement RVSM in domestic airspace we will apply experience that we have gained since 1997 to develop and publish pilot guidance on wake turbulence. In addition, we will conduct a post implementation problem detection/resolution effort that includes wake turbulence.

9. The NTSB recommended that the FAA should conduct adequate training so that operators, pilots, and controllers clearly understand aircraft requirements and status including enroute aircraft system failures.

FAA Response: The FAA Flight Standards Service is coordinating with the FAA Air Traffic organization to develop appropriate guidance for the Aeronautical Information Manual and other FAA documents posted on the FAA RVSM Web site and available in Flight Standards field offices. We will emphasize these areas of concern.

10. One commenter questioned the pilot actions in the event of autopilot failure enroute.

FAA Response: The FAA and other Air Traffic Service Providers provide guidance on recommended pilot actions in events such as aircraft system malfunctions, medical emergencies, and weather encounters. These recommendations are referred to as contingency procedures. In an environment such as the domestic U.S. where direct pilot-communications and radar surveillance is available, ATC assistance is readily available in contingency events such as autopilot failures.

Small Entity Analysis

1. Part 91 and 135 small businesses were not identified in the NPRM Small Entity Analysis. NATA questioned the finding of insignificant impact on small entities and questioned its treatment of part 91 and part 135 businesses.

FAA Response: We have updated the Regulatory Impact Analysis (RIA) published with this final rule. The Small Entity analysis was updated for the RIA.

TCAS

1. A number of commenters asserted that TCAS installation should be a requirement for operation in RVSM airspace.

FAA Response: The FAA does not concur with this assertion for the reasons discussed below.

1,000-foot separation. First, we believe it is important to note that 1,000 ft vertical separation has been applied up to flight level 290 on a global basis, including the U.S., for about 40 years. The 1,000-foot vertical separation below FL 290 is based on basic certification standards for aircraft altimeters, autopilots, and pilot and controller procedures. The current requirements for TCAS equipage are not based on this separation standard.

TCAS and Transponder Equipage Requirements. TCAS equipage is required by parts 121, 125, 129, and 135. Equipage requirements are not related to a specific separation standard or operational procedure. Part 91 § 91.215 requires transponder equipage for operation in Class A airspace. Class A airspace is between FL 180–600 in the U.S.

We estimate that in domestic U.S. operations approximately 90% of flights are currently equipped with TCAS. In addition, all aircraft must be equipped with transponders to operate in U.S. Class A airspace. Aircraft that are transponder equipped, though not TCAS equipped, are still displayed to TCAS equipped aircraft and produce TA's and RA's when within the parameters.

Revision to FAA TCAS Equipage Rules. The FAA published a Final Rule in April 2003 that will, in the January 2005 timeframe, increase the number, percentage and categories of aircraft operating in U.S. domestic airspace that are equipped with TCAS. This is so because in the revised regulations TCAS equipage requirements for turbine-powered airplanes are no longer based on passenger seat configuration. A major provision of the revised part 121 § 121.256, part 125 § 125.224, and part 129 § 129.18 is that, effective January 1, 2005, turbine-powered airplanes of more than 33,000 pounds maximum certified takeoff weight must be operated with one of the following:

- TCAS II that meets TSO C–119b (version 7.0) or a later version
- TCAS II that meets TSO C–119a (version 6.04A Enhanced)
- A collision avoidance system equivalent to TSO C–119b (version 7.0) or later version capable of coordinating with units that meet TSO C–119a (version 6.04A Enhanced)

In addition, these sections contain requirements for new TCAS II installations made after April 30, 2003; requirements for replacement of TCAS II (version 6.04A Enhanced) installations that cannot be adequately repaired with TCAS II (version 7.0) installations; provisions, effective January 1, 2005, for the operation of airplanes with a passenger seat configuration of 10–30 seats and provisions for piston-powered airplanes of more than 33,000 pounds maximum certificated takeoff weight.

Part 91 Aircraft TCAS Equipage. Many business aviation operators equip their aircraft with TCAS voluntarily, as a safety measure.

Other factors. Other factors related to the discussion of TCAS as it relates to RVSM are:

a. *Safety Analysis.* The safety analysis conducted prior to RVSM implementation does not consider the effect of TCAS on risk bearing events such as altitude busts, controller errors, etc. Instead, risk is estimated based on aircraft altitude-keeping errors (technical errors) and operational or human errors. This estimated risk is compared to the agreed Target Level of Safety. The intent is to identify errors and mitigate their occurrence. Nowhere in the safety analysis or in operational evaluation is it assumed that an error event is not significant because risk is mitigated by TCAS when the event occurs.

b. *RVSM Experience.* Since March 1997, in RVSM operations worldwide, approximately 14 million RVSM flight hours have been accumulated and 6 million RVSM flights have been conducted safely. The criteria for altimeter accuracy, autopilot performance, and altitude alerts, plus the RVSM policies and procedures have been effective since their publication in guidance form in 1994 and in part 91, appendix G in April 1997.

c. *ICAO Aircraft Equipage Standards.* The ICAO RVSM aircraft equipage standards applied worldwide, including Europe, do not include a requirement for TCAS.

d. *TCAS Events.* The events in enroute airspace where TCAS has provided a safety net have not been related to the separation standard applied. Instead, events in enroute airspace where aircraft have come into proximity, generally have related to human error. Such events have occurred in airspace where 2,000-foot vertical separation is applied and in some cases where 60 nm lateral separation was applied.

e. *TCAS II Version 7.0.* In December 2001, we published a revision to Part 91, Appendix G to require that Version 7.0 be incorporated into TCAS II if TCAS is installed on the aircraft and the aircraft is used in RVSM operations. RVSM operations will require Version 7.0 in domestic U.S. operations.

2. One commenter stated the belief that TCAS was a requirement for RVSM in other areas of the world.

FAA Response: Neither FAA regulations nor ICAO standards and policies require TCAS installation in order to conduct RVSM operations. ICAO Annex 6 (Operation of Aircraft), Part 1 (International Commercial Air Transport Aeroplanes) contains the ICAO standard for TCAS II, Version 7.0 installation on an aircraft. ICAO standards call for TCAS II, Version 7.0 installation on aircraft with a take-off gross weight exceeding 33,000 pounds or with a passenger carrying capacity of more than 30.

ICAO Annex 6, Part II (International General Aviation Aeroplanes) calls for aircraft to be equipped with a pressure altitude reporting transponder, but does not call for TCAS installation. TCAS installation policies for individual ICAO regions are published in ICAO Regional Supplementary Procedures (Doc 7030). ICAO Doc 7030 TCAS and transponder installation policies reflect ICAO Annex 6, Parts I and II.

3. Some comments proposed that an operating TCAS should be a requirement for entry into RVSM airspace and also for continued operation in the event of TCAS failure enroute.

FAA Response: TCAS installation and operation is not a requirement for the application of enroute separation standards including 1,0000-foot vertical separation below FL 290. Master Minimum Equipment List policy allows for TCAS to be inoperative for up to 3 days. The aircraft equipage requirements for RVSM have provided safe RVSM operations since 1997.

4. ALPA asked us to analyze the incremental safety benefit of requiring TCAS on all aircraft.

FAA Response: The safety analysis performed prior to RVSM implementation considers the frequency of aircraft altitude-keeping errors and of human errors. The risk of error events is not considered to be mitigated by TCAS.

We have estimated that there will be a high probability of TCAS equipage in encounters between aircraft. We have estimated that in 81 percent of encounters between pairs of aircraft both aircraft will be TCAS equipped and in 99 percent of such encounters at least one aircraft will be TCAS equipped.

5. CAPA suggested that encounters between aircraft where one is TCAS equipped and the other is not are similar to the European mid-air collision event that occurred in July of 2002.

FAA Response: First, we do not believe that the potential event described is specific to a single separation standard, including 1,000-foot separation above FL 290. Second, 1,000-foot vertical separation is applied without requirements for TCAS below FL 290. Third, the mid-air event in Europe occurred despite the fact that both aircraft were TCAS equipped. In NAS airspace, approximately 90 percent of aircraft are estimated to be TCAS equipped.

6. AEA asked for confirmation of TCAS I acceptability for operations in RVSM airspace.

FAA Response: The only RVSM requirement related to TCAS installation is that if the aircraft is equipped with TCAS II and used in RVSM operations then TCAS II, Version 7.0 must be incorporated. There is no prohibition in RVSM requirements against TCAS I.

7. AEA asked if Mode S waivers would remain in effect.

FAA Response: All TCAS installations require a TCAS-compatible Mode S transponder. This is to allow for coordination during events where more than one aircraft is TCAS equipped. This is true for Version 7 and all previous versions. TCAS Version 7 and all earlier versions are capable of tracking other aircraft that are equipped with either a Mode A/C or Mode S transponder. TCAS will provide TA and RA protection against aircraft equipped with either type of transponder.

We have not issued any waivers to the requirement for a Mode S transponder on a TCAS-equipped aircraft. This would have resulted in TCAS being inoperative at all times.

The requirement for Version 7 instead of earlier versions of the TCAS logic should have no affect on waivers issued to Mode S requirements for aircraft that are not TCAS equipped.

Regulatory Impact Analysis Summary

Executive Order 12866 directs federal agencies to promulgate new regulations or modify existing regulations after consideration of the expected benefits to society and the expected costs. Each federal agency shall assess both the costs and the benefits of proposed regulations while recognizing that some costs and benefits are difficult to quantify. A proposed rule is promulgated only upon a reasoned determination that the benefits of the proposed rule justify its costs.

The order also requires federal agencies to assess whether a proposed rule is considered a ''significant regulatory action''. The Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. The Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector.

In conducting these analyses, we have determined that this rule: (1) Generates benefits that justify its costs for the significant majority of U.S. operators and is ''a significant regulatory action'' as defined in the Executive Order; (2) is significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) has a significant impact on a substantial number of small entities, but provides benefits that justify a final rule; and (4) does not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

This rule expands Reduced Vertical Separation Minimum (RVSM) operations to aircraft operating between FL 290–410 (inclusive) in the airspace of the 48 contiguous States of the U.S., the District of Columbia, Alaska, that portion of the Gulf of Mexico where we provide air traffic services, the San Juan FIR and the airspace between Florida and the San Juan FIR. Some of the benefits of this rulemaking are: (1) An increase in the number of available flight levels; (2) enhanced airspace capacity; (3) permits operators to operate more fuel/time efficient routes and altitudes; and (4) enhanced air traffic controller flexibility by increasing the number of available flight levels, while maintaining an equivalent level of safety.

We estimate that this rule will cost U.S. operators $869.2 million for the fifteen-year period 2002–2016 or $764.9 million, discounted. For the purposes of this cost analysis, we assumed that operators would choose to upgrade almost all of their aircraft to meet RVSM standards. Operators of non-RVSM approved aircraft would, however, retain the option of flying above or below RVSM airspace. Benefits would begin accruing on January 20, 2005. Estimated quantifiable benefits, based on fuel savings for the U.S. aircraft fleet over the years 2005 to 2016, would be $5.3 billion or discounted at $3.0 billion.

In addition to fuel savings, many non-quantifiable or value-added benefits will result from the implementation of RVSM in domestic U.S. airspace. Input from air traffic managers, controllers, and operators has identified numerous additional benefits.

Through implementation of RVSM in the NAT and PAC regions, operators and controllers have realized some additional benefits. The major additional benefits as identified by air traffic managers and controllers are:

- Enhanced capacity
- Reduced airspace complexity
- Decreased operational errors in these regions
- Reduction of user-requested off course climbs for altitude changes
- Improved flexibility for peak traffic demands
- Reduction of the effect of traffic converging at critical points
- Increased number of options in deviating aircraft during periods of adverse weather

The benefits outlined above for RVSM in the NAT and PAC regions are anticipated in domestic U.S. airspace. There should be expected efficiencies through reduced airspace complexity, increased flight levels, and fewer altitude changes with crossing traffic.

Operators can also expect enhanced operating efficiency and the potential for decreased departure delays due to improved airspace efficiency. Specific benefits cited by aircraft operators are:

- Decreased flight delays
- Improved access to desired flight levels

- Reduced average flight times
- Increased likelihood of receiving a clearance for weather deviations
- Seamless, transparent, and harmonious operations between adjoining RVSM airspaces
- Consistent procedural environment throughout the entire flight
- Reduced impact of adverse weather by permitting aircraft deviations to other airways without any efficiency loss.

Implementation of RVSM in U.S. domestic airspace should increase user satisfaction. The benefits described in this section are compelling in number and operational impact. These benefits are also important in that they are enjoyed both by air traffic and aircraft operators.

Analysis of Alternatives

This rule is a ''significant regulatory action'' as defined by Executive Order (E.O.) 12866 (Regulatory Planning and Review) because this rule will impose costs exceeding $100 million annually. The E.O. requires that agencies promulgating economically significant rules provide an assessment of feasible alternatives to their respective rulemaking actions. In addition, the E.O. requires that an explanation of why the final rule, which is significant, is preferable to the identified potential alternatives. We identified and considered three alternatives to the final rule.

Alternative One—The Status Quo

This alternative would maintain the 2,000-foot separation above FL 290 and would avoid the equipment and testing requirements of this rule, which impose a cost of $869.2 million ($764.9 million, discounted) from 2002 to 2016 on the aviation industry and the FAA. But maintaining the status quo also means that aviation industry would not receive any of the cost-savings afforded by DRVSM. As mentioned earlier, the cost-savings afforded by this rule are estimated to be $5.3 billion ($3.0 billion, discounted) in fuel savings over the same period. Since the foregone cost-savings of the alternative greatly exceed the avoided costs, we reject this alternative in favor of the final rule.

Alternative Two—Implement Domestic RVSM Without the Equipment and Testing Requirements

This alternative would allow RVSM between FL 290 and FL 410 without requiring aircraft system engineering to 14 CFR part 91, appendix G. This alternative would allow the aviation industry to receive the estimated $5.3 billion ($3.0 billion, discounted) in fuel savings while the aviation industry and the FAA avoid RVSM costs of $869.2 million ($764.9 million, discounted). Unfortunately, this is not a viable alternative due to safety considerations.

Studies by the FAA and European civil aviation authorities have shown that many aircraft that have not been calibrated to RVSM standards exhibit altitude-keeping errors that exceed the standards established for RVSM safety. In these studies, non-RVSM calibrated aircraft were observed with errors of up to 700 feet. Under RVSM aircraft are allowed to operate with only 1,000 feet vertical separation. If non-RVSM calibrated aircraft were allowed to operate with only 1,000 feet vertical separation, there could be a 400-foot altitude overlap in altitude-keeping errors for two non-RVSM calibrated aircraft operating in close proximity to each other. Thus, there is an increased risk of midair collisions if non-RVSM calibrated aircraft are allowed to operate under RVSM. Since there are some aviation safety concerns with this alternative, this alternative is also rejected in favor of the final rule.

Alternative Three—Delay Implementation of the RVSM by Seven or Eight Years

This alternative would delay implementation of the rule by seven or eight years. This would allow the costs to be spread over a longer period of time so that costs in any one-year would be below $100 million. This would make the rule no longer economically significant under E.O. 12866. The cost of this alternative would still be the same as the cost of the final rule, although the discounted costs would be lower than the discounted costs of the final rule. However, if implementation of the rule were delayed by seven or eight years, the estimated cost-savings would be reduced by $2.0 billion or $2.4 billion, respectively ($1.5 billion, discounted or $1.8 billion, discounted, respectively). This is a considerable amount of cost-savings to forego in order for the FAA to avoid issuing an economically significant rule. For this reason, this alternative is rejected in favor of the final rule.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Findings of the Regulatory Flexibility Analysis

Operators of large transport aircraft meeting the Small Business Administration (SBA) small entity criteria were identified in the 6-day traffic sample of ETMS data and appear in Table 2 of the Regulatory Impact Analysis. Revenue information for the small entity operators was obtained from the *Air Carrier Financial Statistics Quarterly, Dun and Bradstreet Million Dollar Directory, J&P Airline Fleets International, and the Department of Transportation Bureau of Transportation Statistics Office of Airline Information Web Site*.

Operators of small commercial or general aviation aircraft are typically operated under either 14 CFR part 91 or 14 CFR part 135. This study focuses on part 135 operators. Since they utilize their aircraft as their primary means of revenue generation through offering non-scheduled charter flights, they are more prone to being impacted by this rule. The FAA estimates that 380 operators with less than 1,500 employees operate 2,780 turbojet aircraft on part 135 generating $7.0 billion in charter revenue per annum. As of December 2002, 422 of these aircraft are RVSM approved leaving 2,358 non-approved aircraft. The FAA estimates the cost to upgrade the non-approved airframes is $211.4 million. In addition, the FAA estimates that these operators will incur approximately $74.1 million, or $195,000 per operator, in lost revenue associated with the downtime necessary to upgrade these airframes for RVSM operations. Based on these estimates, the FAA has

determined that this group of approximately 380 operators is significantly impacted by this rule.

The following reviews some of the factors associated with the costs of upgrading part 135 aircraft that the FAA considered in the Regulatory Flexibility Analysis (RFA):

• Table 1 of the Regulatory Impact Analysis (RIA) provides projected costs associated with upgrading individual aircraft types. The FAA recognizes that the costs may change. In some cases, the FAA has seen costs decrease as more upgrade options become available. The FAA also recognizes, however, that in the period before the RVSM implementation date competition for upgrade facilities may lead to an increase in costs. Therefore, the FAA concludes that this cost may vary and can only be estimated.

• For the purposes of estimating costs associated with upgrading part 135 aircraft to RVSM standards, the FAA used the conservative assumption in RIA Tables 2 and 3 that all operators will incur upgrade costs during the 15-year cost analysis period, 2002–2016. The FAA recognizes that some operators of high upgrade cost aircraft may elect to fly below flight level 290 for an indefinite period of time. The FAA conducted a study entitled ''An Examination of Range and Fuel-Burn Penalties Associated with Operating Business Jet Type Aircraft Beneath Proposed U.S. Domestic Reduced Vertical Separation Minimum (DRVSM) Airspace''. The study is available in the rulemaking docket. The study provides costs for flight operation below 290 for such aircraft. The FAA concluded that the costs associated with flight below flight level 290 are less than that for upgrade. The FAA, therefore, believed that assuming all aircraft would incur upgrade costs was a conservative approach.

• RIA Table 5 provides an estimate of revenue lost to part 135 operators when their aircraft are in service centers undergoing RVSM upgrade. For the purpose of developing this table, the FAA assumed an average aircraft downtime of two weeks. The FAA recognizes that actual downtime can vary in individual situations, however, we believe two weeks to be a reasonable assumption for average downtime. These costs can be mitigated if upgrades occur during other scheduled maintenance.

• In the RFA Affordability Analysis, the FAA recognizes that the 380 part 135 operators will fund upgrade costs from company sources, lenders or through the issuance of equity capital.

• Although in January 2005 approximately 90 per cent of flights in domestic U.S. RVSM airspace are projected to be conducted by RVSM-compliant aircraft, approximately 10 percent of flights that now operate above FL 290 are projected to operate below that level. The FAA recognizes that some operators may not complete RVSM engineering work and FAA Flight Standards office processing by the RVSM implementation date. Such operators retain the option to fly below FL 290 until they receive RVSM authority. FAA flight simulations have shown that the approximate 10 percent increase in traffic below FL 290 can be accommodated without degrading safety.

• The FAA examined the fuel consumption penalties and range limitations associated with flight below FL 290. The study entitled ''An Examination of Range and Fuel-Burn Penalties Associated with Operating Business Jet Type Aircraft Beneath Proposed U.S. Domestic Reduced Vertical Separation Minimum (DRVSM) Initial Simulation'' is available for review in the docket. Using data from the FAA Enhanced Traffic Management System, the study examined the actual leg lengths and city-pairs that part 135 aircraft fly. The study concluded that part 135 aircraft would incur a fuel consumption penalty of approximately 7.15 percent. The penalty imposes an average annual cost of $1,147 per airframe or $3.1 million for the part 135 aircraft population that has not already been upgraded. In addition the study concluded that approximately 92 percent of flights would not require a fuel stop when flown beneath FL 290. The study can be found in the public docket at *http://dms.dot.gov* and searching docket number 12261.

• In the past 7 years of RVSM operations, maintenance costs have not been a significant factor in comparison to initial aircraft approval costs. RVSM required systems are already standard for most aircraft and maintenance is already a requirement for them. The FAA recognizes that RVSM requires additional maintenance measures for some aircraft. However, they have not been factored here because they have not been factors in previous RVSM implementations.

• In the ''Costs'' section of the ''Discussion of Comments'', the FAA states that the residual value of aircraft was not a primary consideration in this rulemaking. The FAA believes that compliance with RVSM standards will actually increase the residual value of some aircraft. The FAA recognizes that aircraft that are not upgraded will decrease in residual value, however, RVSM is a global program that has been implemented in a large portion of global airspace and operators must plan accordingly.

The analysis of the operators of large transport aircraft shows that of the 22 potential small entity operators identified in the traffic sample, none were determined to have upgrade costs resulting in their being significantly impacted by this rule. However, 380 Part 135 operators are significantly impacted by this rule. Therefore, the FAA has determined that this rule will impact a substantial number of small entities.

Regulatory Flexibility Analysis

Under section 603(b) of the RFA (as amended), each regulatory flexibility analysis is required to address the following points: (1) Reasons why the FAA is considering the rule, (2) the objectives and legal basis for the rule, (3) the kind and number of small entities to which the rule would apply, (4) the projected reporting, record-keeping, and other compliance requirements of the rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the rule.

Reasons Why the FAA Is Implementing This Rule

This rulemaking action will increase the number of available flight levels, enhance airspace capacity, and permit operators to fly more fuel and time efficient tracks and altitudes. The rule will also enhance air traffic controller flexibility by increasing the number of available flight levels, while maintaining an equivalent level of safety.

The Objectives and Legal Basis for the Rule

The objective of this rule is to enhance operational efficiency and air traffic flexibility. Specifically, this rule aims to create flexibility and resultant benefits for operators and air traffic providers. The legal basis for this rule is found in 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, and articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

The Kind and Number of Small Entities to Which the Rule Will Apply

This rule applies to 70 scheduled airlines operating large transport aircraft under Part 121 of which 22 are small

operators with 1,500 or fewer employees. In addition, this rule also applies to 380 operators operating under Part 135 with all considered to be small entities. The FAA estimates that 1,900 corporations also operate non-approved turbojet aircraft under Part 91 that will be upgraded for this rule. These aircraft are primarily used for private non-revenue transportation and were considered in the Benefit/Cost analysis.

The Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

Information collection requirements in the final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number: 2120–0679.

The following paperwork costs would be imposed on aircraft operators:

Section 14 CFR part 91, Section 91.180 would require aircraft operators seeking operational approval to conduct RVSM operations within the 48 contiguous States of the United States (U.S.), Alaska, the portion of the Gulf of Mexico where the FAA provides air traffic services, the Miami-San Juan corridor and the San Juan flight information region (FIR), to submit their application to their CHDO. This submission by the estimated 2,275 respondents would require each organization to spend 30 hours on the paperwork at a cost of approximately $950 for each operator.

All Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

We are unaware of any Federal rules that duplicate, overlap, or conflict with the rule.

Other Considerations:

Affordability Analysis [1]

For the purpose of this analysis, the degree to which small entities can afford the cost of compliance is based on the availability of financial resources. Initial upgrade costs can be funded from company funds, lenders, or through the issuance of equity capital. These compliance costs can be accommodated by accepting reduced profits, increasing ticket prices or charter rates, or through other cost-savings measures to offset costs.

The cost of compliance for the 380 impacted small entity operators is $211.4 million, or $556,000.00 per small entity for upgrade costs and $74.1 million in downtime costs. Small entity operators are expected to enjoy smaller benefits than large transport operators due to their disproportionate cost-benefit ratio of upgrade costs to forecasted benefits. FAA analysis has determined that the average operator will realize a 1.86% fuel saving. However, part 135 operators electing not to upgrade or delay their aircraft upgrade plans would incur on average a 7.15 percent fuel penalty from conducting operations beneath FL290. Although we recognize these upgrade costs have a significant impact on these operators, the operational penalties associated with not upgrading or delaying aircraft upgrade plans do not prevent the operators from continuing to operate.

Disproportionality Analysis [2]

On average, the 380 small entities will be disadvantaged relative to operators of large transport aircraft due to disproportionate cost impacts. Operators of large transport aircraft enjoy greater revenues than the small entities and typically operate larger fleets. Due to their fleet sizes, large transport aircraft operators enjoy more flexibility to rotate their fleet through the RVSM approval process without a disruption in service while many of the small entities operate only one aircraft. Further, operators of large transport aircraft enjoy having their own maintenance facilities.

Competitiveness Analysis

The 380 small-entity operators do not compete with large transport operators but could experience significant costs through upgrading their aircraft for RVSM operations. However, FAA analysis has shown that aircraft operated under part 135 experience on average a 7.15% reduction in fuel efficiency if they were operated beneath the RVSM stratum. Further, FAA RVSM readiness projections for the January 2005 DRVSM implementation timeframe indicate that the aircraft generating approximately 90% of the operations in the NAS will be approved for RVSM operations. The estimated annual increase in fuel-burn for the projected 10% of non-approved NAS traffic would result in $103.7 million in total fuel penalties for these operators based on $18.2 billion in annual fuel consumption for all operations.

Description of Alternatives

We have considered a number of alternatives to the rule. We find that this rule achieves the desired airspace enhancements and delivers the maximum benefits to operators and air traffic providers while maintaining system safety.

The following alternatives to the rule have been considered:

- Status Quo
- Not enforce the rule for small entities
- Delay the rule
- Phased RVSM implementation

Alternative One—Status Quo

This alternative would maintain the current 2,000-foot vertical separation minimum above FL290 thereby avoiding the $869.2 million ($764.9 million, discounted) in costs between 2002 and 2004 for the aviation industry and the FAA. However, maintaining the status quo does not provide the desired airspace enhancements for operators and air traffic providers. As noted earlier, the cost savings and NAS operational enhancements are estimated to be $5.3 billion ($3.0 billion, discounted) over the 15-year period. Under this alternative, the foregone cost-savings would be more than seven times the cost of this rule. Therefore, we reject this alternative in favor of the rule.

Alternative Two—Not Enforce the Rule for Small Entities

This alternative would permit small operators to operate in RVSM airspace without upgrading their aircraft for such operations. Under this scenario, small operators would avoid $285.5 million ($211.4 million in upgrade costs and

[1] Small entity operators have the following options. They may elect to:

- Modify their aircraft to RVSM standards,
- Operate at and below FL 280 for a period of time until they either modify their aircraft or purchase RVSM compliant aircraft,
- Operate at and below FL 280 indefinitely.

In past RVSM implementation programs, some operators have modified their aircraft despite the costs involved. They have taken this decision because they do not wish to operate with a restriction. Instead, they wish to have access to all flight levels up to FL 410 in order to retain all available options to avoid weather, to be accommodated in prevailing traffic flows and to operate at the most fuel efficient FL's and on preferred routes.

[2] The FAA examined alternatives for operators that do not elect to modify their aircraft to RVSM standards and reached the conclusions discussed below:

Allowing Un-approved Aircraft to Operate Unconditionally in RVSM Airspace. The FAA concluded that it would not be feasible or safe to allow large numbers of un-approved aircraft to operate in RVSM airspace with RVSM approved aircraft. A mix of approved and un-approved aircraft increases ATC complexity, controller work load and the potential for error.

Delaying DRVSM Implementation. It is in the best interest of the majority of the operators and to the overall enhancement of NAS operations to proceed with DRVSM implementation in January 2005. Each year that implementation is delayed will result in the loss of $394 million dollars in operator benefits and delay enhancements to NAS operations.

$74.1 in downtime costs) or $751,316.00 per operator. However, this would compromise safety as it would result in some 2,400 non-approved aircraft operating in the RVSM stratum. Therefore, the FAA rejects this alternative in favor of the rule.

Alternative Three—Phased Implementation of RVSM

This alternative would involve the implementation of RVSM for a smaller altitude band such as FL330–370 with eventual expansion to the full RVSM envelope of FL290–410. Although this alternative would create some flexibility for small operators to continue operating near their desired flight levels and delaying their implementation plans, airspace complexity would be increased. The simulations conducted at the FAA Technical Center showed that when RVSM was applied in any altitude band other than FL 290–410, system safety and airspace management were negatively impacted. Controller workload, potential for controller error and operational complexity all increased. Therefore, we reject this alternative in favor of the rule. The ''Final Report for Domestic Reduced Vertical Separation Minimum (DRVSM) Initial Simulation'' is in the docket and can be accessed at *http://dms.dot.gov* and searching for docket number 12261.

Alternative Four—The Final Rule

This alternative represents the Final Rule. Under this alternative, airspace users and air traffic providers will receive $5.3 billion ($3.0 billion, discounted) in cost-savings for the years 2005 to 2016. These benefits will be realized through the investment of $869.2 million ($764.9 million discounted) in costs associated with this rule. We estimate that the costs for 380 small entities would be $211.4 million, or $556,000.00 on average. This alternative is preferred, as we believe it provides the best balance of costs and benefits for airspace users and air traffic providers without a reduction in aviation safety.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. We have assessed the potential effect of this rulemaking and have determined that it will impose the same costs on domestic and international entities and thus it has a neutral trade impact.

Federalism

We have analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Paperwork Reduction Act of 1995

Information collection requirements in the final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB control number 2120–0679. This final rule adds the OMB control number to the table of OMB control numbers in 14 CFR 11.201(b).

Unfunded Mandates Reform Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22,1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector; such as a mandate is deemed to be a ''significant regulatory action.''

This rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on ICAO, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to maximum extent practicable. The operator and aircraft approval process was developed jointly by the FAA and the JAA under the auspices of NATSPG. We have determined that this amendment does not present any difference.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. We believe that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

We have assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (42 U.S.C. 6362). We have determined that this rule is not a major regulatory action under the provisions of the EPCA.

Executive Order 13211—Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, for matters identified as significant energy actions. A significant energy action is an action that (1) is significant under Executive Order 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy or (2) is designated by the administrator of the Administrator of OIRA as a significant energy action. We are not required to submit a Statement of Energy Effects for this proposed rule because we do not expect this rule to have a significant adverse effect on the supply, distribution, or use of energy and the Administrator of OIRA has not identified it as a significant energy action.

List of Subjects

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

14 CFR Part 91

Air-traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ For the reasons discussed in the preamble, the Federal Aviation Administration amends parts 11 and 91 of Title 14 of the Code of Federal Regulations (14 CFR parts 11 and 91) as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

Subpart B—Paperwork Reduction Act Control Numbers

■ 2. Amend the table in § 11.201(b) by revising the entry for part 91 to read as follows:

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control No.
* * * * *	
Part 91	2120–0005, 2120–0026, 2120–0027, 2120–0573, 2120–0606, 2120–0620, 2120–0631, 2120–0651, 2120–0679
* * * * *	

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

Subpart B—Flight Rules

■ 4. Amend §91.159 by revising paragraph (b) to read as follows and by removing paragraph (c):

§ 91.159 VFR cruising altitude or flight level.

* * * * *

(b) When operating above 18,000 feet MSL, maintain the altitude or flight level assigned by ATC.

■ 5. Amend §91.179 by revising paragraph (b)(3) introductory text and adding a new paragraph (b)(4) to read as follows:

§ 91.179 IFR cruising altitude or flight level.

* * * * *

(b) * * *

(3) When operating at flight level 290 and above in non-RVSM airspace, and—

* * * * *

(4) When operating at flight level 290 and above in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd flight level, at 2,000-foot intervals beginning at and including flight level 290 (such as flight level 290, 310, 330, 350, 370, 390, 410); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even flight level, at 2000-foot intervals beginning at and including flight level 300 (such as 300, 320, 340, 360, 380, 400).

■ 6. Add § 91.180 to subpart B to read as follows:

§ 91.180 Operations within airspace designated as Reduced Vertical Separation Minimum airspace.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace unless:

(1) The operator and the operator's aircraft comply with the minimum standards of appendix G of this part; and

(2) The operator is authorized by the Administrator or the country of registry to conduct such operations.

(b) The Administrator may authorize a deviation from the requirements of this section.

■ 7. In Appendix G, amend section 5 by revising the introductory text; redesignating paragraph (2) as paragraph (a) and by revising newly redesignated (a); and amend section 8 by adding new paragraphs (d), (e), and (f) to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 5. Deviation Authority Approval

The Administrator may authorize an aircraft operator to deviate from the requirements of § 91.180 or § 91.706 for a specific flight in RVSM airspace if that operator has not been approved in accordance with Section 3 of this appendix if:

(a) The operator submits a request in a time and manner acceptable to the Administrator; and

* * * * *

Section 8. Airspace Designation

* * * * *

(d) *RVSM in the United States.* RVSM may be applied in the airspace of the 48 contiguous states, District of Columbia, and Alaska, including that airspace overlying the waters within 12 nautical miles of the coast.

(e) *RVSM in the Gulf of Mexico.* RVSM may be applied in the Gulf of Mexico in the following areas: Gulf of Mexico High Offshore Airspace, Houston Oceanic ICAO FIR and Miami Oceanic ICAO FIR.

(f) *RVSM in Atlantic High Offshore Airspace and the San Juan FIR.* RVSM may be applied in Atlantic High Offshore Airspace and in the San Juan ICAO FIR.

Issued in Washington, DC, on October 22, 2003.

Marion Blakey,

Administrator.

[FR Doc. 03–27028 Filed 10–22–03; 2:12 pm]

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Class E airspace; comments due by 11-6-03; published 9-22-03 [FR 03-24141]

TREASURY DEPARTMENT

Comptroller of the Currency

New Basel Capital Accord; implementation:
Risk-based capital guidelines; comments due by 11-3-03; published 8-4-03 [FR 03-18977]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Partnership transactions involving long-term contracts; accounting method; comments due by 11-4-03; published 8-6-03 [FR 03-18484]

TREASURY DEPARTMENT

Thrift Supervision Office

New Basel Capital Accord; implementation:
Risk-based capital guidelines; comments due by 11-3-03; published 8-4-03 [FR 03-18977]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:
Eola Hills, OR; comments due by 11-7-03; published 9-8-03 [FR 03-22762]

VETERANS AFFAIRS DEPARTMENT

Medical benefits:
Medical care or services, reasonable charges; 2003 methodology changes; comments due by 11-3-03; published 10-2-03 [FR 03-24102]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2152/P.L. 108–99

To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program. (Oct. 15, 2003; 117 Stat. 1176)

Last List October 15, 2003

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4] Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869–050–00002–4)	32.00	[1] Jan. 1, 2003
4	(869–050–00003–2)	9.50	Jan. 1, 2003
5 Parts:			
1–699	(869–050–00004–1)	57.00	Jan. 1, 2003
700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
1200–End, 6 (6 Reserved)	(869–050–00006–7)	58.00	Jan. 1, 2003
7 Parts:			
1–26	(869–050–00007–5)	40.00	Jan. 1, 2003
27–52	(869–050–00008–3)	47.00	Jan. 1, 2003
53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
210–299	(869–050–00010–5)	59.00	Jan. 1, 2003
300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
400–699	(869–050–00012–1)	39.00	Jan. 1, 2003
700–899	(869–050–00013–0)	42.00	Jan. 1, 2003
900–999	(869–050–00014–8)	57.00	Jan. 1, 2003
1000–1199	(869–050–00015–6)	23.00	Jan. 1, 2003
1200–1599	(869–050–00016–4)	58.00	Jan. 1, 2003
1600–1899	(869–050–00017–2)	61.00	Jan. 1, 2003
1900–1939	(869–050–00018–1)	29.00	[4] Jan. 1, 2003
1940–1949	(869–050–00019–9)	47.00	Jan. 1, 2003
1950–1999	(869–050–00020–2)	45.00	Jan. 1, 2003
2000–End	(869–050–00021–1)	46.00	Jan. 1, 2003
8	(869–050–00022–9)	58.00	Jan. 1, 2003
9 Parts:			
1–199	(869–050–00023–7)	58.00	Jan. 1, 2003
200–End	(869–050–00024–5)	56.00	Jan. 1, 2003
10 Parts:			
1–50	(869–050–00025–3)	58.00	Jan. 1, 2003
51–199	(869–050–00026–1)	56.00	Jan. 1, 2003
200–499	(869–050–00027–0)	44.00	Jan. 1, 2003
500–End	(869–050–00028–8)	58.00	Jan. 1, 2003
11	(869–050–00029–6)	38.00	Jan. 1, 2003
12 Parts:			
1–199	(869–050–00030–0)	30.00	Jan. 1, 2003
200–219	(869–050–00031–8)	38.00	Jan. 1, 2003
220–299	(869–050–00032–6)	58.00	Jan. 1, 2003
300–499	(869–050–00033–4)	43.00	Jan. 1, 2003
500–599	(869–050–00034–2)	38.00	Jan. 1, 2003
600–899	(869–050–00035–1)	54.00	Jan. 1, 2003
900–End	(869–050–00036–9)	47.00	Jan. 1, 2003
13	(869–050–00037–7)	47.00	Jan. 1, 2003
14 Parts:			
1–59	(869–050–00038–5)	60.00	Jan. 1, 2003
60–139	(869–050–00039–3)	58.00	Jan. 1, 2003
140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–050–00041–5)	47.00	Jan. 1, 2003
1200–End	(869–050–00042–3)	43.00	Jan. 1, 2003
15 Parts:			
0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
300–799	(869–050–00044–0)	57.00	Jan. 1, 2003
800–End	(869–050–00045–8)	40.00	Jan. 1, 2003
16 Parts:			
0–999	(869–050–00046–6)	47.00	Jan. 1, 2003
1000–End	(869–050–00047–4)	57.00	Jan. 1, 2003
17 Parts:			
1–199	(869–050–00049–1)	50.00	Apr. 1, 2003
200–239	(869–050–00050–4)	58.00	Apr. 1, 2003
240–End	(869–050–00051–2)	62.00	Apr. 1, 2003
18 Parts:			
1–399	(869–050–00052–1)	62.00	Apr. 1, 2003
400–End	(869–050–00053–9)	25.00	Apr. 1, 2003
19 Parts:			
1–140	(869–050–00054–7)	60.00	Apr. 1, 2003
141–199	(869–050–00055–5)	58.00	Apr. 1, 2003
200–End	(869–050–00056–3)	30.00	Apr. 1, 2003
20 Parts:			
1–399	(869–050–00057–1)	50.00	Apr. 1, 2003
400–499	(869–050–00058–0)	63.00	Apr. 1, 2003
500–End	(869–050–00059–8)	63.00	Apr. 1, 2003
21 Parts:			
1–99	(869–050–00060–1)	40.00	Apr. 1, 2003
100–169	(869–050–00061–0)	47.00	Apr. 1, 2003
170–199	(869–050–00062–8)	50.00	Apr. 1, 2003
200–299	(869–050–00063–6)	17.00	Apr. 1, 2003
300–499	(869–050–00064–4)	29.00	Apr. 1, 2003
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800–1299	(869–050–00067–9)	58.00	Apr. 1, 2003
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22 Parts:			
1–299	(869–050–00069–5)	62.00	Apr. 1, 2003
300–End	(869–050–00070–9)	44.00	Apr. 1, 2003
23	(869–050–00071–7)	44.00	Apr. 1, 2003
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200–499	(869–050–00073–3)	50.00	Apr. 1, 2003
500–699	(869–050–00074–1)	30.00	Apr. 1, 2003
700–1699	(869–050–00075–0)	61.00	Apr. 1, 2003
1700–End	(869–050–00076–8)	30.00	Apr. 1, 2003
25	(869–050–00077–6)	63.00	Apr. 1, 2003
26 Parts:			
§§ 1.0–1–1.60	(869–050–00078–4)	49.00	Apr. 1, 2003
§§ 1.61–1.169	(869–050–00079–2)	63.00	Apr. 1, 2003
§§ 1.170–1.300	(869–050–00080–6)	57.00	Apr. 1, 2003
§§ 1.301–1.400	(869–050–00081–4)	46.00	Apr. 1, 2003
§§ 1.401–1.440	(869–050–00082–2)	61.00	Apr. 1, 2003
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§§ 1.501–1.640	(869–050–00084–9)	49.00	Apr. 1, 2003
§§ 1.641–1.850	(869–050–00085–7)	60.00	Apr. 1, 2003
§§ 1.851–1.907	(869–050–00086–5)	60.00	Apr. 1, 2003
§§ 1.908–1.1000	(869–050–00087–3)	60.00	Apr. 1, 2003
§§ 1.1001–1.1400	(869–050–00088–1)	61.00	Apr. 1, 2003
§§ 1.1401–1.1503–2A	(869–050–00089–0)	50.00	Apr. 1, 2003
§§ 1.1551–End	(869–050–00090–3)	50.00	Apr. 1, 2003
2–29	(869–050–00091–1)	60.00	Apr. 1, 2003
30–39	(869–050–00092–0)	41.00	Apr. 1, 2003
40–49	(869–050–00093–8)	26.00	Apr. 1, 2003
50–299	(869–050–00094–6)	41.00	Apr. 1, 2003
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600–End	(869–050–00097–1)	17.00	Apr. 1, 2003

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27 Parts:			
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200–End	(869–050–00099–7)	25.00	Apr. 1, 2003
28 Parts:			
0–42	(869–050–00100–4)	61.00	July 1, 2003
43–End	(869–050–00101–2)	58.00	July 1, 2003
29 Parts:			
0–99	(869–050–00102–1)	50.00	July 1, 2003
100–499	(869–050–00103–9)	22.00	July 1, 2003
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900–1899	(869–050–00105–5)	35.00	July 1, 2003
*1900–1910 (§§ 1900 to 1910.999)	(869–050–00106–3)	61.00	July 1, 2003
1910 (§§ 1910.1000 to end)	(869–050–00107–1)	46.00	July 1, 2003
1911–1925	(869–050–00108–0)	30.00	July 1, 2003
1926	(869–050–00109–8)	50.00	July 1, 2003
1927–End	(869–050–00110–1)	62.00	July 1, 2003
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–050–00112–8)	50.00	July 1, 2003
700–End	(869–050–00113–6)	57.00	July 1, 2003
31 Parts:			
0–199	(869–050–00114–4)	40.00	July 1, 2003
200–End	(869–050–00115–2)	64.00	July 1, 2003
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
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1–190	(869–050–00116–1)	60.00	July 1, 2003
191–399	(869–050–00117–9)	63.00	July 1, 2003
400–629	(869–050–00118–7)	50.00	July 1, 2003
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700–799	(869–050–00120–9)	46.00	July 1, 2003
800–End	(869–050–00121–7)	47.00	July 1, 2003
33 Parts:			
1–124	(869–050–00122–5)	55.00	July 1, 2003
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–050–00124–1)	50.00	July 1, 2003
34 Parts:			
1–299	(869–050–00125–0)	49.00	July 1, 2003
300–399	(869–050–00126–8)	43.00	[7] July 1, 2003
400–End	(869–050–00127–6)	61.00	July 1, 2003
35	(869–050–00128–4)	10.00	[6] July 1, 2003
36 Parts			
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200–299	(869–050–00130–6)	37.00	July 1, 2003
300–End	(869–050–00131–4)	61.00	July 1, 2003
***37**	(869–050–00132–2)	50.00	July 1, 2003
38 Parts:			
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18–End	(869–050–00134–9)	62.00	July 1, 2003
39	(869–050–00135–7)	41.00	July 1, 2003
40 Parts:			
1–49	(869–050–00136–5)	60.00	July 1, 2003
*50–51	(869–050–00137–3)	44.00	July 1, 2003
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–050–00140–3)	31.00	July 1, 2003
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8] July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
*63 (63.1–63.599)	(869–050–00144–6)	58.00	July 1, 2003
63 (63.600–63.1199)	(869–050–00145–4)	50.00	July 1, 2003
63 (63.1200–End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–050–00148–9)	29.00	July 1, 2003
72–80	(869–050–00149–7)	61.00	July 1, 2003
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8] July 1, 2002
86 (86.600–1–End)	(869–050–00152–7)	50.00	July 1, 2003
*87–99	(869–050–00153–5)	60.00	July 1, 2003
100–135	(869–050–00154–3)	43.00	July 1, 2003
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–050–00156–0)	49.00	July 1, 2003
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260–265	(869–050–00158–6)	50.00	July 1, 2003
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–050–00160–8)	42.00	July 1, 2003
400–424	(869–050–00161–6)	56.00	July 1, 2003
425–699	(869–050–00162–4)	61.00	July 1, 2003
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1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–050–00166–7)	24.00	July 1, 2003
*102–200	(869–050–00167–5)	50.00	July 1, 2003
*201–End	(869–050–00168–3)	22.00	July 1, 2003
42 Parts:			
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45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9] Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9] Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9] Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
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20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
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2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
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7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
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49 Parts:			
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186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
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Title	Stock Number	Price	Revision Date
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002
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50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.