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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–057–1]

Japanese Beetle; Domestic Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Japanese beetle quarantine and regulations to add Colorado and Montana to the list of protected States. This action is necessary to prevent the spread of Japanese beetle into noninfested areas of the United States.

DATES: This interim rule is effective July 18, 2003. We will consider all comments that we receive on or before September 22, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–057–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–057–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–057–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. S. Anwar Rizvi, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4313.

SUPPLEMENTARY INFORMATION:

Background

The Japanese beetle feeds on fruits, vegetables, and ornamental plants and is capable of causing damage to over 300 potential hosts. The Japanese beetle quarantine and regulations, contained in 7 CFR 301.48 through 301.48–8 (referred to below as the regulations), quarantine the States of Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia and restrict the interstate movement of aircraft from regulated airports in these States in order to prevent the spread of the Japanese beetle to noninfested States where the Japanese beetle could become established. Those noninfested States where the Japanese beetle could become established (referred to below as protected States) are listed in § 301.48(b).

The Japanese beetle is active during daylight hours only. Under § 301.48–2 of the regulations, an inspector of the Animal and Plant Health Inspection Service (APHIS) may designate any airport within a quarantined State as a regulated airport if he or she determines that adult populations of Japanese beetle exist during daylight hours at the airport to the degree that aircraft using the airport constitute a threat to spread the Japanese beetle and aircraft destined for protected States may be leaving the airport.

Also, under § 301.48–4 of the regulations, aircraft from regulated airports may move interstate to a protected State only if: (1) An inspector, upon visual inspection of the airport and/or the aircraft, determines that the aircraft does not present a threat to spread the Japanese beetle because adult beetle populations are not present; or (2) the aircraft is opened and loaded only while it is enclosed in a hangar that APHIS has determined to be free of and safeguarded against Japanese beetle; or (3) the aircraft is loaded during the hours of 8 p.m. to 7 a.m. (generally non-daylight hours) only or lands and departs during those hours and, in either situation, is kept completely closed while on the ground during the hours of 7 a.m. to 8 p.m.; or (4) if opened and loaded during daylight hours, the aircraft is inspected, treated, and safeguarded in accordance with the requirements described in § 301.48–4(d).

As noted previously, paragraph (b) of § 301.48 lists noninfested States that are protected by the regulations. Prior to the effective date of this interim rule, the States listed were Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington. When the list in § 301.48(b) was established in the 1970's, Colorado and Montana opted not to be listed because of the belief that the Japanese beetle could not survive in the States' climates. However, in recent years, State officials in Colorado and Montana have trapped increasing numbers of Japanese beetles in the vicinity of Denver International Airport and Billings Logan International Airport, respectively. In the case of Colorado, Japanese beetles have been found at several nurseries receiving stock from Japanese beetle infested Eastern States. In view of the increase in trap catches and the growing amount of shrub and turf areas under irrigation (especially in urban areas) in those States, Colorado and Montana State officials have informed APHIS that they now wish to be listed as protected States. Therefore, in this interim rule we are amending the regulations in § 301.48(b) by adding Colorado and Montana to the list of protected States.

Emergency Action

This rulemaking is necessary on an emergency basis to provide protection from the Japanese beetle to Colorado and Montana during the 2003 season of Japanese beetle activity, which begins in mid-June in many parts of the country. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.48 [Amended]

■ 2. In § 301.48, paragraph (b) is amended by adding the word ''Colorado,'' after the word ''California,'' and by adding the word ''Montana,'' after the word ''Idaho,''.

Done in Washington, DC, this 18th day of July 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18851 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 993 and 999

[Docket No. FV03–993–3 IFR]

Dried Prunes Produced in California; Temporary Suspension of the Mandatory Outgoing Prune Inspection and Quality Requirements, and Modification of the Undersized Prune Disposition Requirements Under the Marketing Order; and Suspension of the Prune Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends the outgoing prune inspection and quality requirements under the California Dried Prune Marketing Order (Order) and its administrative rules and regulations, and the prune import regulation, for a three-year period, and modifies the Order's undersized prune disposition requirements. The Order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). Suspension of the outgoing inspection and quality requirements, and import regulation provisions will ensure relief from these regulations. During the three-year suspension period the industry will consider developing and implementing outgoing inspection and finished product grade standards more consistent with current industry needs.

DATES: Effective August 1, 2003 through July 31, 2006, except for the amendments to § 993.150 (g)(2) and (g)(3), which are effective August 1, 2003. Comments received by September 22, 2003 will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), both as amended, regulating the handling of dried prunes produced in

California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule suspends the outgoing prune inspection and quality requirements in the order and its administrative rules and regulations, and the prune import regulation for a three-year period, and modifies the undersized prune disposition requirements. These changes will be effective with the start of the new crop year on August 1, 2003. The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). The Committee unanimously recommended suspension of the outgoing inspection, and outgoing prune quality requirements at meetings held on April 3, and May 1, 2003, because it is the quickest way to ensure relief from these regulations. During the three-year suspension period, the industry will consider developing and implementing outgoing inspection and finished product grade standards that are more in line with current industry needs. As discussed below, suspension of the prune import regulation is required under section 8e of the Act.

Marketing Order Authority To Modify and Suspend

Section 993.50(g) states in part: ''rules and regulations to insure proper disposition of the [undersized] prunes shall be established by the Committee with the approval of the Secretary.''

Section 993.90(a) states in part: ''The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.''

Outgoing Grade and Size Regulations

The order currently mandates outgoing inspections and outgoing prune quality, size, and labeling requirements of California produced prunes by California prune handlers to verify such prunes meet quality requirements. These requirements are based on the U.S. Standards for Grades of Dried Prunes and marketing order grade standards. The objective of the inspection, grade, size, and labeling requirements is to ensure that only prunes of acceptable quality and size enter the domestic and foreign markets for human consumption, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes that the costs associated with existing minimum grade, size, and labeling standards may exceed the benefits accrued from such requirements at this time.

Prune Import Regulations

Section 8e of the Agriculture Marketing Agreement Act of 1937 (Act) provides that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 999.200 contains the prune import regulations that are comparable to the domestically produced prune outgoing quality and size requirements. Since this rule suspends the outgoing quality and size requirements for domestically produced prunes for three years, these requirements must be suspended in the import regulations during this period as well.

U.S. imports of dried prunes are insignificant compared to U.S. production. In 2002, while the U.S. produced 158,000 tons of dried prunes, only 616 tons were imported. In that year, the domestically produced tonnage was over 250 times as large as the imported tonnage. In 2001, 204 tons were imported, but the U.S. produced 150,000 tons. Production was 735 times as large as imports.

In recent years, about 90 percent of U.S. imports of dried prunes have come from Argentina. Other countries that export to the U.S. include Chile, France, Mexico, Iran, and Turkey.

Undersized Prune Disposition Regulations

The prune administrative rules and regulations currently require handlers to have a third party inspection of each lot of undersized prunes prior to shipment into nonhuman outlets or other disposition. Under § 993.51 of the Order, inspections are performed by the Dried Fruit Association of California. These requirements also require handlers to submit to the Committee comprehensive documentation verifying that they have satisfied their undersized prune obligation.

The prune administrative rules and regulations also currently limit the quantities of larger size that can be used to meet a handler's undersized disposition obligation. While the Committee plans to continue to restrict the shipment of undersized prunes into human consumption outlets, the Committee believes that the costs associated with the inspection and documentation of the disposal of undersized prunes may exceed the benefits. To reduce the cost and time for handlers to file reports and verify the disposition of undersized prunes through inspection, the Committee unanimously recommended removing the inspection requirements, and simplifying the documentation required from handlers to satisfy their undersized obligation as well as removing the limits on the weights of larger prunes that can be used to meet undersized obligations.

Background and Action Taken

California prune handlers are currently selling prunes in many forms to customers throughout the world. The majority of these sales involve sizing or processing the prunes to more stringent specifications than required under the order. Retail and wholesale buyers often visit handlers' plants in California to verify specification and quality procedures, which tend to be more stringent than the minimum outgoing quality requirements mandated in the marketing order. Handlers continue to improve the quality and outgoing inspection procedures to target the specific customer and market demands. Almost all prunes sold for consumption in the United States as prunes are pitted

and packaged in consumer bags and canisters targeting much higher standards than those mandated by the marketing order.

Current procedures require detailed administrative notating and reporting of defect information, large numbers of line inspectors at handler plants, and tracking and segregating lots and bins of fruit to comply with the order. As a result, handlers incur significant amounts of time and money on the inspection process. Also, almost all fruit is inspected by international buyers upon receipt, and is accepted or rejected based on the fruits' condition at the time of that review, regardless of any prior inspection process or certification. Further, prunes produced in other countries must meet customer specifications and inspection criteria.

Because of increased foreign competition that sells quality processed fruit, shifting consumer demand from natural condition to processed prunes, and increasingly competitive specifications that have left the minimum marketing order standards no longer reflect current industry needs. The Committee believes that California prune handlers must reduce all unnecessary costs in order to remain competitive with imported fruit and to profitably sell fruit in international markets.

The mandatory outgoing inspections focus on cosmetic defects or defects that tend to be removed through steaming, pitting, or juicing the fruit. While the industry once sold primarily unprocessed prunes, consumer demand has changed and some processing is invariably required, leaving the outgoing inspection criteria inapplicable and out-dated.

With regard to import requirements, section 8e of the Act requires import regulations to be comparable to the domestic regulations, not more restrictive. Since this rule suspends outgoing grade and size regulations for domestically produced prunes, and substantially relaxes the disposition and verification requirements on undersized prunes under the order, the import regulation must be suspended as well.

During the three-year suspension period, the industry will have the opportunity to consider developing and implementing more appropriate finished product grade standards through amendments to the order and administrative rules and regulations.

At its May 1, 2003, meeting, the Committee unanimously recommended suspension of all outgoing inspection, outgoing quality, size, and labeling requirements in the marketing order and the administrative rules and regulations for three years, beginning with the start of the new crop year on August 1, 2003. The suspension of these provisions will reduce some administrative costs.

This interim final rule suspends in their entirety §§ 993.50(a) through (f) and 993.97 Exhibit A—Part II of the order, and §§ 993.150(a) and (b), 993.150(d) through (g)(1), 993.515, 993.516, 993.517, 993.518 of the administrative rules and regulations, as well as § 999.200 of the import regulation. Portions of §§ 993.50(g) and 993.51 of the order, and portions of §§ 993.601 of the administrative rules and regulations are also suspended. These sections of the order and administrative rules and regulations pertain to the various requirements of the outgoing inspection, outgoing quality, size, and labeling requirements, and import regulation provisions.

Prune handlers oppose the current undersized prune regulations because they are costly to meet. Undersized prunes have marginal value as cattle feed or use in tobacco products (about $40–$45 per ton), and the costs of completing the required Committee paperwork and having them inspected by the DFA of California may exceed the revenue received. The industry is now also less concerned about the minimal amount of poor quality undersized prunes. Supplies of undersized prunes are now lower because of the recent tree pull programs and growers field sizing programs to drop small prune plums in the orchard, rather than deliver them to handlers.

The Committee chose to recommend removal of the limits on the quantities of larger-sized prunes that can be used to meet a handler's undersized weight disposition obligation, and the requirement for inspection of the undersized prunes and certification of handlers' receipt of usage, because these changes will eliminate certain inspection costs and reduce Committee and handler administration costs.

At the April 3, 2003, meeting, the Committee unanimously recommended modification of the undersized prune disposition provisions in the marketing order and the administrative rules and regulations, beginning with the start of the new crop year on August 1, 2003. The modification of these provisions will reduce some committee and handler administrative costs.

This interim final rule removes § 993.150(g)(2)(i), § 993.150(g)(2)(iii), and § 993.150(g)(2)(iv) in the administrative rules and regulations. Portions of § 993.150(g)(3) are amended.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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.

Industry Profile

There are approximately 1,205 producers of dried prunes in the production area and approximately 21 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 of less than $750,000 and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Eight of the 21 handlers (38 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped less than $5,000,000 worth of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

In addition, there are an estimated 30 importers and one third-party entity that performs inspections under the order. USDA does not have precise information on these entities, but believes that the majority of the importers and the inspection agency are small entities.

Summary of Rule Change

This rule suspends the outgoing prune inspection and outgoing prune quality requirements under the order and the administrative rules and regulations, and the prune import provisions for a three-year period, and modifies the undersized prune disposition requirements. These changes will be effective with the start

of the new crop year on August 1, 2003, for three years. In the absence of additional rulemaking, the suspended requirements will come back into effect at the end of the three-year period.

The industry chose suspension of the outgoing inspection, outgoing prune quality and size and labeling requirements, because suspension is the quickest way to ensure relief from these regulations. During the three-year suspension period, the industry will have the opportunity to consider developing and implementing more effective finished product grade standards through amendments to the order and administrative rules and regulations. It also will have an opportunity to decide whether these requirements should be terminated.

Authority to suspend these provisions of the marketing order and administrative rules and regulations is provided in § 993.90(a) of the order. Authority to modify the disposition requirements and procedures of undersized prunes in the administrative rules and regulations is provided in §§ 993.50(g) and 993.52 of the order. Authority for the import regulation is in section 8e of the Act.

Impact of Regulation

Regarding the impact of this rule on affected entities, this action could reduce the reporting and recordkeeping burden on California prune handlers and reduce the Committee's and handlers' administrative costs. Also, this action would reduce the number of inspections performed by the inspection agency under the order. The Committee estimates that 21 California prune handlers would be subject to these provisions and to filing the handler reports. Also under the prune import regulations, it is estimated that as many as 10 importers would file forms applicable to the import regulations. The handler annual burden to file these reports is 70.04 hours, and the respondent annual burden to file reports under the import regulations is 6.05 hours. Thus, there is a potential to reducing the annual handler and importer reporting burden by 76.09 hours during the suspension period. The benefits of this interim final rule are expected to be available to all prune handlers and importers, regardless of their size of operation.

The forms affected by this rule are as follows: (1) Form PMC 2.2, Application for Permission to Dispose of Substandard Prunes; (2) Form PMC 2.6, Statement of Proposed Disposition of Substandard Prunes; (3) Form PMC 4.72A, Foreign Export—Notice of Substandard Prunes for Manufacturing Purposes; (4) Form PMC 4.72B, Foreign Export—Notice of Usage of Substandard Prunes for Manufacturing Purposes; (5) Form PMC 2.21, Application for Permission to Dispose of Undersized Prunes for Non-Human Usage; (6) Form PMC 4.71A, User's Receipt of Dried Undersized Prunes for Non-Human Usage; (7) Form PMC 4.71B, User's Certificate of Non-Human Usage of Dried Undersized Prunes; (8) Form PMC 2.63, Statement of Proposed Disposition of Undersized Prunes; (9) Form FV–170, Prune Form No. 1; and (10) Form FV–171, Prune Form No. 2.

It should be noted that if the Committee determines that these suspensions are having an unfavorable impact on the industry, it could meet and recommend rescinding the suspensions.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were previously approved by the Office of Management and Budget, under OMB No. 0581–0178. 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. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Alternatives Considered

The Committee and industry members discussed at the Committee's April 3, 2003, and May 1, 2003, meetings different alternatives to these actions. The Committee discussed the possibility of suspending the total Federal prune marketing order, but its benefit in other areas is recognized by the industry. Another alternative discussed was to suspend all mandatory inspections (both incoming and outgoing inspections), but many on the Committee and in the industry deemed this action too extreme. Another alternative discussed was to exempt handlers from the inspection requirements if they could demonstrate that the automation of their plant assured consistent delivery of higher quality prunes, but this would not be practicable. Another alternative considered was a two-year suspension of the undersized prune regulation. This was opposed because it would increase the domestic salable tonnage and would add to the industry's oversupply.

The Committee's April 3, 2003, and May 1, 2003, meetings where the outgoing inspection, outgoing prune quality, size, and labeling requirement issues were deliberated were public meetings and widely publicized throughout the prune industry. At the April 3, 2003, meeting, the Committee recommended removing the limits on quantity of larger-sized that could be used to meet handler undersized obligations and eliminating of the DFA of California undersized prune inspection and certification of receipt of usage. This was because it will reduce costs, including inspection fees and other Committee costs associated with mandatory inspection, and the reporting burden resulting from the inspection requirements.

All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of these changes on small businesses.

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

The Office of the U.S. Trade Representative has reviewed this interim final rule and concurs with its issuance.

A 60-day comment period is provided to allow interested persons to respond to this rule. All written comments timely received will be considered before a final determination is made on this matter. After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the provisions being suspended would not tend to effectuate the declared policy of the Act during the three-year period, and that the provisions being amended would tend to effectuate the declared policy of the Act effective August 1, 2003.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee recommended that the rule be implemented at the beginning of the new crop year, August 1, 2003; (2) this rule relaxes certain requirements in the order and the administrative rules and regulations; (3) the Committee unanimously recommended these

changes at a public meeting and interested parties had an opportunity to provide input; and (4) a 60-day comment period is provided and all comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

■ For the reasons set forth in the preamble, 7 CFR parts 993 and 999 are amended as follows:

■ 1. The authority citation for 7 CFR parts 993 and 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 2. In § 993.50:

■ a. Paragraphs (a), (b), (c), (d), (e), and (f) are suspended in their entirety effective August 1, 2003, through July 31, 2006.

■ b. Paragraph (g) is amended by suspending the words ‘‘, and reasonably comparable in size, to’’ in the third sentence; suspending the fourth and fifth sentences in their entirety; and suspending the words ‘‘Any such tolerance, together with any’’ and ‘‘and that such prunes are reasonably comparable to the undersized prunes so received,’’ in the sixth sentence, effective August 1, 2003, through July 31, 2006.

■ 3. Section 993.51 is amended by suspending the words ‘‘, and before shipping or disposing’’ and ‘‘or the pack specifications, including labeling,’’ in the first sentence, effective August 1, 2003, through July 31, 2006.

■ 4. In § 993.97, section II pertaining to minimum standards for processed prunes is suspended in its entirety effective August 1, 2003, through July 31, 2006.

■ 5. In § 993.150:

■ a. Paragraphs (a), (b), (d), (e), and (f) are suspended in their entirety effective August 1, 2003, through July 31, 2006.

■ b. Paragraph (g) is amended by suspending paragraph (g)(1) in its entirety effective August 1, 2003, through July 31, 2006, and by removing paragraphs (g)(2)(i), (g)(2)(iii), and (g)(2)(iv) in their entirety effective August 1, 2003.

■ c. Paragraph (g)(2)(ii) is redesignated as paragraph (g)(2)(i) and revised as follows effective August 1, 2003:

§ 993.150 Disposition of prunes by handlers.

* * * * *

(g) * * *

(2) * * *

(i) *Documentation of shipment or other disposition.* For each quantity of undersized prunes so shipped or otherwise disposed of, the handler shall promptly forward to the Committee one copy of the applicable bill of lading, truck receipt, or related documentation of disposition which shall show: *(a)* The name of the consignee; *(b)* the destination by name and address of the person designated to receive the prunes; *(c)* the date of shipment or other disposition; *(d)* the net weight of the prunes; and *(e)* identification of the prunes as undersized prunes.

■ d. Paragraphs (g)(3)(i) and (g)(3)(ii) are revised effective August 1, 2003, to read as follows:

§ 993.150 Disposition of prunes by handlers.

* * * * *

(g) * * *

(3) * * *

(i) *Undersized French prunes.* Whenever an undersized regulation specifies an opening for French prunes, any quantity of any size of French prunes disposed of by a handler in compliance with § 993.50(g) shall satisfy a handler's undersized disposition.

(ii) *Undersized non-French prunes.* Whenever an undersized regulation specifies an opening for non-French prunes, any quantity of any size of non-French prunes disposed of by a handler in compliance with § 993.50(g) shall satisfy a handler's undersized disposition.

§ 993.150 Disposition of prunes by handlers.

■ 6. Sections 993.515, 993.516, 993.517, and 993.518 are suspended in their entirety effective August 1, 2003, through July 31, 2006.

■ 7. In § 993.601(a) the words, ‘‘and outgoing’’, ‘‘and the minimum standards which handlers' shipments or other final dispositions of prunes are required to meet pursuant to § 993.50(a)’’, ‘‘IIC(3)’’, and ‘‘IIC(6)’’ are suspended effective August 1, 2003, through July 31, 2006.

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

■ 8. Section 999.200 is suspended in its entirety effective August 1, 2003, through July 31, 2006.

Dated: July 16, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–18778 Filed 7–23–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 03–044–1]

Tuberculosis in Cattle and Bison; State Designations; New Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by removing New Mexico from the list of accredited-free States and adding it to the list of modified accredited advanced States. This action is necessary to help prevent the spread of tuberculosis because New Mexico no longer meets the requirements for accredited-free State status.

DATES: This interim rule is effective July 24, 2003.

Compliance Date: The date for complying with certain requirements of 9 CFR 77.10 for sexually intact heifers, steers, and spayed heifers moving interstate from the State of New Mexico is September 30, 2003 (see ‘‘Delay in Compliance’’ under **SUPPLEMENTARY INFORMATION**). The compliance date for all other provisions in 9 CFR part 77 applicable to the interstate movement of cattle and bison from the State of New Mexico is July 24, 2003.

Comment Date: We will consider all comments that we receive on or before September 22, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–044–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–044–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and

address in your message and ''Docket No. 03–044–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Terry Beals, Senior Staff Veterinarian, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5467.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis.* It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

At the beginning of the 20th century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock.

Federal regulations implementing this program are contained in 9 CFR part 77, ''Tuberculosis'' (referred to below as the regulations), and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of bovine tuberculosis. Subpart B of the regulations contains requirements for the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone, accreditation preparatory State or zone, or nonaccredited State or zone.

The status of a State or zone is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards for cattle and bison contained in the UMR. In an interim rule published in the **Federal Register** on October 23, 2000, and effective on November 22, 2000 (65 FR 63502–63533, Docket No. 99–038–5), we, among other things, raised the designation of New Mexico from modified accredited to accredited-free.

Recently, two tuberculosis-affected herds (one dairy herd in the fall of 2002 and another dairy herd in the winter of 2002–2003) were detected in Roosevelt County, NM. Under the regulations in § 77.7(c), if two or more affected herds are detected in an accredited-free State or zone within a 48-month period, the State or zone will be removed from the list of accredited-free States or zones and will be reclassified as modified accredited advanced. Therefore, we are amending the regulations by removing New Mexico from the list of accredited-free States or zones and adding it to the list of modified accredited advanced States or zones.

The two affected herds detected in the State have been quarantined, and a complete epidemiological investigation into the potential sources of the disease is being conducted. In cooperation with the State, we have continuously tested area cattle for tuberculosis since the investigation began.

Under the regulations in § 77.10, cattle or bison that originate in a modified accredited advanced State or zone, and are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

- The cattle or bison are moved directly to slaughter at an approved slaughtering establishment (§ 77.10(a));
- The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; and are either officially identified or identified by premises of origin identification (§ 77.10(b));
- The cattle or bison are from an accredited herd and are accompanied by a certificate stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement (§ 77.10(c)); or
- The cattle or bison are sexually intact animals, are not from an accredited herd, are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculin test conducted within 60 days prior to the date of movement (§ 77.10(d)).

Delay in Compliance

In an interim rule effective June 3, 2002, and published in the **Federal Register** on June 6, 2002 (67 FR 38841–38844, Docket No. 02–021–1), we amended the regulations by classifying the State of Texas as modified accredited advanced. In another interim rule effective and published in the **Federal Register** on April 25, 2003 (68 FR 20333–20336, Docket No. 03–005–1), we amended the regulations by classifying the State of California as modified accredited advanced. Given the size and complexity of the cattle industries in Texas and California, we delayed the date for complying with certain identification and certification requirements in § 77.10 for sexually intact heifers, steers, and spayed heifers moving interstate from the States of Texas and California until September 30, 2003.

In the interests of equitable treatment for producers in New Mexico, we are similarly delaying the date of compliance with the following interstate movement requirements of § 77.10 for sexually intact heifers, steers, and spayed heifers moving interstate from the State of New Mexico until September 30, 2003:

- The identification of sexually intact heifers moving to approved feedlots and steers and spayed heifers (§ 77.10(b));
- The identification requirements for sexually intact heifers moving to feedlots that are not approved feedlots (§ 77.10(d));
- Because identification is required for certification, the certification requirements for sexually intact heifers moving to unapproved feedlots (§ 77.10(d)).

All other applicable provisions of the regulations will be in effect as ofthe effective date of this rule.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of tuberculosis in the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above).

After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Prior to this rule, the State of New Mexico was classified as an accredited-free State for cattle and bison. However, two infected herds have been discovered within a 48-month period. Under the regulations, if two or more affected herds are detected in an accredited-free State or zone within a 48-month period, the State or zone must be reclassified as modified accredited advanced. In keeping with that requirement, this interim rule removes New Mexico from the list of accredited-free States and adds it to the list of modified accredited advanced States.

In 2001, there were approximately 8,500 cattle and bison operations in New Mexico, totaling 1.58 million head. According to the National Agricultural Statistics Service, the total cash value of cattle in New Mexico was over $1.3 billion as of that year. Over 92 percent of New Mexico's cattle operations yield less than $750,000 annually and are, therefore, considered small entities under criteria established by the Small Business Administration.

This interim rule changes the status of New Mexico to modified accredited advanced, resulting in interstate movement restrictions where none existed previously. Specifically, as explained previously, § 77.10 requires that, for movement to certain destinations, animals must test negative to an official tuberculin test and/or be officially identified by premises of origin identification before interstate movement.

This rule will prove beneficial by preventing the spread of tuberculosis to other areas of the United States. However, the stricter requirements for interstate movement will have an economic effect on those producers involved in the interstate movement of cattle and bison from New Mexico. As such, this analysis will focus on the expenses incurred by those producers engaged in interstate movement and in determining whether those negative impacts are significant.

The approximate per head tuberculin testing cost is $3.76, and the cost of official identification (an eartag) and an applicator is about $0.16 per head plus the cost of labor to apply the eartags. On January 1, 2002, the average value per animal in New Mexico was estimated to be $840, which translates to an average value per 185-head herd of about $155,400. Thus, we believe that the added cost of the required tuberculin testing and identification is small relative to the average value of cattle and bison, representing less than 1 percent of the per head value. Further, since this rule provides for a delay in date of compliance with the identification requirements in § 77.10(b) and (d), some herd owners' identification costs may be deferred until at least September 30, 2003.

The expenses stemming from the testing and identification requirements are not expected to be substantial for cattle and bison owners in New Mexico. The more a particular herd owner engages in interstate movement, the greater the resulting expense. Unfortunately, the exact number of herd owners involved in interstate movement is unknown. However, it is clear that this change in status will not have an economically substantial effect on cattle and bison herd owners in New Mexico.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0229 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 03–044–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 03–044–1 and send your comments within 60 days of publication of this rule.

This interim rule removes New Mexico from the list of accredited-free States for bovine tuberculosis and adds it to the list of modified accredited advanced States. Cattle or bison that originate in a modified accredited advanced State or zone, and are not known to be infected with or exposed to tuberculosis, may be moved interstate only if the animals meet certain conditions with regards to transport, identification, and accreditation. These conditions are detailed in the **SUPPLEMENTARY INFORMATION** portion of this document as well as in § 77.10 of the regulations. As previously noted however, these requirements are suspended until September 30, 2003. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.016 hours per response.

Respondents: Certain herd owners in New Mexico.

Estimated annual number of respondents: 375.

Estimated annual number of responses per respondent: 100.

Estimated annual number of responses: 37,500.

Estimated total annual burden on respondents: 600 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

■ Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 77.7 [Amended]

■ 2. In § 77.7, paragraph (a) is amended by removing the words ''New Mexico,''.

§ 77.9 [Amended]

■ 3. In § 77.9, paragraph (a) is amended by adding the words '', New Mexico,'' immediately after the word ''California''.

§ 77.10 [Amended]

■ 4. Section 77.10 is amended by revising the OMB control number citation at the end of the section to read as follows: ''(Approved by the Office of Management and Budget under control numbers 0579–0146, 0579–0220, and 0579–0229)''.

Done in Washington, DC, this 18th day of July 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18850 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–257–AD; Amendment 39–13244; AD 2003–15–02]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all EMBRAER Model EMB–145 series airplanes, that currently requires repetitive replacement of the bleed-air check valve and associated gaskets on the bleed low-pressure lines of the engines with new parts. This amendment continues to require repetitive replacement of the bleed-air check valves and associated gaskets. Additionally, this amendment provides for optional terminating action for the repetitive replacement of bleed-air check valves by installing new improved check valves, and adds airplanes to the applicability of the existing AD. This amendment also clarifies that the replacement and follow-on actions are required for the left- and right-hand engines. The actions specified by this AD are intended to prevent failure of the bleed-air check valves on the bleed low-pressure lines of the engines, which could result in engine compressor stall and consequent flameout of the affected engines. This action is intended to address the identified unsafe condition.

DATES: Effective August 28, 2003.

The incorporation by reference of EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; and Change No. 01, dated March 23, 2000; as listed in the regulations; is approved by the Director of the Federal Register as of August 28, 2003.

The incorporation by reference of EMBRAER Alert Service Bulletin 145–36–A011, dated March 19, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 2, 1999 (64 FR 26835, May 18, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–11–01, amendment 39–11172 (64 FR 26835, May 18, 1999), which is applicable to all EMBRAER Model EMB–145 series airplanes, was published in the **Federal Register** on March 20, 2001 (66 FR 15667). The action proposed to continue to require repetitive replacement of the bleed-air check valves and associated gaskets on the bleed low-pressure lines of the engines with new parts. That action also proposed to require repetitive replacement of an additional bleed-air check valve with a check valve having the same part number, or with a new improved check valve; and eventual replacement of the bleed-air check valves with new improved check valves, and various follow-on actions. In addition, that action proposed to add airplanes to the applicability of the existing AD.

Comments

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

Request To Clarify Replacement Requirements

The commenter requests revising paragraph (b) of the proposed AD to specify that replacement of the bleed-air check valves on the bleed-air low-pressure lines applies to both the left- and right-hand engines. A reference to the left-hand engine was omitted from this paragraph.

The FAA concurs. Although a reference to the left-hand engine was

inadvertently omitted from paragraph (b) of the proposed AD, it was our intent to reference both the left- and right-hand engines. This intent is apparent from the preamble discussion and from the repetitive replacement requirements of paragraph (c) of the proposed AD. We have revised paragraph (b) of the final rule accordingly. In addition, we have revised the Summary section of the final rule to clarify that the replacement and follow-on actions are required for both the left- and right-hand engines.

Request To Revise Service Bulletin References

The commenter requests adding a reference to EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000, in paragraphs (b), (c), and (d) of the proposed AD. The commenter states that EMBRAER Service Bulletin 145–36–0011, Change 01, dated March 23, 2000, was issued only for administrative purposes with no change to the technical content. In addition, the commenter states that Change 01 of the service bulletin divided the actions specified in the original service bulletin into ten parts because of a shortage of the bleed-air check valves needed to accomplish the service bulletin in its entirety (replacing all five check valves).

We concur with the request for the reasons provided by the commenter and have added a reference to EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000, in paragraphs (b) and (d) of this final rule.

Request To Revise Compliance Time in Paragraph (d)

The commenter requests changing the compliance time in paragraph (d) of the proposed AD for replacing the bleed-air check valve on the tube assembly of the auxiliary power unit (APU). The commenter states that, because of a shortage of bleed-air check valves, it is necessary to change ''before further flight'' to ''within 4,000 flight hours after the effective date of this AD.'' The commenter adds that only the bleed-air check valve on the bleed-air low-pressure line was replaced on the entire fleet of 65 affected airplanes. In addition, the remaining three bleed-air check valves (two high pressure and one APU) will be replaced during a C-check scheduled at 4,000 flight hours. The commenter is concerned that, if the present compliance time of ''before further flight'' is not changed, the 30 remaining airplanes (which still require two bleed-air check valves on the bleed-air high pressure lines, and one bleed-air check valve on the tube assembly of the APU) would be grounded.

Since issuance of the proposed AD, it has been determined that the requirements of paragraph (d) of the proposed AD do not address the unsafe condition. Therefore, those requirements have been removed from this final rule.

Request To Omit Paragraph (e)

The commenter suggests omitting paragraph (e) of the proposed AD because of the previously suggested changes to paragraph (d) of the proposed AD. The commenter contends that combining the requirements of paragraphs (d) and (e) would satisfy the terminating action requirement.

We partially agree. As described earlier, the requirements of paragraph (d) of the proposed AD have been omitted from this final rule. Because of this determination, the relief granted in paragraph (e) of the proposed AD still applies, and no change to paragraph (d) of this final rule (paragraph (e) of the proposed AD) is necessary in this regard.

Differences Between This Final Rule and the Service Bulletin/Brazilian Airworthiness Directive

Operators should note that, although the Accomplishment Instructions of Change 01 of the referenced service bulletin specify procedures that include Parts I through X, the Brazilian airworthiness directive references and requires accomplishment of only the procedures in Parts I through IV of the service bulletin. In consonance with the parallel Brazilian airworthiness directive, paragraph (b) of the proposed AD and the final rule require the actions specified in Parts I and II of the service bulletin. However, this final rule differs from the Brazilian airworthiness directive in that it does not require accomplishment of Parts III and IV of the service bulletin. For the purposes of this final rule, the actions specified in Parts III and IV of the service bulletin are optional terminating actions, as described in paragraph (d) of this final rule. The Departmento de Aviacao Civil has concurred in our assessment that accomplishment of the actions specified in Parts I and II are sufficient to ensure the safety of the fleet.

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

There are approximately 135 Model EMB–135 and –145 series airplanes of U.S. registry that will be affected by this AD.

The repetitive replacements that are currently required by AD 99–11–01 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $16,200, or $120 per airplane, per each repetitive replacement. The new requirements of this AD add no additional economic burden.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11172 (64 FR 26835, May 18, 1999), and by adding a new airworthiness directive (AD), amendment 39–13244, to read as follows:

2003–15–02 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–13244. Docket 2000–NM–257–AD. Supersedes AD 99–11–01, Amendment 39–11172.

Applicability: All Model EMB–135 and EMB–145 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bleed-air check valves on the bleed low-pressure line of the engines, which could result in engine compressor stall and consequent flameout of the affected engines; accomplish the following:

Restatement of Requirements of AD 99–11–01, Amendment 39–11172

(a) For Model EMB–145 series airplanes: Prior to the accumulation of 2,000 total flight hours, or within 100 flight hours after June 2, 1999 (the effective date of AD 99–11–01, amendment 39–11172), whichever occurs later: Replace the bleed-air check valves having part number (P/N) 816603–1, and associated gaskets having P/N 24096–250C, on the bleed low-pressure lines of the left- and right-hand engines, with new parts having the same P/Ns; per EMBRAER Alert Service Bulletin 145–36–A011, dated March 19, 1999; or EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; or Change 01, dated March 23, 2000. Thereafter, repeat the replacement at intervals not to exceed 2,000 flight hours in accordance with the service bulletin.

New Requirements of This AD

Note 2: The replacement interval of 2,000 flight hours specified in paragraph (a) of this AD is required only until the requirements of paragraph (b) of this AD are implemented.

Replacement

(b) *For all airplanes:* Replace any bleed-air check valve having either P/N 816603–1 or P/N 816603–2 on the bleed-air low-pressure lines of the left- and right-hand engines, and associated gaskets having P/N 24096–250C, with a new check valve and associated gaskets having the same P/N, or a new improved check valve having P/N 816603–3 (including reworking the flanges) and associated gaskets having P/N 24096–250C; per EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; or Change 01, dated March 23, 2000; at the later of the times specified in paragraph (b)(1) or (b)(2) of this AD:

(1) Before the accumulation of 1,600 total flight hours, or within 1,600 flight hours since the last replacement of the check valve, whichever occurs later; or

(2) Within 200 flight hours after the effective date of this AD.

Note 3: Where there are differences between this AD and the service bulletin, this AD prevails.

Repetitive Replacement

(c) *For all airplanes:* If the bleed-air check valves on the bleed-air low-pressure lines of the left- and right-hand engines have been replaced with check valves having either P/N 816603–1 or P/N 816603–2 per paragraph (b) of this AD, repeat the replacement requirements of paragraph (b) of this AD, at intervals not to exceed 1,600 flight hours, until the requirements of paragraph (d) of this AD are accomplished.

Optional Terminating Actions

(d) Replace bleed-air check valves on the bleed-air low-pressure lines of the left- and right-hand engines, having P/N 816603–1 or P/N 816603–2, with new improved bleed-air check valves having P/N 816603–3 (including reworking the flanges), per EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; or Change 01, dated March 23, 2000. Accomplishment of these actions constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(g) The actions shall be done in accordance with EMBRAER Alert Service Bulletin 145–36–A011, dated March 19, 1999; EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; or EMBRAER Service Bulletin 145–36–0011, Change 01, dated March 23, 2000; as applicable.

(1) The incorporation by reference of EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; and EMBRAER Service Bulletin 145–36–0011, Change 01, dated March 23, 2000; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Alert Service Bulletin 145–36–A011, dated March 19, 1999, was approved previously by the Director of the Federal Register as of June 2, 1999 (64 FR 26835, May 18, 1999).

(3) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Brazilian airworthiness directive 1999–04–01R2, dated May 30, 2000.

Effective Date

(h) This amendment becomes effective on August 28, 2003.

Issued in Renton, Washington, on July 15, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18417 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 10

[CBP Dec. 03–10]

RIN 1515–AD27

Refund of Duties Paid on Imports of Certain Wool Products

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by removing the regulation originally promulgated to provide procedures for the issuance of the refunds of duties paid on certain wool imports pursuant to section 505 of title V of the Trade and Development Act of 2000. As section 5101 of the Trade Act of 2002 significantly amended section 505 and provides self-effectuating procedures for the issuance of the refunds, the regulation implementing section 505 is no longer necessary and is obsolete.

DATES: The amendment is effective July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 572–8763.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 2000, the Trade and Development Act of 2000 was signed into law. *See* Public Law 106–200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

On December 26, 2000, Customs (now the Bureau of Customs and Border Protection (CBP)) promulgated in § 10.184, Customs Regulations (19 CFR 10.184), a regulation to provide the procedures for issuing refunds pursuant to section 505. *See* 65 FR 81344. This section was subsequently amended by documents published in the **Federal Register** on April 23, 2001 (66 FR 20392), and January 23, 2002 (67 FR 3059).

On August 6, 2002, President Bush signed into law the Trade Act of 2002. Division E of the Trade Act of 2002 contains miscellaneous provisions. Within Division E, title L sets forth miscellaneous trade benefits with subtitle A pertaining specifically to wool provisions. Within subtitle A, section 5101, entitled the ''Wool Manufacturer Payment Clarification and Technical Corrections Act,'' amends section 505.

The amendments to section 505 are extensive and self-effectuating, making § 10.184 of the Customs Regulations unnecessary and obsolete. For this reason, part 10 of the Customs Regulations is amended by removing § 10.184.

It is noted that a document was published in the **Federal Register** (67 FR 52520) on August 12, 2002, that set forth section 505 of the Trade Act of 2002, as amended, with its self-effectuating procedures, and provided a detailed description of the changes to the wool duty payment program.

Executive Order 12866, Regulatory Flexibility Act, Inapplicability of Prior Public Notice and Comment Procedures and Delayed Effective Date Requirements

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866. Because this amendment merely removes from the Customs Regulations a regulation which is now obsolete, CBP has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. For the same reason, pursuant to the provisions of 5 U.S.C. 553(d)(3), there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, CBP.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

■ For the reasons stated above, 19 CFR part 10 is amended as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 continues to read as follows, and the specific authority for § 10.184 is removed:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

■ 2. The center heading preceding § 10.184 and § 10.184 are removed.

Robert C. Bonner,

Commissioner of Customs and Border Protection.

Approved: July 21, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–18839 Filed 7–23–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 24 and 111

[CBP Decision 03—13]

RIN 1515–AC81

User Fees

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule proposed amendments to the Customs Regulations to reflect various legislative amendments to 19 U.S.C. 58c, the Customs user fee statute, including those made by the Miscellaneous Trade and Technical Corrections Act of 1999 and the Tariff Suspension and Trade Act of 2000. The amended regulations set forth the fee structure for passengers arriving in the United States aboard commercial vessels and aircraft, provide for application of a fee to ferries in limited circumstances, and clarify how Customs and Border Protection administers certain user fees. Also, minor conforming changes are made to the regulations pertaining to customs brokers.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Concerning user fees applicable to commercial vessel and aircraft

passengers under § 24.22(g): Edward Matthews at (202) 927–0552. Concerning the various fee payment and information submission procedures under § 24.22: Robert T. Reiley at (202) 927–1504.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 2002, Customs and Border Protection (CBP; the bureau within the new Department of Homeland Security that includes the former U.S. Customs Service) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (67 FR 11954) proposing to amend part 24 of the Customs Regulations pertaining to user fees (19 CFR part 24) and certain related sections of part 111 pertaining to customs brokers (19 CFR part 111). The NPRM set forth the bases for the proposed changes to part 24 as follows: (1) Some proposed changes derived from provisions of the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36, 113 Stat. 127), signed into law on June 25, 1999; (2) one proposed change was based on a provision of the Tariff Suspension and Trade Act of 2000 (Pub. L. 106–476, 114 Stat. 2101), signed into law on November 9, 2000; (3) some proposed changes were based on other statutory provisions that were not reflected in the regulations; (4) some proposed changes were designed to bring the regulations up to date with current administrative practices; and (5) one proposed change was a technical correction. The NPRM provided that the proposed changes to part 111 were designed to clarify administration of the annual user fee and the permit fees for customs brokers. The changes that were proposed are further discussed below.

Changes Based on the Miscellaneous Trade and Technical Corrections Act of 1999

The Fee Structure

Section 2418 of the Miscellaneous Trade and Technical Corrections Act of 1999 (the Act) amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, codified at 19 U.S.C. 58c (section 58c), which established user fees for certain services performed by CBP. Paragraph (b)(1) of section 2418 of the Act amended the fee structure set forth under section 58c(a)(5) applicable to passengers arriving in the United States on board commercial vessels or aircraft. Prior to the Act, only one fee applied to these covered passengers under section 58c(a)(5), as follows: $6.50 beginning on January 1, 1994, and applying to passengers arriving from a place outside the customs territory of the United States and $5 beginning on October 1, 1997, and applying to passengers arriving from a place outside the United States other than Canada, Mexico, a United States territory or possession, or an adjacent island. The amendment continued the $5 fee applicable to each passenger arriving in the United States aboard a commercial vessel or aircraft from a place outside the United States other than Canada, Mexico, a United States territory or possession, or an adjacent island. This fee, formerly provided for under section 58c(a)(5)(B), is now provided for under section 58c(a)(5)(A). The amendment also imposed, under section 58c(a)(5)(B), a fee of $1.75 per passenger arriving aboard a commercial vessel (not a commercial aircraft) from Canada, Mexico, a United States territory or possession, or an adjacent island. Under the amended statute, no fee applies in the case of passengers arriving aboard commercial aircraft from Canada, Mexico, a United States territory or possession, or an adjacent island.

In the NPRM, CBP proposed to amend § 24.22(g), Customs Regulations (19 CFR 24.22), to conform the regulations to the new fee structure of amended sections 58c(a)(5)(A) and (B).

Procedures for Payment of the New Fees

The NPRM also proposed changes to the Customs Regulations relative to the fee payment procedure. Under the current regulations, it is the responsibility of the carriers, travel agents, tour wholesalers, or other parties issuing tickets or travel documents to collect the fee from all passengers who are subject to the fee (§ 24.22(g)(3) in the current regulations). These parties must make payment of the collected fees to CBP no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passengers (§ 24.22(g)(4) in the current regulations). Current § 24.22(g)(4) also provides that the quarterly fee payment must be accompanied by a statement that includes the name, address, and taxpayer identification number of the party remitting the payment and the calendar quarter covered by the payment.

The NPRM proposed to amend § 24.22(g)(3) to make clear that the party responsible for collecting the fee must collect a fee when an infant travels without a ticket or travel document. This follows CBP's consistent practice of treating infants as passengers for purposes of the passenger fees. Thus, CBP proposed to add to § 24.22(g)(1) a definition of the term ''passenger'' making it clear that it includes infants even if the carrier does not charge for their transportation and even if the infant is carried by another passenger (rather than occupying a seat).

Because CBP, since enactment of the Act, has had to administer two fees rather than one, the NPRM also proposed to amend § 24.22(g)(4) to require the following additional information in the statement required under that section: The total number of tickets for which fees were required to be collected, as well as the total number of infants traveling without a ticket or travel document for which fees were required to be collected; the total amount of fees collected and remitted; with respect to vessel fees, the total number of tickets and non-ticketed infants for which fees were required to be collected and the total amount of fees collected; and a breakdown of vessel fees collected and remitted under section 58c(a)(5)(A) (the $5 per passenger fee) and section 58c(a)(5)(B) (the $1.75 per passenger fee). This additional information is necessary to enable CBP to properly account for the fees now provided for under section 58c(a)(5).

Changes Based on the Tariff Suspension and Trade Act of 2000

The NPRM proposed amendments to §§ 24.22(b)(4)(iv) and 24.22(g)(1) of the Customs Regulations to conform the regulations to a statutory amendment regarding ferries. Section 1457 of the Tariff Suspension and Trade Act of 2000 amended section 58c(b)(1)(A)(iii) to provide an exception to the fee limitation relative to ferries. Prior to this amendment, ferries were excepted from application of the fees under section 58c(a). While this amendment was self-effectuating, effective on November 24, 2000, making ferries commencing operations on or after August 1, 1999, and operating south of 27 degrees latitude and east of 89 degrees longitude subject to the commercial vessel fee of section 58c(a)(1) (and § 24.22(b)(1)) (provided the ferry is of 100 net tons or more) and the $1.75 commercial vessel passenger fee of section 58c(a)(5)(B), the NPRM proposed to set forth the statutory requirement in the Customs Regulations.

Changes Based on Other Statutory Provisions

The NPRM also proposed to amend § 24.22(g) to cover the fee exemption provision set forth in section 58c(b)(1)(A)(iv) and the ''one-time only fee'' set forth in section 58c(b)(4)(B). These two statutory provisions are not reflected in the current regulation.

The fee exemption provision under section 58c(b)(1)(A)(iv) provides that no fee under section 58c(a)(5) applies to passengers arriving aboard commercial vessels traveling only between ports that are within the customs territory of the United States. The one-time only fee provision of section 58c(b)(4)(B) applies where a fee under section 58c(a)(5) is applicable to passengers arriving aboard a commercial vessel and the voyage is a single voyage involving two or more United States ports. In other words, if a vessel proceeds coastwise to one or more United States ports after its initial arrival from a place outside the United States, the applicable fee is charged only once for each passenger.

The NPRM also proposed to amend § 24.22(g) in order to reflect in § 24.22(g)(1)(iii) the definition of the term ''adjacent islands'' set forth in 8 U.S.C. 1101(b)(5). Under section 58c(b)(1)(A)(i)(I)(dd), the term ''adjacent islands'' is given meaning by reference to 8 U.S.C. 1101(b)(5).

Changes Regarding Administrative Practices

The NPRM proposed to amend various provisions of the regulation to reflect current fee payment and other practices, including clarification of the proper addresses for the mailing of payments, requirements for obtaining and using the user fee decal, and use of electronic and credit card payment options. These amendments were proposed for the following sections of the regulation: § 24.22(b)(3) which concerns the procedure for prepayment of the fee for the arrival of commercial vessels (that is, vessels of 100 net tons or more as well as barges and other bulk carriers arriving from Canada or Mexico); § 24.22(c)(3) which concerns the procedure for prepayment of the fee for the arrival of commercial vehicles; § 24.22(d) which concerns the fee for the arrival of railroad cars and includes, in paragraph (d)(3), procedures for prepayment of the fee and, in paragraph (d)(4)(ii), procedures for monthly statement filing and fee remittance; § 24.22(e)(1) and (2), which concern, respectively, payment of the fee at the time of arrival of private vessels and private aircraft and prepayment of the fee; § 22.24(g)(4) which covers the procedure for payment of fees for the arrival of passengers aboard commercial vessels and commercial aircraft; § 24.22(h) which concerns the annual customs broker permit fee; and § 24.22(i) which concerns procedures for remittance of, and for submitting information relative to, the fees provided for under § 24.22.

Changes To Make a Technical Correction

The NPRM proposed to correct several erroneous references to § 142.13(c) (19 CFR 142.13(c)) found in paragraphs (a), (c)(2), and (d) of § 24.25, which pertains to statement processing and automated clearinghouse procedures. Section 142.13(c) is currently reserved, and the reference in the above paragraphs of § 24.25 should instead be to § 142.13(b), which pertains to special classes of merchandise.

Conforming Changes to Part 111

Lastly, the NPRM proposed to amend certain sections of Part 111 of the Customs Regulations (19 CFR part 111) which pertains to customs brokers. Specifically, it was proposed to amend §§ 111.19 and 111.96 to conform to the change made to § 24.22(h) referred to above and to clarify the payment procedure in connection with a national customs broker permit application. In §§ 111.19 and 111.96, there are references to the payment of the annual customs broker permit user fee referred to in § 24.22(h).

Comments

One comment was received in response to the NPRM.

Comment: The commenter recommended the removal from the regulations of the exception found under § 24.22(e)(3)(i) which excepts private vessels less than 30 feet in length (and not carrying any goods that must be declared to CBP) from the fee imposed on private vessels under § 24.22(e)(1). The commenter based the recommendation on the grounds that the regulations require that all private vessels, regardless of tonnage or length, must report their arrival in the United States (see § 123.1(c)) and thus these vessels, including those under 30 feet in length, should not be exempt from the fee.

CBP response: CBP, at this time, is not adopting the commenter's recommendation to remove from the regulations the fee exception for private vessels of less than 30 feet in length. These vessels have been excepted from the fee because CBP incurred no processing costs in clearing them. Now, however, CBP requires the operators of these vessels to call when they arrive but does not inspect all of them. CBP will evaluate the matter and consider whether the exception should be retained, removed, or modified.

Conclusion

Based on analysis of the comment received and further review of the matter, CBP believes that the proposed regulatory amendments should be adopted without change.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

This amendment to the Customs Regulations will conform the regulations to already enacted statutory provisions concerning the collection of fees and will enhance the efficiency of the fee payment and collection process to the advantage of the public. Thus, it is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the regulatory amendments set forth in this document will not have a significant economic impact on a substantial number of small entities. Moreover, the new reporting requirements in this document impose an insignificant amount of additional annual burden on small businesses. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in § 24.22 have previously been approved by the Office of Management and Budget (OMB) under OMB control number 1515–0154 (User Fees). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that lacks a valid control number.

The collections of information in this final rule are in § 24.22(g)(5)(iv) and (v), pertaining to information required in the statement that must accompany a quarterly fee payment relative to passenger fees. This information is necessary to allow CBP to track and account for the two passenger fees mandated in the Miscellaneous Trade and Technical Corrections Act of 1999. These collections of information are mandatory. The likely respondents and recordkeepers are small businesses or organizations.

The estimated average annual burden associated with the collections of information in this final rule is four hours per respondent/recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the OMB, Attention: Desk Officer for the Department of Homeland Security/ Bureau of Customs and Border Protection, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of

Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, Customs and Border Protection. Other personnel contributed in its development.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes, User fees.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing.

Amendments to the Regulations

■ For the reasons stated in the preamble, parts 24 and 111 of the Customs Regulations (19 CFR parts 24 and 111) are amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

■ 2. Section 24.22 of the regulations is amended by:

■ a. Revising paragraphs (b)(3), (b)(4)(iv), and (c)(3);

■ b. In paragraph (d), revising the second sentence of paragraph (d)(3), adding a new sentence at the end of paragraph (d)(4)(ii), and, in the last sentence of paragraph (d)(5), removing the words ''in accordance with the procedures set forth in paragraph (i)(2) of this section'';

■ c. Revising paragraphs (e)(1) and (e)(2);

■ d. In paragraph (g), revising paragraph (g)(1), redesignating paragraphs (g)(2) through (g)(7) as (g)(3) through (g)(8), adding new paragraph (g)(2), revising newly designated paragraphs (g)(3), (g)(4), and (g)(5), and, at the end of the last sentence of newly designated paragraph (g)(7), removing the words ''in accordance with the procedures set forth in paragraph (i)(2) of this section''; and

■ e. Revising paragraphs (h) and (i).

The revisions read as follows:

24.22 Fees for certain services.

* * * * *

(b) * * *

(3) *Prepayment.* The vessel operator, owner, or agent may at any time prepay the maximum calendar year amount specified in paragraph (b)(1)(ii) or (b)(2)(ii) of this section, or any remaining portion of that amount if individual arrival fees have already been paid on the vessel for that calendar year. Prepayment must be made at a CBP port office. When prepayment is for the remaining portion of a maximum calendar year amount, certified copies of receipts (Customs Form 368 or 368A) issued for individual arrival fee payments during the calendar year must accompany the payment.

(4) *Exceptions.* * * *

(iv) A ferry except for a ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(c) * * *

(3) *Prepayment.* The owner, agent, or person in charge of a commercial vehicle may at any time prepay a fee of $100 to cover all arrivals of that vehicle during a calendar year or any remaining portion of a calendar year. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: Bureau of Customs and Border Protection, Decal Program Administrator, P.O. Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet through the ''Traveler Information'' links at CBP's website (*http://www.cbp.gov*). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories. Once the prepayment has been made under this paragraph, a decal will be issued to be permanently affixed by adhesive to the lower left hand corner of the vehicle windshield or on the left wing window, and otherwise in accordance with the accompanying instructions, to show that the vehicle is exempt from payment of the fee for individual arrivals during the applicable calendar year or any remaining portion of that year.

(d) * * *

(3) *Prepayment.* * * * The prepayment, accompanied by a letter setting forth the railroad car number(s) covered by the payment, the calendar year to which the payment applies, a return address, and any additional information required under paragraph (i) of this section, must be mailed to: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

(4) *Statement filing and payment procedures.* * * *

(ii) * * * Payment must be made in accordance with this paragraph and paragraph (i) of this section and must be sent by mail to the following address: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

* * * * *

(e) *Fee for arrival of a private vessel or private aircraft.* (1) *Fee.* Except as provided in paragraph (e)(3) of this section, the master or other person in charge of a private vessel or private aircraft must, upon first arrival in any calendar year, proceed to CBP and tender the sum of $25 to cover services provided in connection with all arrivals of that vessel or aircraft during that calendar year. A properly completed Customs Form 339, Annual User Fee Decal Request, must accompany the payment. Upon payment of the annual fee, a decal will be issued to be permanently affixed by adhesive to the vessel or aircraft, in accordance with accompanying instructions, as evidence that the fee has been paid. Except in the case of private aircraft, and aircraft landing at user fee airports authorized under 19 U.S.C. 58b, all overtime charges provided for in this part remain payable notwithstanding payment of the fee specified in this paragraph.

(2) *Prepayment.* A private vessel or private aircraft owner or operator may, at any time during the calendar year, prepay the $25 annual fee specified in paragraph (e)(1) of this section. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, along with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: Customs and Border Protection, Decal Program Administrator, P.O. Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet through the ''Traveler Information'' links at CBP's website (*http://www.cbp.gov*). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories.

* * * * *

(g) *Fees for arrival of passengers aboard commercial vessels and commercial aircraft.* (1) *Fees.* (i) Subject to paragraphs (g)(1)(ii) and (g)(3) of this

section, a fee of $5 must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States, other than Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, in either of the following circumstances:

(A) When the journey of the arriving passenger originates in a place outside the United States other than Canada, Mexico, one of the territories or possessions of the United States, or one of the adjacent islands; or

(B) When the journey of the arriving passenger originates in the United States and is not limited to Canada, Mexico, territories and possessions of the United States, and adjacent islands.

(ii) Subject to paragraph (g)(3) of this section, a fee of $1.75 must be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel from Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, regardless of whether the journey of the arriving passenger originates in a place outside the United States or in the United States.

(iii) For purposes of this paragraph (g), the term ''territories and possessions of the United States'' includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, and the term ''adjacent islands'' includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(iv) For purposes of this paragraph (g), a journey, which may encompass multiple destinations and more than one mode of transportation, will be deemed to originate in the location where the person's travel begins under cover of a transaction which includes the issuance of a ticket or travel document for transportation into the customs territory of the United States.

(v) For purposes of this paragraph (g), the term ''passenger'' means a natural person for whom transportation is provided and includes an infant whether a separate ticket or travel document is issued for the infant or the infant occupies a seat or is held or carried by another passenger.

(vi) For purposes of paragraph (g)(1)(ii) of this section, the term ''commercial vessel'' includes any ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(vii) In the case of a commercial vessel making a single voyage involving two or more United States ports, the applicable fee prescribed under paragraph (g)(1)(i) or (g)(1)(ii) of this section is required to be charged only one time for each passenger.

(2) *Fee chart.* The chart set forth below outlines the application of the fees specified in paragraphs (g)(1)(i) and (ii) of this section with reference to the place where the passenger's journey originates and with reference to the place from which the passenger arrives in the United States (that is, the last stop on the journey prior to arrival in the United States). In the chart:

(i) SL stands for ''Specified Location'' and means Canada, Mexico, any territories and possessions of the United States, and any adjacent islands; (ii) The single asterisk (*) means that the journey originating in the United States is limited to travel to one or more Specified Locations;

(iii) The double asterisk (**) means that the journey originating in the United States includes travel to at least one place other than a Specified Location; and

(iv) N/A indicates that the facts presented in the chart preclude application of the fee.

Place where journey originates (see (g)(1)(iv))	Fee status for arrival from SL		Fee status for arrival from other than SL	
	Vessel	Aircraft	Vessel	Aircraft
SL	$1.75	No fee	No fee	No fee
Other than SL or U.S.	$1.75	No fee	$5	$5
U.S.*	$1.75	No fee	N/A	N/A
U.S.**	$1.75	No fee	$5	$5

(3) *Exceptions.* The fees specified in paragraph (g)(1) of this section will not apply to the following categories of arriving passengers:

(i) Crew members and persons directly connected with the operation, navigation, ownership or business of the vessel or aircraft, provided that the crew member or other person is traveling for an official business purpose and not for pleasure;

(ii) Diplomats and other persons in possession of a visa issued by the United States Department of State in class A–1, A–2, C–2, C–3, G–1 through G–4, or NATO 1–6;

(iii) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/CBP Military Inspection Program;

(iv) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport;

(v) Persons who are in transit to a destination outside the United States and for whom CBP inspectional services are not provided;

(vi) Persons departing from and returning to the same United States port as passengers on board the same vessel without having touched a foreign port or place; and

(vii) Persons arriving as passengers on board a commercial vessel traveling only between ports that are within the customs territory of the United States.

(4) *Fee collection procedures.* (i) Each air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document for transportation into the customs territory of the United States is responsible for collecting from the passenger the applicable fee specified in paragraph (g)(1) of this section, including the fee applicable to any infant traveling without a separate ticket or travel document. The fee must be separately identified with a notation ''Federal inspection fees'' on the ticket or travel document issued to the passenger to indicate that the required fee has been collected. A fee relative to an infant traveling without a ticket or travel

document may be identified instead with the notation on a receipt or other document issued for that purpose or to record the infant's travel. If the ticket or travel document, or a receipt or other document issued relative to an infant traveling without a ticket or travel document, is not so marked and was issued in a foreign country, the fee must be collected by the departing carrier upon departure of the passenger from the United States. If the fee is collected at the time of departure from the United States, the carrier making the collection must issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets or travel documents must collect the fee in the same manner as a carrier.

(ii) Collection of the fee under paragraph (g)(1)(i) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States which originates in and arrives from a place outside the United States other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States, includes a stop in a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, and the return arrival to the United States is from a place other than one of these specified places; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, is processed by CBP, and the journey does not originate in one of these specified places.

(iii) Collection of the fee under paragraph (g)(1)(ii) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States and the return arrival to the United States is from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island and is processed by CBP.

(5) *Quarterly payment and statement procedures.* Payment to CBP of the fees required to be collected under paragraph (g)(1) of this section must be made no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passenger. Payment of the fees must be made, in accordance with the procedures set forth in this paragraph and paragraph (i) of this section, by the party required to collect the fee under paragraph (g)(4)(1) of this section. Each quarterly fee payment must be sent to the following address: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278). Overpayments and underpayments may be accounted for by an explanation with, and adjustment of, the next due quarterly payment to CBP. The quarterly payment must be accompanied by a statement that includes the following information:

(i) The name and address of the party remitting payment;

(ii) The taxpayer identification number of the party remitting payment;

(iii) The calendar quarter covered by the payment;

(iv) The total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, and the total amount of fees collected and remitted; and

(v) For commercial vessel passengers, the total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, the total amount of fees collected and remitted to CBP, and a separate breakdown of the foregoing information relative to the $5 vessel passenger fee collected and remitted under paragraph (g)(1)(i) of this section and the $1.75 vessel passenger fee collected and remitted under paragraph (g)(1)(ii) of this section.

* * * * *

(h) *Annual customs broker permit fee.* Customs brokers are subject to an annual fee for each district permit and for a national permit held by an individual, partnership, association, or corporation, as provided in § 111.96(c) of this chapter. The annual fee for each district permit must be submitted to the port through which the broker was granted the permit. The annual fee for a national permit must be submitted to the port through which the broker's license is delivered.

(i) *Information submission and fee remittance procedures.* In addition to any information specified elsewhere in this section, each payment made by mail must be accompanied by information identifying the person or organization remitting the fee, the type of fee being remitted (for example, railroad car, commercial truck, private vessel), and the time period to which the payment applies. All fee payments required under this section must be in the amounts prescribed and must be made in U.S. currency, or by check or money order payable to Customs and Border Protection, in accordance with the provisions of § 24.1 of this part. Authorization for making payments electronically can be obtained by writing to the National Finance Center, Collections Section, 6026 Lakeside Blvd., Indianapolis, IN 46278. Where payment is made at a CBP port, credit cards will be accepted only where the port is equipped to accept credit cards for the type of payment being made. If payment is made by check or money order, the check or money order must be annotated with the appropriate class code. The applicable class codes and payment locations for each fee are as follows:

(1) Fee under paragraph (b)(1) of this section (commercial vessels of 100 net tons or more other than barges and other bulk carriers from Canada or Mexico): class code 491. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(2) Fee under paragraph (b)(2) of this section (barges and other bulk carriers from Canada or Mexico): class code 498. Payment location: port of arrival for each individual arrival (fee to be

collected by CBP at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(3) Fee under paragraph (c) of this section (commercial vehicles): for each individual arrival, class code 492; for prepayment of the maximum calendar year fee, class code 902. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment in accordance with paragraph (c)(3) of this section;

(4) Fee under paragraph (d) of this section (railroad cars): for each individual arrival (under the monthly payment and statement filing procedure), class code 493; for prepayment of the maximum calendar year fee, class code 903. Payment location: for individual arrivals (monthly payment and statement filing), see paragraph (d)(4)(ii) of this section; for prepayment, see paragraph (d)(3) of this section;

(5) Fee under paragraph (e) of this section (private vessels and aircraft): for private vessels, class code 904; for private aircraft, class code 494. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment in accordance with paragraph (e)(2) of this section;

(6) Fee under paragraph (f) of this section (dutiable mail): class code 496. Payment location: see paragraph (f) of this section;

(7) Fee under paragraph (g)(1)(i) of this section (the $5 fee for commercial vessel and commercial aircraft passengers): class code 495. Payment location: see paragraph (g)(5) of this section;

(8) Fee under paragraph (g)(1)(ii) of this section (the $1.75 fee for commercial vessel passengers): class code 484. Payment location: see paragraph (g)(5) of this section; and

(9) Fee under paragraph (h) of this section (customs broker permits): for district permits, class code 497; for national permits, class code 997. Payment location: see paragraph (h) of this section.

* * * * *

■ 3. Paragraphs (a), (c)(2), and (d) of § 24.25 are amended by removing the reference ''§ 142.13(c)'' wherever it appears and adding, in its place, the reference ''§ 142.13(b)''.

PART 111—CUSTOMS BROKERS

■ 4. The authority citation for Part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202, (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

Section 111.96 also issued under 19 U.S.C. 58c; 31 U.S.C. 9701.

■ 5. Section 111.19 is amended by revising paragraphs (c) and (f)(4) to read as follows:

§ 111.19 Permits.

* * * * *

(c) *Fees.* Each application for a district permit under paragraph (b) of this section must be accompanied by the $100 and $125 fees specified in §§ 111.96(b) and (c). In the case of an application for a national permit under paragraph (f) of this section, the $100 fee specified in § 111.96(b) and the $125 fee specified in § 111.96(c) must be paid at the port through which the applicant's license was delivered (see § 111.15) prior to submission of the application. The $125 fee specified in § 111.96(c) also must be paid in connection with the issuance of an initial district permit concurrently with the issuance of a license under paragraph (a) of this section.

* * * * *

(f) *National permit.* * * *

(4) Attach a receipt or other evidence showing that the fees specified in § 111.96(b) and (c) have been paid in accordance with paragraph (c) of this section.

* * * * *

■ 6. Section 111.96 is amended by revising paragraph (b); in paragraph (c), by removing from the second sentence the words ''or upon filing the application for the'' and adding in their place the words ''or in connection with the filing of an application for a; and by removing from the same sentence the reference ''§ 111.19(f)(4)'' and adding in its place ''§ 111.19(c)''. The revision reads as follows:

§ 111.96 Fees.

* * * * *

(b) *Permit fee.* A fee of $100 must be paid in connection with each permit application under § 111.19 to defray the costs of processing the application, including an application for reinstatement of a permit that was revoked by operation of law or otherwise.

* * * * *

Dated: July 21, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: July 21, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–18837 Filed 7–23–03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 102

[CBP Dec. 03—11]

Technical Corrections: Rules of Origin of Imported Goods (Other than Textile and Apparel Products) for Purposes of the NAFTA

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; corrections.

SUMMARY: This document makes technical corrections to the Customs Regulations to reflect the terms of the current version of the Harmonized Tariff Schedule of the United States within the specific tariff shift rules and related requirements for determining the country of origin of imported goods (other than textiles and apparel products) for purposes of the NAFTA.

DATES: These corrections are effective July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Altneu, International Agreements Staff, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 572–8754.

SUPPLEMENTARY INFORMATION:

Background

Section 102.20 of the Customs Regulations (19 CFR 102.20) lists specific tariff shift rules and other requirements for determining the country of origin of imported goods (other than textiles and apparel products covered by § 102.21) for certain North American Free Trade Agreement (NAFTA) purposes. Specifically, § 102.20 prescribes tariff rules that may be used to determine when a good is a good of a NAFTA country (United States, Canada or Mexico). *See* the NAFTA Implementation Act, Public Law 103–182, 107 Stat. 437 (December 8, 1993).

Section 102.20 presents the origin rules in terms of tariff classification changes (tariff shifts) and/or specific operations which are required in order for origin to be conferred. The rule applicable to a particular good is determined by that good's tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) at the time the country of origin determination is made.

Need for Correction

Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988, the International Trade Commission is required to keep the HTSUS under continuous review and prepare investigations proposing modifications thereto to the President. *See* U.S. International Trade Commission Investigation No. 1205–5 (final), Proposed Modifications to the Harmonized Tariff Schedule of the United States, Publication 3430 (June 2001).

In 2002, the HTSUS was amended which resulted in the transfer of certain goods, for tariff classification purposes, to different or newly created tariff provisions, as well as the removal of tariff provisions currently referenced in § 102.20. *See* Presidential Proclamation 7515, dated December 18, 2001 (66 FR 66549, dated December 26, 2001). The changes to the HTSUS involve product coverage and/or numbering of select headings and subheadings, and are not intended to have any other substantive effect. *See* T.D. 96–48, Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement, 61 FR 28934 (June 6, 1996) and 60 FR 22312 (May 5, 1995). This document makes technical corrections to § 102.20 to reflect the terms of the current version of the HTSUS. The following examples are offered to illustrate the need for technical corrections to § 102.20.

Example: Pursuant to the existing terms of § 102.20(b), the tariff shift rule for HTSUS headings 1301–1302 permits a change to these headings ''from any other chapter.'' Prior to the 2002 amendments to the HTSUS, poppy straw concentrates were classifiable in Chapter 13 and therefore did not undergo the requisite tariff shift necessary to confer origin. As a result of the 2002 amendments to the HTSUS, certain concentrates of poppy straw were moved from Chapter 13 and provided for under subheading 2939.11.00, HTSUS. Poppy straw concentrates classifiable in this provision (Chapter 29) would now satisfy the tariff shift rule for Chapter 13 pursuant to the existing terms of § 102.20(b). In order to reflect the original scope of the tariff shift rule for Chapter 13 within § 102.20(b), the tariff shift rule needs to be amended to specifically exclude changes from HTSUS subheading 2939.11 from conferring origin.

Example: In 2002, a new subheading was created at 1904.30.00, HTSUS, which provides for ''bulgur wheat.'' This product was previously classified in the basket ''other'' provision under subheading 1904.90.00, HTSUS. As the new subheading 1904.30.00, HTSUS, is not included in the tariff shift rules set forth in § 102.20(d), the goods classifiable under this provision are currently precluded from having their origin determined pursuant to § 102.20(d). The technical corrections in this document amend the tariff shift rules in § 102.20(d) to add this new tariff provision and the rule ''from any other heading,'' which was the rule for bulgur wheat when it was classified under subheading 1904.90 in the 2001 version of the HTSUS.

Executive Order 12866, Regulatory Flexibility Act, Inapplicability of Prior Public Notice and Comment Procedures and Delayed Effective Date Requirements

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866. Because these amendments merely update the Customs Regulations by reflecting the terms of the 2002 HTSUS within the specific tariff shift rules and related requirements for determining the country of origin of imported goods (other than textiles and apparel products) for purposes of the NAFTA, Customs and Border Protection (CBP) has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), there is good cause for dispensing with a delayed effective date. Because the document is not subject to the requirements of 5 U.S.C. 553, as noted, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 102

Customs duties and inspection, Imports, Rules of origin, Trade agreements.

Amendment to the Regulations

■ For the reasons stated above, part 102 of the Customs Regulations (19 CFR part 102) is amended as set forth below.

PART 102—RULES OF ORIGIN

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

■ 2. In § 102.20, the table is amended by:

■ a. Removing the entries for ''2009.11–2009.30'', ''2009.40–2009.80'', ''2816.20'', ''2816.30'', ''2841.10–2841.40'', ''2901.10–2901.90'', ''2905.49–2905.50'', ''2907.29–2907.30'', ''2933.11–2934.90'', ''3002.90'', ''3809.91–3809.99'', ''3817.10–3817.20'', ''4101–4103'', ''4104–4107'', ''4108–4111'', ''4601'', ''4811.10–4811.31'', ''4811.39'', ''4811.40–4811.90'', ''4823.11'', ''4823.20–4823.59'', ''6812.10'', ''6812.20'', ''6812.30'', ''6812.40'', ''8101.10–8101.92'', ''8101.93'', ''8102.10–8102.92'', ''8102.93'', ''8103.10–8113.00'', ''8508.10–8508.80'', ''8508.90'', ''9009.90'', ''9021.11'', ''9021.19'', and ''9112.10–9112.80'';

■ b. Adding entries, in numerical order, for ''1904.30'', ''2009.11–2009.39'', ''2009.41–2009.80'', ''2816.40'', ''2841.10–2841.30'', ''2901.10–2901.29'', ''2905.49–2905.59'', ''2907.29'', ''2933.11–2934.99'', ''3006.70'', ''3006.80'', ''3809.91–3809.93'', ''3817'', ''3825.10–3825.69'', ''3825.90'', ''4101'', ''4102'', ''4103'', ''4104–4106'', ''4107'', ''4112'', ''4113'', ''4114.10–4115.20'', ''4601.20–4601.99'', ''4811'', ''4823.12'', ''4823.20–4823.40'', ''8101.10–8101.95'', ''8101.96'', ''8102.10–8102.95'', ''8102.96'', ''8103.20–8113.00'', ''9009.91–9009.99'', ''9021.10'', and ''9112.20'';

■ c. Revising the entries in the ''Tariff shift and/or other requirements'' column adjacent to the ''HTSUS'' column listing for ''1301–1302'', ''2821.20'', ''2937–2941'', ''3001.10'', ''3001.20–3001.90'', ''3002.10–3002.90'', ''3003.10'', ''3003.20'', ''3003.31'', ''3003.39'', ''3003.40'', ''3003.90'', ''3004.10'', ''3004.20'', ''3004.31'', ''3004.32'', ''3004.39'', ''3004.40'', ''3004.50'', ''3004.90'', ''3005.10'', ''3006.10'', ''3006.20–3006.60'', ''3402.11'', ''3402.12–3402.20'', ''4401–4411'', ''6812.90'', ''8467.91–8467.99'', ''8471.60–8472.90'', ''8479.10–8479.89'', and ''9404.30–9404.90''; and

■ d. Adding in paragraph (h) titled ''Section VIII: Chapters 41 through 43'', in the ''Chapter 42 Note'' between the clauses ''4202.32.40 through 4202.32.95'' and ''4202.92.15 through 4202.92.30'', the reference '', 4202.92.05''.

■ The additions and revisions read as follows:

§ 102.20 Specific rules by tariff classification.

* * * * *

HTSUS	Tariff shift and/or other requirements
* *	* * * * *
1301–1302	A change to heading 1301 through 1302 from any other chapter, except from concentrates of poppy straw of subheading 2939.11
* *	* * * * *
1904.30	A change to subheading 1904.30 from any other heading
* *	* * * * *
2009.11–2009.39	A change to subheading 2009.11 through 2009.39 from any other chapter
2009.41–2009.80	A change to subheading 2009.41 through 2009.80 from any other chapter
* *	* * * * *
2816.40	A change to subheading 2816.40 from any other subheading, except a change to oxides, hydroxides and peroxides of strontium of subheading 2816.40 from subheading 2530.90
* *	* * * * *
2821.20	A change to subheading 2821.20 from any other subheading, except from earth color mineral substances of 2530.90 or from subheading 2601.11 through 2601.20
* *	* * * * *
2841.10–2841.30	A change to subheading 2841.10 through 2841.30 from any other subheading, including another subheading within that group
* *	* * * * *
2901.10–2901.29	A change to subheading 2901.10 through 2901.29 from any other subheading, including another subheading within that group, except from acyclic petroleum oils of heading 2710 or from subheading 2711.13, 2711.14, 2711.19, or 2711.29
* *	* * * * *
2905.49–2905.59	A change to subheading 2905.49 through 2905.59 from any other subheading, including another subheading within that group
* *	* * * * *
2907.29	A change to subheading 2907.29 from any other subheading, including a change to phenol-alcohols of subheading 2907.29, from polyphenols of subheading 2907.29, or a change to polyphenols of subheading 2907.29 from phenol-alcohols of subheading 2907.29, except a change from subheading 2707.99
* *	* * * * *
2933.11–2934.99	A change to subheading 2933.11 through 2934.99 from any other subheading, including another subheading within that group
* *	* * * * *
2937–2941	A change to heading 2937 through 2941 from any other heading, including another heading within that group, except a change to concentrates of poppy straw of subheading 2939.11 from poppy straw extract of subheading 1302.19
* *	* * * * *
3001.10	A change to subheading 3001.10 from any other subheading, except from subheading 0206.10 through 0208.90 or 0305.20, heading 0504 or 0510, or subheading 0511.99 if the change from these provisions is not to a powder classified in subheading 3001.10, and except a change from subheading 3006.80
3001.10–3001.90	A change to subheading 3001.20 through 3001.90 from any other subheading, including another subheading within that group, except a change from subheading 3006.80
3002.10–3002.90	A change to subheading 3002.10 through 3002.90 from any other subheading, including another subheading within that group, except a change from subheading 3006.80
3003.10	A change to subheading 3003.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.20, or 3006.80
3003.20	A change to subheading 3003.20 from any other subheading, except from subheading 2941.30 through 2941.90, or 3006.80
3003.31	A change to subheading 3003.31 from any other subheading, except from subheading 2937.12 or 3006.80
3003.39	A change to subheading 3003.39 from any other subheading, except from hormones or their derivatives classified in Chapter 29, or except from subheading 3006.80
3003.40	A change to subheading 3003.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, 1302.39, or 3006.80 or alkaloids or derivatives thereof classified in Chapter 29
3003.90	A change to subheading 3003.90 from any other subheading, provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content, or except from subheading 3006.80

HTSUS	Tariff shift and/or other requirements
3004.10	A change to subheading 3004.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.10, 3003.20, or 3006.80
3004.20	A change to subheading 3004.20 from any other subheading, except from subheading 2941.30 through 2941.90, 3003.20, or 3006.80
3004.31	A change to subheading 3004.31 from any other subheading, except from subheading 2937.12, 3003.31, 3003.39, or 3006.80
3004.32	A change to subheading 3004.32 from any other subheading, except from subheading 3003.39 or 3006.80, or from adrenal corticosteroid hormones classified in Chapter 29
3004.39	A change to subheading 3004.39 from any other subheading, except from subheading 3003.39 or 3006.80, or from hormones or derivatives thereof classified in Chapter 29
3004.40	A change to subheading 3004.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, 1302.39, 3003.40 or 3006.80, or alkaloids or derivatives thereof classified in Chapter 29
3004.50	A change to subheading 3004.50 from any other subheading, except from subheading 3003.90 or 3006.80, or vitamins classified in Chapter 29 or products classified in heading 2936
3004.90	A change to subheading 3004.90 from any other subheading, except from subheading 3003.90 or 3006.80, and provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content
3005.10	A change to subheading 3005.10 from any other subheading, except from subheading 3006.80 or 3825.30
3006.10	A change to subheading 3006.10 from any other subheading, except from subheading 1212.20, 3006.80, 3825.30, or 4206.10
3006.20–3006.60	A change to subheading 3006.20 through 3006.60 from any other subheading, including another subheading within that group, except from subheading 3006.80 or 3825.30
3006.70	A change to subheading 3006.70 from any other subheading, except from subheading 3006.80 or 3825.30, and provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound
3006.80	A change to subheading 3006.80 from any other chapter
* *	* * * * *
3402.11	A change to subheading 3402.11 from any other subheading, except from mixed alkylbenzenes of heading 3817
3402.12–3402.20	A change to subheading 3402.12 through 3402.20 from any other subheading, including another subheading within that group
* *	* * * * *
3809.91–3809.93	A change to subheading 3809.91 through 3809.93 from any other subheading, including another subheading within that group
* *	* * * * *
3817	A change to heading 3817 from any other heading, including changes from one product to another within that heading, except from subheading 2902.90
* *	* * * * *
3825.10–3825.69	A change to subheading 3825.10 through 3825.69 from any other chapter, except from Chapter 28 through 38, 40 or 90
3825.90	A change to subheading 3825.90 from any other subheading, except from subheading 3824.90, and provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound
* *	* * * * *
4101	A change to hides or skins of heading 4101 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4101 or from any other chapter; or A change to any other good of heading 4101 from any other chapter
4102	A change to hides or skins of heading 4102 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4102 or from any other chapter; or A change to any other good of heading 4102 from any other chapter.
4103	A change to hides or skins of heading 4103 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4103 or from any other chapter; or A change to any other good of heading 4103 from any other chapter
4104–4106	A change to heading 4104 through 4106 from any other heading, including another heading within that group, except from hides or skins of heading 4101 through 4103 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4107, 4112 or 4113
4107	A change to heading 4107 from any other heading except from hides or skins of heading 4101 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4104
4112	A change to heading 4112 from any other heading except from hides or skins of heading 4102 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4105
4113	A change to heading 4113 from any other heading except from hides or skins of heading 4103 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4106
4114.10–4115.20	A change to subheading 4114.10 through 4115.20 from any other subheading, including a subheading within that group
* *	* * * * *
4401–4411	A change to heading 4401 through 4411 from any other heading, including another heading within that group; or

HTSUS	Tariff shift and/or other requirements
	A change to strips continuously shaped along the ends and also continuously shaped along the edges or faces of heading 4409 from strips continuously shaped only along the edges or faces of heading 4409
* *	* * * * *
4601.20–4601.99	A change to subheading 4601.20 through 4601.99 from any other subheading, including another heading within that group
* *	* * * * *
4811	A change to paper or paperboard in strips or rolls of a width not exceeding 15 cm of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811 or any other heading, except from heading 4817 through 4823; A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811, paper or paperboard in rectangular (including square) sheets with the larger dimension exceeding 36 cm and the other dimension exceeding 15 cm in the unfolded state of heading 4811 or any other heading, except from heading 4817 through 4823; or A change to any other good of heading 4811 from any other chapter
* *	* * * * *
4823.12	A change to subheading 4823.12 from any other subheading
* *	* * * * *
4823.20–4823.40	A change to subheading 4823.20 through 4823.40 from any other chapter
* *	* * * * *
6812.90	A change to subheading 6812.90 from any other heading; or A change to yarn and thread of subheading 6812.90 from any other subheading including from any other good also classified in subheading 6812.90; or A change to cords and string, whether or not plaited of subheading 6812.90 from any other subheading or from any other good also classified in subheading 6812.90, except from yarn and thread of subheading 6812.90; or, A change to woven or knitted fabric of subheading 6812.90 from any other subheading including from any other good also classified in subheading 6812.90.
* *	* * * * *
8101.10–8101.95	A change to subheading 8101.10 through 8101.95 from any other subheading, including another subheading within that group; or A change to any of the following goods classified in subheading 8101.10 through 8101.95, including from materials also classified in subheading 8101.10 through 8101.95: Matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip
8101.96	A change to subheading 8101.96 from any other subheading, except from subheading 8101.95
* *	* * * * *
8102.10–8102.95	A change to subheading 8102.10 through 8102.95 from any other subheading, including another subheading within that group; or A change to any of the following goods classified in subheading 8102.10 through 8102.95, including from materials also classified in subheading 8102.10 through 8102.95: Matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip
8102.96	A change to subheading 8102.96 from any other subheading, except from subheading 8102.95
* *	* * * * *
8103.20–8113.00	A change to subheading 8103.20 through 8113.00 from any other subheading, including another subheading within that group; or A change to any of the following goods classified in subheading 8103.20 through 8113.00, including from materials also classified in subheading 8103.20 through 8113.00: Matte; unwrought; powder except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands
* *	* * * * *
8467.91–8467.99	A change to subheading 8467.91 through 8467.99 from any other heading, except from heading 8407, or except from heading 8501 when resulting from a simple assembly
* *	* * * * *
8471.60–8472.90	A change to printing machines of subheading 8472.90 from any other subheading, except from subheading 8443.11 through 8443.60;

HTSUS	Tariff shift and/or other requirements
	A change to subheading 8471.60 through 8472.90 from any other subheading outside that group, except from subheading 8504.40 or heading 8473; or A change to subheading 8471.60 through 8472.90 from any other subheading within that group or from subheading 8504.90 or from heading 8473, provided that the change is not the result of simple assembly
* *	* * * * *
8479.10–8479.89	A change to printing machines of subheading 8479.89 from any other subheading, except from subheading 8443.11 through 8443.60; or A change to subheading 8479.10 through 8479.89 from any other subheading, including another subheading within that group
* *	* * * * *
9009.91–9009.99	A change to subheading 9009.91 through 9009.99 from any other heading
* *	* * * * *
9021.10	A change to subheading 9021.10 from any other subheading, except from nails classified in heading 7317 or screws classified in heading 7318 when resulting from a simple assembly
* *	* * * * *
9112.20	A change to subheading 9112.20 from any other subheading, except from subheading 9112.90 when that change is pursuant to General Rule of Interpretation 2(a)
* *	* * * * *
9404.30–9404.90	A change to down- and/or feather-filled goods classified in subheading 9404.30 through 9404.90 from any other heading; or For all other goods classified in subheading 9404.30 through 9404.90, a change from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, or 6001 through 6006, or subheading 6307.90
* *	* * * * *

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: July 21, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–18840 Filed 7–23–03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 133

[CBP Decision 03—12]

RIN 1515–AC98

Civil Fines for Importation of Merchandise Bearing a Counterfeit Mark

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to clarify the limit on the amount of a civil fine which may be assessed by the Bureau of Customs and Border Protection (CBP; a bureau of the new Department of Homeland Security that encompasses much of the agency formerly known as the U.S. Customs Service) when imported merchandise bearing a counterfeit mark is seized under 19 U.S.C. 1526(e). The regulations currently use, as a measurement for determining the limit, the domestic value of merchandise as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure. The language set forth in the amended regulation adheres more closely to the statutory language, basing the limit of the civil fine on the value of the genuine good according to the manufacturer's suggested retail price (MSRP), without any reference to domestic value. Because the MSRP excludes discounted sales and markdowns, it is usually greater than the good's domestic value. Removing the distinction between the statutory and regulatory language will clear up confusion and result in CBP more uniformly determining the amount of a civil fine when merchandise bearing a counterfeit mark is imported.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Lynne O. Robinson, Office of Regulations and Rulings: (202) 572–8743.

SUPPLEMENTARY INFORMATION:

Background

The Anticounterfeiting Consumer Protection Act of 1996 (the ACPA; Pub. L. 104–153, 110 Stat. 1386) was signed into law on July 2, 1996, to ensure that Federal law adequately addresses the scope and sophistication of modern counterfeiting which costs American businesses an estimated $200 billion a year worldwide. Toward that end, the ACPA amended section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526), to provide two new tools to fight the importation of counterfeit goods: (1) the seizure, forfeiture, and destruction of merchandise bearing a counterfeit mark under 19 U.S.C. 1526(e) (section 1526(e)), as amended by section 9 of the ACPA, and (2) the imposition of a civil fine under 19 U.S.C. 1526(f) (section 1526(f)), a new section of law created under section 10 of the ACPA.

Under section 1526(e), merchandise bearing a counterfeit mark that is seized and forfeited must be destroyed except where the merchandise is not unsafe or a hazard to health and the trademark owner has consented to its disposal by one of several alternative methods (*see* sections 1526(e)(1),(2) and (3)). This provision ensures that a violator cannot regain possession of the forfeited goods and distribute them in some other manner (including making another attempt to import them at another U.S.

port or into another country). Under section 1526(f)(1), a civil fine is assessed against any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under section 1526(e). Section 1526(f)(2) provides for a fine for the first seizure in an amount up to the value the imported merchandise would have had if it were genuine, according to the manufacturer's suggested retail price (MSRP). Section 1526(f)(3) provides for a fine for subsequent seizures in the amount of up to twice the value the imported merchandise would have had if it were genuine, according to the MSRP.

On November 17, 1997, Customs published interim regulations in the **Federal Register** (62 FR 61231) to amend § 133.25 of the Customs Regulations (19 CFR 133.25) to reflect the ACPA's amendment of 19 U.S.C. 1526. The interim amendments were adopted as a final rule published in the **Federal Register** (63 FR 51296) on September 25, 1998. A final rule document published in the **Federal Register** (64 FR 9058) on February 24, 1999, redesignated § 133.25 as § 133.27.

Under § 133.27 of the Customs Regulations (19 CFR 133.27), CBP may impose a civil fine, in addition to any other penalty or remedy authorized by law, against any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark that is seized under section 1526(e) and § 133.21 of the Customs Regulations (19 CFR 133.21). Under § 133.27(a), the fine imposed for the first violation (seizure) will not be more than the domestic value of the merchandise (as set forth in § 162.43(a)) as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure. Under § 133.27(b), the fine imposed for subsequent violations will not be more than twice the domestic value of the merchandise as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure.

Upon review of § 133.27, CBP determined that the language of the regulation is inconsistent with the language of section 1526(f). The regulation employs the term ''domestic value'' (of the merchandise) while the statute does not use that term. Moreover, because the MSRP is exclusive of any sale or markdown of a good at retail, it is usually greater than the good's domestic value. Therefore, setting the maximum amount of a civil fine by means of a formula that includes both the domestic value of the merchandise and the value of genuine merchandise according to the MSRP is confusing and contributes to misunderstanding by both CBP personnel and the public.

A review of the regulatory history indicates that CBP, in using the term ''domestic value'' in § 133.27 (§ 133.25 when published as a final rule on September 25, 1998), relied on 19 U.S.C. 1606 (section 1606) and § 162.43(a) of the Customs Regulations (19 CFR 162.43(a)). Section 1606 provides that CBP will determine the domestic value of merchandise seized under the Customs laws at the time and place of appraisement. Section 162.43(a) provides that ''domestic value'' as used in section 1606 means the price for which seized or similar property is freely offered for sale at the time and place of appraisement and in the ordinary course of trade.

While this ''domestic value appraisement rule'' of section 1606 and § 162.43(a) is applicable in various circumstances involving merchandise seized under the Customs laws, its application is qualified. Under 19 U.S.C. 1600, the procedures set forth in 19 U.S.C. 1602 through 1619, including the use of domestic value as laid out in section 1606, apply to seizures of property under any law enforced or administered by CBP unless such law specifies different procedures. Because section 1526(f) specifies the formula for imposing civil fines for the importation of merchandise bearing a counterfeit mark, the domestic value appraisement rule of section 1606 and § 162.43(a) does not apply.

This conclusion led CBP to publish a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (67 FR 39321) on June 7, 2002, which proposed to remove the term ''domestic value'' from § 133.27, leaving ''manufacturer's suggested retail price'' as the applicable measure of the penalty. The notice stated that using the MSRP as the measure for a penalty will: (1) Result in a formula for setting the maximum civil fine under the regulation that more closely follows the language of the statute; (2) clarify for CBP personnel and the importing public the limit of a civil fine; (3) enhance uniformity in CBP's assessment of fines when merchandise bearing a counterfeit mark is imported and seized; and (4) ensure that the Congressional intent in enacting section 1526(f), *i.e.*, to enhance deterrence of trade in counterfeit goods, will be uniformly served. Deterrence is furthered by the fact that the MSRP of a given article (in this case the genuine article that corresponds to imported merchandise bearing a counterfeit mark) is normally greater than its domestic value (because MSRP excludes discounted sales and markdowns) and a civil fine based on the MSRP will normally be greater.

Discussion of Comments

The NPRM invited public comment, and CBP received 15 responses by the close of the comment period. Of the 11 specific comments gleaned from the 15 responses, several agreed with CBP's proposal to amend the regulation and with CBP's reasons for doing so. However, some commenters suggested changes to the proposed amendment which are discussed below:

Comment: A commenter proposed that all previously issued fines under 19 U.S.C. 1526(f) should be canceled as they were not issued pursuant to a valid regulation.

Customs response: CBP disagrees. All penalties were issued in a manner consistent with the provisions of the statute, *i.e.*, fine amounts were finally set based on the MSRP. Thus, CBP will not cancel fines issued prior to the effective date of this amendment.

Comment: A commenter proposed that CBP should not issue a penalty notice assessing a fine under 19 U.S.C. 1526(f) where the manufacturer has not determined a MSRP for its genuine product. Another commenter suggested the use of ''domestic resale value'' when the MSRP of a genuine good is not available.

Customs response: CBP disagrees. CBP believes that in most cases, there will be a readily available MSRP to use in determining a fine under the statute. Occasional problematic situations will be handled on a case-by-case basis, and reasonable alternatives to using a manufacturer's MSRP, such as using the MSRP of a comparable good, will be employed with the assistance of CBP officers experienced in appraising merchandise.

Comment: A commenter proposed that the regulation incorporate sentencing guidelines used for criminal offenses.

Customs response: CBP disagrees. The sentencing guidelines are used by courts to determine sentences in criminal cases. Section 1526(f) provides for a civil fine which Congress sought to be imposed in addition to any other civil or criminal penalty (see section 1526(f)(4)). There is no indication that Congress wanted CBP to employ criminal sentencing guidelines in assessing penalties under section 1526(f).

Comment: A commenter proposed that because a fine under section 1526(f) is issued at the discretion of CBP, CBP officers should be instructed to impose

fines only in the most egregious circumstances.

Customs response: CBP disagrees. The statute makes clear that a first offense and subsequent offenses are subject to penalty. There is no indication that Congress contemplated a range of offenses from minor to serious and a different result for minor offenses, whatever they might be. Further, the legislative history demonstrates strong Congressional resolve to stem the flow of counterfeit merchandise into the United States. Strict enforcement of the civil seizure and fine provisions under the statute are the means to accomplish the deterrence Congress envisioned. Violators will have the chance to submit arguments during the petitioning process for mitigation of the fine.

Comment: A commenter proposed that an importer/petitioner be permitted to challenge CBP's finding that a good bears a counterfeit mark in its petition to mitigate a fine assessed under section 1526(f).

Customs response: CBP does not disagree with this comment. A finding by CBP that a good bears a counterfeit mark forms the basis for a seizure under section 1526(e). A penalty under section 1526(f) follows the seizure under section 1526(e). They are separate proceedings. If a violator can successfully challenge the CBP finding that a good bears a counterfeit mark in the section 1526(e) proceeding, it will not face a section 1526(f) proceeding. In the section 1526(f) proceeding, a petitioner may always raise the issue of whether the good in question bears a counterfeit mark. At that time, CBP may review the validity of the initial finding and may remit the section 1526(f) penalty in appropriate circumstances.

Conclusion

Based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, CBP believes that the proposed regulatory amendments should be adopted without change. CBP notes that with adoption of these amendments to the regulation, CBP will undertake to similarly amend the guidelines it uses to mitigate penalties assessed under section 1526(f). The current guidelines are set forth in T.D. 99–76, 33 Cust. Bull. No. 43, October 27, 1999.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

This amendment to the regulation will result in the language of the regulation more closely adhering to the language of the governing statute, thus clarifying for the public the maximum amount CBP can assess for a civil fine when merchandise bearing a counterfeit mark is imported and seized. Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is therefore certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 133

Counterfeit goods, Penalties, Seizures and forfeitures, Trademarks.

Amendment to the Regulations

■ For the reasons stated in the preamble, part 133 of the Customs Regulations (19 CFR part 133) is amended as follows:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

■ 1. The authority citation for part 133 continues to read, in part, as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

■ 2. Section 133.27 is revised to read as follows:

§ 133.27 Civil fines for those involved in the importation of merchandise bearing a counterfeit mark.

In addition to any other penalty or remedy authorized by law, CBP may impose a civil fine under 19 U.S.C. 1526(f) on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that bears a counterfeit mark resulting in a seizure of the merchandise under 19 U.S.C. 1526(e) (see § 133.21 of this subpart), as follows:

(a) *First violation.* For the first seizure of merchandise under this section, the fine imposed will not be more than the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

(b) *Subsequent violations:* For the second and each subsequent seizure under this section, the fine imposed will not be more than twice the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: July 21, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–18838 Filed 7–23–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 03–005]

RIN 1625–AA00

Safety Zone; Offshore Gran Prix, Huntington Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Pacific Ocean near Huntington Beach, California, for the Huntington Beach Offshore Gran Prix powerboat race on August 17, 2003. This temporary safety zone is necessary to provide for public safety in order to protect life and prevent property damage near the racecourse. Persons and vessels are prohibited from entering into or transiting through this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 12 a.m. (noon) to 3 p.m. (PDT) on August 17, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Los Angeles-Long Beach 03–005] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/ Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Final dates and other logistical details for the event were not provided to the Coast Guard in time to draft and publish an NPRM or a temporary final rule 30 days prior to the event, as the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to provide a safety zone to ensure the safety of the spectators and other vessels in the area.

For the same reasons stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone in the navigable waters of the Pacific Ocean near Huntington Beach, California, for the Huntington Beach Offshore Gran Prix powerboat race on August 17, 2003. Pacific Offshore Powerboat Racing Association is sponsoring the race consisting of approximately 25 offshore powerboats, operating at high speeds, racing along a multi-lap oval course located offshore Huntington Beach between the hours of 12 a.m. (noon) and 3 p.m. (PDT). The course is centered between the entrance to Anaheim Bay and the Huntington Beach Pier, approximately 1/4 nautical mile offshore. This temporary safety zone is necessary to provide for public safety in order to protect life and prevent property damage near the racecourse.

The Coast Guard will close the waterway to all vessels and persons 30 minutes prior to the start of the race and will reopen the waterway approximately 30 minutes after the conclusion of the race if the Coast Guard determines that it is safe to do so. A broadcast notice to mariners will be issued for this event.

Discussion of Rule

The description and coordinates for this temporary safety zone are provided for in the regulatory text section below. This area is approximately 1,500 yards wide and 8,000 yards long and is geographically centered between Anaheim Bay and Huntington Beach Pier near Huntington Beach, California.

Persons and vessels are prohibited from entering into or transiting through this temporary safety zone during the race. By prohibiting persons and vessels from entering the waters near the racecourse, the risk of loss of life and damage to property will be significantly reduced.

U.S. Coast Guard personnel will enforce this safety zone. The Coast Guard may be assisted by other Federal, State, or local agencies, which during this event may include the Coast Guard Auxiliary, Huntington Beach Lifeguards, and Huntington Beach Police.

Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the safety zone described herein, will be punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and *in rem* liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Regulatory Evaluation

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

Due to the limited scope of the safety zone, the fact that vessel traffic can pass safely around the zone, and the short duration of the zone, the Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

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

This rule will possibly affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in the affected area. The impact to these entities would not, however, be significant since this zone will encompass only a small portion of the waterway for a limited period of time and vessels can safely navigate around the safety zone.

For these reasons and the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a new § 165.T11–073 to read as follows:

§ 165.T11–073 Safety Zone; Offshore Gran Prix, Huntington Beach, CA.

(a) *Location.* The following described area constitutes a temporary safety zone: All waters of the Pacific Ocean near Huntington Beach, California, from surface to bottom, encompassed by lines connecting points beginning at latitude 33°43′ 36″ N, longitude 118(05'0'' W; then to 33°43′16″ N, 118°05′39″ W; then to 33°39′54″ N, 118°02′15″ W; then to 33°40′31″ N, 118°01′39″ W; and then returning to the point of origin. (Datum: NAD 1983).

(b) *Effective period.* This section is effective from 12 noon to 3 p.m. (PDT) on August 17, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number (800) 221–8724 or the Patrol Commander on VHF-FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: July 14, 2003.

John M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 03–18762 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810–AA93

Indian Education Discretionary Grant Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the discretionary grant programs administered under Title VII of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001, Public Law No. 107–110. The programs governed by this title include grants for the Professional Development program and the Demonstration Grants for Indian Children program. These regulations identify specific application and program requirements that must be set forth in order for applications to be considered for funding, and the requirements for the payback provisions that apply to the Professional Development program. These regulations will govern the grant application process for new awards under both programs for fiscal year 2003 and thereafter, including the payback provisions for the Professional Development program.

EFFECTIVE DATE: These regulations are effective July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Cathie Martin. Telephone: (202) 260–1683 or via Internet: *cathie.martin@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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 2002, the Demonstration Grants for Indian Children program and Professional Development program were revised and recodified as sections 7121 and 7122 of subpart 2 of part A of title VII of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by Public Law 107–110, the No Child Left Behind Act of 2001. On July 22, 2002, the Secretary published in the **Federal Register** (67 FR 47695) a final rule with request for comment on these programs. No comments were received, and no substantive changes are made to these regulations.

These regulations incorporate the specific program requirements for both programs. They also include the Secretary's application requirements for the Professional Development program that must be met in order for applications to be considered for funding, and the requirements concerning the payback provisions applicable to that program. The Secretary is required, under Section 7122(h) of the ESEA, to establish regulations governing payback and reporting provisions for the Professional Development program.

Analysis of Comments and Changes

No comments were received in response to the Secretary's invitation to comment on the final rule that suggested changes or clarification of the content of these regulations. Consequently, the Secretary has determined that no substantive changes are necessary.

Executive Order 12866

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. Section 437(d)(2) of the General Education Provisions Act (GEPA), however, exempts from this rulemaking requirement those rules where the Secretary determines it would cause extreme hardship to the beneficiaries of the program that would be affected by those rules. The Secretary, in accordance with section 437(d)(2) of GEPA, has decided to issue these rules without first publishing them for public comment in order to ensure timely and high quality grant awards.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

The small entities that are affected by these regulations are small local educational agencies (LEAs) receiving Federal funds under this program. However, the regulations will not have a significant economic impact on the small LEAs affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

Based on the response to the final regulations with invitation to comment and our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.299 Indian Education—Special Programs.)

List of Subjects in 34 CFR Part 263

Elementary and secondary education, Grant programs-education, Indians-education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: July 21, 2003.

Eugene W. Hickok,

Under Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary revises part 263 of title 34 of the Code of Federal Regulations to read as follows:

PART 263—INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

Subpart A—Professional Development Program

Sec.

263.1 What is the Professional Development program?
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Subpart B—Demonstration Grants for Indian Children Program

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Authority: 20 U.S.C. 7441 and 7442, unless otherwise noted.

Subpart A—Professional Development Program

§ 263.1 What is the Professional Development program?

(a) The Professional Development program provides grants to eligible entities to—

(1) Increase the number of qualified Indian individuals in professions that serve Indian people;

(2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) Improve the skills of qualified Indian individuals who serve in the education field.

(b) The Professional Development program requires individuals who receive training to—

(1) Perform work related to the training received under the program and that benefits Indian people, or to repay all or a prorated part of the assistance received under the program; and

(2) Report to the Secretary on the individual's compliance with the work requirement.

(Authority: 20 U.S.C. 7442)

§ 263.2 Who is eligible to apply under the Professional Development program?

(a) In order to be eligible for either pre-service or in-service training programs, an applicant must be an eligible entity which means—

(1) An institution of higher education, including an Indian institution of higher education;

(2) A State educational agency in consortium with an institution of higher education;

(3) A local educational agency in consortium with an institution of higher education;

(4) An Indian tribe or Indian organization in consortium with an institution of higher education; or

(5) A Bureau of Indian Affairs (Bureau)-funded school.

(b) Bureau-funded schools are eligible applicants for—

(1) An in-service training program; and

(2) A pre-service training program when the Bureau-funded school applies in consortium with an institution of higher education that is accredited to provide the coursework and level of degree required by the project.

(c) Eligibility of an applicant requiring a consortium with any institution of higher education, including Indian institutions of higher education, requires that the institution of higher education be accredited to provide the coursework and level of degree required by the project.

(Authority: 20 U.S.C. 7442)

§ 263.3 What definitions apply to the Professional Development program?

The following definitions apply to the Professional Development program:

Bureau-funded school means a Bureau school, a contract or grant school, or a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

Department means the U.S. Department of Education.

Dependent allowance means costs for the care of minor children under the age of 18 who reside with the training participant and for whom the participant has responsibility. The term does not include financial obligations for payment of child support required of the participant.

Expenses means tuition and required fees; health insurance required by the institution of higher education; room, personal living expenses, and board at or near the institution; dependent allowance; and instructional supplies.

Full course load means the number of credit hours that the institution requires of a full-time student.

Full-time student means a student who—

(1) Is a degree candidate for a baccalaureate or graduate degree;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

Good standing means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

Graduate degree means a post-baccalaureate degree awarded by an institution of higher education beyond the undergraduate level.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements of paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect October 19, 1994.

Indian institution of higher education means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

Indian organization means an organization that—

(1) Is legally established—

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Has as its primary purpose the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Induction services means services provided after the participant completes his or her training program and includes, at a minimum, these activities:

(1) Mentoring, coaching, and consultation services for the participant to improve performance,

(2) Access to research materials and information on teaching and learning,

(3) Periodic assessment of, and feedback sessions on, the participant's performance, provided in coordination with the participant's supervisor,

(4) Periodic meetings or seminars for participants to enhance collaboration, feedback, and peer networking and support.

In-service training means professional activities and opportunities designed to

enhance the skills and abilities of individuals in their current areas of employment.

Institution of higher education means an accredited college or university within the United States that awards a baccalaureate or post-baccalaureate degree.

Participant means an Indian individual who is being trained under the Professional Development program.

Payback means work-related service or cash reimbursement to the Department of Education for the training received under the Professional Development program.

Pre-service training means training to Indian individuals to prepare them to meet the requirements for licensing or certification in a professional field requiring at least a baccalaureate degree.

Professional development activities means in-service training offered to enhance the skills and abilities of individual participants.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means that portion of an award that is used for room and board and personal living expenses.

Note: Only full-time students are eligible for stipends.

Undergraduate degree means a baccalaureate (bachelor's) degree awarded by an institution of higher education.

(Authority: 20 U.S.C. 7442 and 7491)

§ 263.4 What training costs may a Professional Development program include?

(a) A Professional Development program may include, as training costs, assistance to either—

(1) Fully finance a student's educational expenses; or

(2) Supplement other financial aid—including Federal funding other than loans—for meeting a student's educational expenses.

(b) The Secretary announces the expected maximum amounts for stipends and other costs—including training costs—in the annual application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7442)

§ 263.5 What priority is given to certain projects and applicants?

(a) The Secretary awards a total of 5 points to an application submitted by an Indian tribe, Indian organization, or an Indian institution of higher education that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization or Indian institution of higher education will be considered eligible to receive the 5 priority points. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application.

(b) The Secretary awards a total of 5 points to an application submitted by a consortium of eligible applicants that includes a tribal college or university and that designates that tribal college or university as the fiscal agent for the application. The consortium application of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR to be considered eligible to receive the 5 priority points. These competitive preference points are in addition to the 5 competitive preference points that may be given under paragraph (a) of this section. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application.

(c) The Secretary may give absolute preference reserving all or a portion of the funds available for new awards under the Professional Development program, to only those applications that meet one of the following priorities selected for a fiscal year. The Secretary announces the absolute priority selected in the annual application notice published in the **Federal Register**.

(1) *Pre-Service training for teachers.* This priority provides support and training to Indian individuals to complete a pre-service education program that enables these individuals to meet the requirements for full State certification or licensure as a teacher through—

(i) Training that leads to a bachelor's degree in education before the end of the award period; or

(ii) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area as long as the training meets the requirements for full State teacher certification or licensure; or

(iii) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists; and

(iv) One-year induction services after graduation, certification, or licensure, provided during the award period to graduates of the pre-service program while they are completing their first year of work in schools with significant Indian student populations.

Note to paragraph (c)(1): In working with various institutions of higher education and State certification/licensure requirements, we found that States requiring a degree in a specific subject area (*e.g.*, specialty areas or teaching at the secondary level) generally require a Master's degree or fifth-year requirement before an individual can be certified or licensed as a teacher. These students would be eligible to participate as long as their training meets the requirements for full State certification or licensure as a teacher.

(2) *Pre-service administrator training.* This priority provides—

(i) Support and training to Indian individuals to complete a master's degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator; and

(ii) One year of induction services, during the award period, to participants after graduation, certification, or licensure, while they are completing their first year of work as administrators in schools with significant Indian student populations.

(Authority: 20 U.S.C. 7442 and 7473)

§ 263.6 How does the Secretary evaluate applications for the Professional Development program?

The following criteria, with the total number of points available in parenthesis, are used to evaluate an application for a new award:

(a) *Need for project (5) points.* In determining the need for the proposed project, the Secretary considers the following:

(1) The extent to which the proposed project will prepare personnel in specific fields in which shortages have been demonstrated; and

(2) The extent to which specific gaps or weaknesses in local capacity to provide, improve, or expand services that address the needs of the community or region have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance (10) points.* In determining the significance of the proposed project, the Secretary considers the following:

(1) The potential contribution of the proposed project to increase effective strategies for teaching and student achievement;

(2) The likelihood that the proposed project will build local capacity to provide, improve, or expand services that address the needs of the target population; and

(3) The likelihood that the proposed project will result in system change or improvement.

(c) *Quality of the project design (15) points.* The Secretary considers the following factors in determining the quality of the design of the proposed project:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(2) The extent to which the design of the proposed project reflects up-to-date knowledge from scientifically-based research and effective practices on how to improve teaching and learning to support student proficiency in meeting rigorous academic standards;

(3) The extent to which performance feedback and continuous improvement of participant performance are integral to the design of the proposed project; and

(4) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing educational services to the population of students to be served by the participants.

(d) *Quality of project services (15) points.* The Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge of scientifically-based research and effective practice;

(2) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in the achievement of students as measured against rigorous academic standards; and

(3) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of the training and project services provided.

(e) *Quality of project personnel (15) points.* The Secretary considers the following factors when determining the quality of the personnel who will carry out the proposed project:

(1) The qualifications, including relevant training and experience, of the project director;

(2) The qualifications, including relevant training and experience, of key project personnel; and

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Adequacy of resources (10) points.* In determining the adequacy of support for the proposed project, the Secretary considers the following factors:

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project;

(2) The extent to which the costs are reasonable in relation to the design of the program, program objectives, number of persons to be served, and the anticipated results and benefits; and

(3) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(g) *Quality of the management plan (15) points.* In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of procedures for ensuring feedback and continuous improvement in the performance of program participants in meeting the needs of the population they are to serve;

(2) The adequacy of the management plan to achieve the objectives of the proposed project during the award period, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and

(3) The extent to which the time commitments of the project director and other key personnel are appropriate and adequate to meet the objectives of the proposed project.

(h) *Quality of the project evaluation (15) points.* In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the context within which the project operates and the effectiveness of project implementation strategies;

(2) The extent to which the methods of evaluation will provide performance feedback on participants and permit periodic assessment of progress toward achieving the intended outcomes; and

(3) The extent to which the methods of evaluation include the use of objective output measures that are directly related to the intended outcomes of the project and will produce both quantitative and qualitative data to the extent possible.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.7 What are the requirements for a leave of absence?

(a) A participant shall submit a written request for a leave of absence to the project director not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the project director chooses to waive the prior notification requirement.

(b) The project director may approve a leave of absence, for a period not longer than one academic year, provided a training participant has successfully completed at least one academic year.

(c) The project director permits a leave of absence only if the institution of higher education certifies that the training participant is eligible to resume his or her course of study at the end of the leave of absence.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.8 What are the payback requirements?

(a) Individuals receiving assistance under the Professional Development program are required to—

(1) Sign an agreement, at the time of selection for training, to meet the provisions of the payback requirement; and

(2) Perform work related to the training received and that benefits Indian people; or

(3) Repay all or a prorated part of the assistance received.

(b) The period of time required for a work-related payback is equivalent to the total period of time for which training was actually received under the Professional Development program.

(c) The cash payback required shall be equivalent to the total amount of funds received and expended for training received under these programs and may be prorated based on any approved work-related service the participant performs.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.9 When does payback begin?

(a) For all participants who complete their training under the Professional Development program, payback shall begin within six months from the date of completion of the training.

(b) For participants who do not complete their training under the Professional Development program, payback shall begin within six months from the date the fellow leaves the Professional Development program, unless he or she continues as a full-time student without interruption, in a program leading to a degree in an accredited institution of higher education.

(1) If the participant leaves the Professional Development program, but plans to continue his or her education as a full-time student, the Secretary may defer the payback requirement until the participant has completed his or her educational program. Written requests for deferment shall be submitted to the Secretary within 30 days of leaving the Professional Development program and shall provide the following information—

(i) The name of the accredited institution the student will be attending;

(ii) A copy of the letter of admission from the institution;

(iii) The degree being sought; and

(iv) The projected date of completion.

(2) After approval by the Secretary for deferment of the payback provision on the basis of continuing as a full-time student, former participants are required to submit to the Secretary a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.10 What are the payback reporting requirements?

(a) *Notice of intent.* Participants shall submit to the Secretary, within 30 days of completion of their training program, a written notice of intent to complete a work-related or cash payback, or to continue in a degree program as a full-time student.

(b) *Work-related payback.* If the participant proposes a work-related payback, the written notice of intent shall include information explaining how the work-related service is related to the training received and how it benefits Indian people.

(1) For work-related service, the Secretary shall review each participant's payback plan to determine if the work-related service is related to the training received and that it benefits Indian people. The Secretary approves the payback plan if a determination is made that the work-related service to be performed is related to the training received and benefits Indian people, meets all applicable statutory and regulatory requirements, and is otherwise appropriate.

(2) The payback plan for work-related service shall identify where, when, the type of service, and for whom the work will be performed.

(3) A participant shall notify the Secretary in writing of any change in the work-related service being performed within 30 days of such change.

(4) For work-related payback, individuals shall submit a status report every six months beginning from the date the work-related service is to begin. The reports shall include a certification from the participant's employer that the service(s) have been performed without interruption.

(5) For participants that initiate, but cannot complete, a work-related payback, the payback reverts to a cash payback that is prorated based upon the amount of time the work-related payback has been completed.

(c) *Cash payback.* If a cash payback is to be made, the Department will contact the participant to establish an appropriate schedule for payments.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

Subpart B—Demonstration Grants for Indian Children Program

§ 263.20 What definitions apply to the Demonstration Grants for Indian Children program?

The following definitions apply to the Demonstration Grants for Indian Children program:

Federally supported elementary or secondary school for Indian students means an elementary or secondary school that is operated or funded, through a contract or grant, by the Bureau of Indian Affairs.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements described in paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect October 19, 1994.

Indian institution of higher education means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

Indian organization means an organization that:

(1) Is legally established:

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Has as its primary purpose the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Professional development activities means in-service training offered to enhance the skills and abilities of individuals that may be part of, but not exclusively, the activities provided in a Demonstration Grants for Indian Children program.

(Authority: 20 U.S.C. 7441)

§ 263.21 What priority is given to certain projects and applicants?

(a) The Secretary awards a total of 5 competitive preference priority points to an application that presents a plan for combining two or more of the activities described in section 7121(c) of the Act over a period of more than one year.

(b) The Secretary awards a total of 5 competitive preference priority points to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education that is eligible to participate in the Demonstration Grants for Indian Children program. A consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five (5) priority points. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application. These competitive preference points are in addition to the 5 competitive preference points that may be given under paragraph (a) of this section.

(c) The Secretary may give absolute preference reserving all or a portion of the funds available for new awards under the Demonstration Grants for Indian Children program, to only those applications that meet one or more of the following priorities selected for a

fiscal year. The Secretary announces the absolute priority selected in the annual application notice published in the **Federal Register**.

(1) School readiness projects that provide age appropriate educational programs and language skills to three- and four-year-old Indian students to prepare them for successful entry into school at the kindergarten school level.

(2) Early childhood and kindergarten programs, including family-based preschool programs, emphasizing school readiness and parental skills.

(3) College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including math and science, to enable Indian students to successfully transition to postsecondary education.

(Authority: 20 U.S.C. 7441 and 7473)

[FR Doc. 03–18873 Filed 7–23–03; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 01–185; FCC 03–15]

Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects one citation in the rule changes published in the **Federal Register** of June 5, 2003, regarding Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands.

DATES: Effective on July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Breck Blalock or James Ball, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: On June 5, 2003, the **Federal Register** published a summary of the final rule in the above captioned proceeding. As published, the final rule contains errors which may prove to be misleading and need to be clarified. In final rule FR Doc. 03–14081, beginning on page 33649 in the issue of June 5, 2003, make the following corrections:

On page 33649 in the 2nd column, remove instruction number 6 and the text.

Dated: July 16, 2003.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–18641 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 01–185; FCC 03–15]

Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects one citation in the rule changes published in the **Federal Register** of June 5, 2003, regarding Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands. This correction cites to 47 CFR 25.136, the correct rule section affected by the rule change.

DATES: Effective on July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Breck Blalock or James Ball, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of June 5, 2003, (68 FR 33640). In FR Doc. 03–14081, published in the **Federal Register** of June 5, 2003, (68 FR 33640), § 25.136 was inadvertently identified. In Rule FR Doc. 03–14081 published on June 5, 2003 (68 FR 33640) make the following correction.

On page 33649, in the second column,

■ 6. Section 25.136 is amended by revising the section heading and adding paragraphs (f), (g), and (h) of this section to read as follows:

§ 25.136 Licensing provisions for the L-Band mobile-satellite service.

* * * * *

(f) *Incorporation of ancillary terrestrial component base station into an L-band Mobile-Satellite Service System.* Any licensee authorized to construct and launch an L-band mobile-satellite system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

(g) *Pre-operational testing.* An MSS ATC licensee may, without further authority from the Commission, conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of the technical provisions of its MSS license, its ATC authorization, the rules and regulations in this part and the applicable engineering standards. An MSS licensee may not offer ATC service to the public for compensation during pre-operational testing. In order to operate any ATC base stations, such a licensee must meet all the requirements set forth in § 25.147 and must have been granted ATC authority through a modification of its space station license.

(h) *Aircraft.* All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 1626.5–1660.5 MHz and 1525–1559 MHz bands shall bear the following statement in a conspicuous location on the device: ''This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft.''

* * * * *

Dated: July 16, 2003.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–18642 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2258; MM Docket No. 02–15, RM–10364]

Radio Broadcasting Services; Glenpool and Okmulgee, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Shamrock Communications, Inc., reallots Channel 231C1 from Okmulgee to Glenpool, Oklahoma, and modifies Station KTSO(FM)'s license accordingly. *See* 67 FR 5961, February 8, 2002. Channel 231C1 can be allotted to Glenpool in compliance with the Commission's minimum distance separation requirements at petitioner's presently authorized site. The coordinates for Channel 231C1 at Glenpool are 35–50–02 North Latitude and 96–07–28 West Longitude.

DATES: Effective August 28, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–15, adopted July 9, 2003, and released July 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ 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. 54, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma is amended by adding Glenpool, Channel 231C1 and by removing Okmulgee, Channel 231C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18832 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2038; MM Docket No. 02–382; RM–10615]

Radio Broadcasting Services; Bridgeton, Pennsauken, NJ

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the amendatory language to a final rule published in the **Federal Register** of July 15, 2003, regarding Radio Broadcasting Services in Bridgeton and Pennsauken, New Jersey. The amendatory language stated the wrong channel number for the community of Bridgeton. This document corrects the channel number for the community of Bridgeton.

DATES: Effective August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

Correction

■ In final rule FR Doc. 03–17832, published July 15, 2003 (68 FR 41724), make the following correction.

■ On page 41724, in the third column of § 73.202(b), correct the amendatory language to read as follows:

■ 2. Section 73.202(b), the Table of FM Allotments under New Jersey, is amended by removing Bridgeton, Channel 299B and by adding Pennsauken, Channel 300A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18835 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 89–1199; MM Docket No. 88–185; RM–6288, RM–6499, RM–6747]

Radio Broadcasting Services; Montgomery, WV

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document editorially amends 47 CFR 73.202(b), the Table of FM Allotments for the community of Montgomery, West Virginia, which was published in the **Federal Register** of Tuesday, October 10, 1989, (54 FR 41446). The Federal Communications Commission published in the **Federal Register**, of October 10, 1989, a document which added Channel 227A to Montgomery, West Virginia. *See* 54 FR 41446. This document amends 47 CFR 73.202(b), the Table of FM Allotments under West Virginia, by adding Montgomery, Channel 227A.

DATES: Effective on July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION:

Background

The Federal Communications Commission published a document in the **Federal Register** of October 10, 1989, (54 FR 41446), which amended Section 73.202(b), the FM Table of Allotments under West Virginia by adding Montgomery, Channel 227A; by adding Channel 233B1 and removing Channel 233A at Dunbar; by removing Mount Gay-Shamrock, Channel 234A; and under Kentucky, by adding Channel 234C3 at Paintsville.

Need for Correction

Part 73 of title 47 of the Code of Federal Regulations no longer contains under Section 73.202(b), the FM Table of Allotments under West Virginia Channel 227A at Montgomery, therefore this community and channel needs to be added to the Code of Federal Regulations.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Accordingly, 47 CFR part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation of part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Montgomery, Channel 227A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18836 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF43

Endangered and Threatened Wildlife and Plants; Final Rule To Remove the Douglas County Distinct Population Segment of Columbian White-Tailed Deer From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: In this action, we, the U.S. Fish and Wildlife Service, establish two distinct population segments (DPS) of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*): the Douglas County DPS and the Columbia River DPS; and remove the Douglas County DPS from the List of Threatened and Endangered Wildlife. We have also determined that the Douglas County, Oregon, DPS is no longer an endangered or threatened species pursuant to the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), based on the best available data indicating that the Douglas County DPS has recovered. This DPS has increased from about 2,500 animals, in 1983, to over 6,000 today. The range of the population has also increased. This robust population growth, coupled with habitat acquired and protected for the population, has brought the Douglas County DPS to the point where a change in status is appropriate. This recovery has primarily been the result of habitat acquisition and management for the deer, hunting restrictions, and the application of local ordinances designed to protect the Douglas County DPS.

The delisting of the Douglas County DPS will not change the endangered status of the Columbia River DPS. It remains fully protected by the Act.

DATES: This rule is effective July 24, 2003.

ADDRESSES: The administrative file for this rule is available for inspection, by appointment, during normal business hours at the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE. 98th Ave., Suite 100, Portland, Oregon 97266.

FOR FURTHER INFORMATION CONTACT: Cat Brown, Wildlife Biologist at the Oregon Fish and Wildlife Office (see **ADDRESSES** section) (telephone 503/231–6179; facsimile 503/231–6195).

SUPPLEMENTARY INFORMATION:

Background

The Columbian white-tailed deer is the westernmost representative of 30 subspecies of white-tailed deer in North and Central America (Halls 1978; Baker 1984). It resembles other white-tailed deer subspecies, ranging in size from 39 to 45 kilograms (kg) (85 to 100 pounds (lb)) for females and 52 to 68 kg (115 to 150 lb) for males (Oregon Department of Fish and Wildlife (ODFW) 1995). Generally a red-brown color in summer, and gray in winter, the subspecies has distinct white rings around the eyes and a white ring just behind the nose (ODFW 1995). Its tail is relatively long, brown on top with a white fringe, and white below (Verts and Carraway 1998). The subspecies was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936; Verts and Carraway 1998). Early accounts suggested this deer was locally common, particularly in riparian areas along major rivers (Gavin 1978). The decline in Columbian white-tailed deer numbers was rapid with the arrival and settlement of pioneers in the fertile river valleys (Gavin 1978). Conversion of brushy riparian land to agriculture, urbanization, uncontrolled sport and commercial hunting, and perhaps other factors apparently caused the extirpation of this deer over most of its range by the early 1900s (Gavin 1978). By 1940, a population of 500 to 700 animals along the lower Columbia River in Oregon and Washington, and a disjunct population of 200 to 300 in Douglas County, Oregon, survived (Crews 1939; Gavin 1984; Verts and Carraway 1998). These two remnant populations remain geographically separated by about 320 kilometers (km) (200 miles (mi)), much of which is unsuitable or discontinuous habitat.

Columbian white-tailed deer in Douglas County are most often associated with riparian habitats, but studies have shown that the deer uses a variety of lower elevation habitat types. Radio-tagged deer in a recent study selected riparian habitats more frequently than any other habitat type, but were also found using all the other habitat types in the study area (*i.e.*, grassland, grass shrub, oak savannah, oak-hardwood woodland, oak-hardwood savannah shrub, oak-hardwood conifer, conifer, and urban/suburban yards) (Ricca 1999). This study found that the areas of concentrated use within a deer's home range were generally located within 200 meters (m) (650 feet (ft)) of streams (Ricca 1999), which confirms earlier work (Smith 1981) suggesting that habitat type is less important than distance to a stream. Open areas (grasslands and oak savanna) are used for feeding between dusk and dawn (Ricca 1999). The diet of Columbian white-tailed deer consists of forbs (broad-leaved herbaceous plants), shrubs, grasses, and a variety of other foods such as lichens, mosses, ferns, seeds, and nuts (Lowell Whitney, Oregon State University, pers. comm. 2001).

Population estimates for the Douglas County DPS have demonstrated a fairly steady upward trend since management for the population began (see Table 1).

TABLE 1.—REVISED ANNUAL TREND COUNTS (BASED ON SPRING CENSUSES) AND POPULATION ESTIMATES (BASED ON LINEAR REGRESSION) WITH CONFIDENCE INTERVALS (LOWER AND UPPER POPULATION ESTIMATES) FOR THE DOUGLAS COUNTY DPS OF COLUMBIAN WHITE-TAILED DEER, 1975–2002 (LINDSAY BALL, ODFW, IN LITT. 2002).

Year	Annual trend count (deer/mile)	Population estimate	95% confidence intervals	
			Lower population estimate	Upper population estimate
1975	1.7	1158	333	1984
1976	1.9	1340	468	2212
1977	1.95	1522	603	2441
1978	2	1704	738	2670
1979	2.3	1886	873	2899
1980	2.3	2068	1008	3128
1981	2.2	2250	1143	3357
1982	2.1	2432	1278	3585

TABLE 1.—REVISED ANNUAL TREND COUNTS (BASED ON SPRING CENSUSES) AND POPULATION ESTIMATES (BASED ON LINEAR REGRESSION) WITH CONFIDENCE INTERVALS (LOWER AND UPPER POPULATION ESTIMATES) FOR THE DOUGLAS COUNTY DPS OF COLUMBIAN WHITE-TAILED DEER, 1975–2002 (LINDSAY BALL, ODFW, IN LITT. 2002).—Continued

Year	Annual trend count (deer/mile)	Population estimate	95% confidence intervals	
			Lower population estimate	Upper population estimate
1983	2.5	2614	1413	3814
1984	2.7	2796	1548	4043
1985	2.6	2978	1683	4272
1986	2.2	3160	1818	4501
1987	4.1	3342	1953	4730
1988	5.6	3523	2088	4958
1989	5	3705	2223	5187
1990	6.6	3887	2358	5416
1991	7.7	4069	2493	5645
1992	5.6	4251	2628	5874
1993	6.6	4433	2763	6103
1994	5.3	4615	2898	6331
1995	4.3	4797	3033	6560
1996	4.3	4979	3168	6789
1997	5.5	5161	3303	7018
1998	4.6	5343	3438	7247
1999	7.7	5525	3573	7476
2000	5.4	5707	3708	7705
2001	6.9	5888	3843	7933
2002	8.6	6070	3978	8162

In the 1930s, the Columbian white-tailed deer population in Douglas County was estimated at 200 to 300 individuals within a range of about 79 square kilometers (km^2) (31 square miles (mi^2)) (Crews 1939). By 1983, the population had increased to about 2,500 deer (U.S. Fish and Wildlife Service (Service) 1983). The population has continued to grow and is currently estimated at over 6,000 deer (Lindsay Ball, ODFW, *in litt.* 2002). Along with this increase in numbers, the range also has expanded to the north and west, and the subspecies now occupies an area of approximately 800 km^2 (309 mi^2) (ODFW 1995). In 2002, the ODFW estimated that there were 8.6 deer per mile along its standard census routes, with a sex ratio of 24 adult bucks to 100 adult does, and 34 fawns to 100 does (Lindsay Ball, ODFW, *in litt.* 2002). A recent 3-year study of the population found relatively low annual survival rates for adult deer (74 percent over 3 years), although the results were within the range of white-tailed deer survival rates in other parts of the country (Ricca *et al.* 2002). Fawn survival rates in this study were on the lower extreme of rates reported for other white-tailed deer populations (Ricca *et al.* 2002); the authors of the study suggest that poor fawn survival may be linked to high deer density in Douglas County. Annual population surveys indicate that deer density has doubled in the last 20 years, and the population may be at or near carrying capacity in portions of its range within Douglas County (Ricca 1999).

The State of Oregon has had a long history of research and active management of the Douglas County DPS of Columbian white-tailed deer. In 1927, the Oregon State Legislature established a White-tailed Deer Refuge in Douglas County. Early studies estimated a population of 200 to 300 Columbian white-tailed deer on the refuge, and an approximately equal number of Columbian black-tailed deer (*Odocoileus hemionus columbiana*) (Crews 1939). The State of Oregon (ODFW 1995) subsequently considered white-tailed deer in Douglas County to be black-tailed deer or a hybrid between the black-tailed deer and the Columbian white-tailed deer; the refuge was dissolved in 1952, and regulated hunting resumed (Gavin 1984). In 1978, Oregon recognized the white-tailed deer population in Douglas County as the Columbian white-tailed deer, and prohibited hunting of white-tailed deer in that County (Service 1983).

Since 1978, the ODFW has conducted spring and fall surveys to estimate population size, recruitment, and sex ratios (ODFW, *in litt.* 2001). Standard routes for spotlight surveys have been established along 76.4 km (47.5 mi) of road within the known range of the population (ODFW, *in litt.* 2001). The fall deer census counts both Columbian white-tailed deer and Columbian black-tailed deer throughout Douglas County, from November 15 through December 15 in most years, on nights with suitable survey conditions. All deer observed are classified by species, sex, and age (*i.e.*, fawns, does, or bucks by antler class). This allows an estimate of fawn production going into winter (fawns per 100 adults), and in the case of black-tailed deer, the post hunting season buck survival (bucks per 100 does) (Steve Denney, ODFW, *in litt.* 2001).

The spring census is similar to the fall count. On warm, wet nights in March, the ODFW conducts a spotlight count along the standard road routes, recording both white-tailed and black-tailed deer. All deer observed are recorded and classified as either adults or fawns; this provides an estimate of overwinter fawn survival (fawns per 100 does) and population trend (expressed as deer per mile) (S. Denney, ODFW, *in litt.* 2001).

The State also implements an active research program, in coordination with us and the Oregon State University, to investigate deer habitat use and movement of radio-tagged individuals (Ricca 1999; ODFW 1995; ODFW, *in litt.* 2001). Since 1998, for example, the ODFW has been transplanting radio-tagged Columbian white-tailed deer from areas of high deer densities to Mildred Kanipe Memorial Park in northwestern Douglas County. The goals of the project have been to boost numbers of deer in the park, accelerate

range expansion to the north, to refine capture and transplanting techniques, and to move deer from areas where damage has been a concern (S. Denney, ODFW, *in litt.* 2001).

The Columbian white-tailed deer was listed as endangered by the State with the passage of the Oregon Endangered Species Act in 1987 (ODFW 1995). In 1995, the ODFW reviewed the status of the Columbian white-tailed deer in Oregon (both Douglas County and Columbia River populations) and concluded that the subspecies had recovered (ODFW 1995). At the November 1995 meeting of the Oregon Fish and Wildlife Commission, the Commissioners voted unanimously to remove the Columbian white-tailed deer from the State of Oregon List of Threatened and Endangered Species; the subspecies was placed on the State's Sensitive Species List for continued monitoring (Oregon Fish and Wildlife Commission 1995). Oregon continues to prohibit hunting of white-tailed deer in all western Oregon big-game management units (ODFW 2001).

Distinct Vertebrate Population Segment

The Douglas County and Columbia River populations of the Columbian white-tailed deer meet the requirements for consideration as distinct population segments as described in our Policy Regarding the Recognition of Distinct Vertebrate Population Segments, published in the **Federal Register** on February 7, 1996 (61 FR 4722). For a population to be considered as a distinct vertebrate population segment, two elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs.

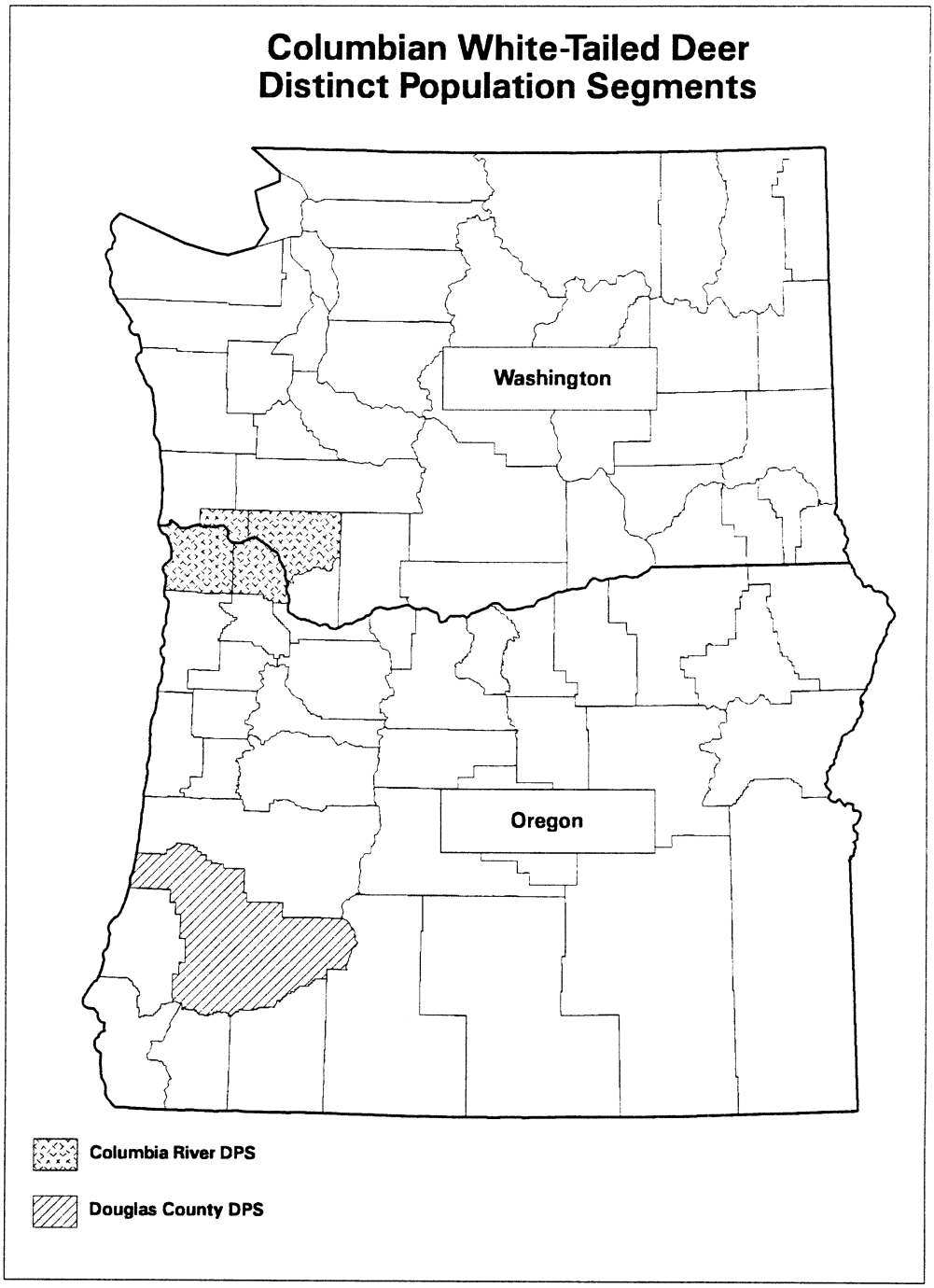
A population may be considered discrete if it is: (1) Separated from other populations of the same taxon by physical, physiological, ecological, or behavioral factors; or (2) limited by international governmental boundaries where there are differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms. The Douglas County and Columbia River populations of Columbian white-tailed deer are discrete because they are geographically isolated from each other. Historically, this subspecies ranged from the south end of Puget Sound in Washington south to the Umpqua River drainage in Oregon (Bailey 1936). At the present time, the subspecies is found in two locations (along the Columbia River in Washington and Oregon, and in Douglas County, Oregon), which are separated by over 320 km (200 mi), much of which is discontinuous or unsuitable habitat. Columbian white-tailed deer are not migratory and appear to restrict their movements to relatively small home ranges (ODFW 1995). Laboratory research has also demonstrated that there may be a relatively large genetic difference between the Douglas County and Columbia River populations of Columbian white-tailed deer (Gavin and May 1988), which indicates a lack of gene flow between the two populations. As a result, the wide geographic gap in suitable habitat between the Columbia River and Douglas County populations demonstrates that this subspecies has two discrete population segments.

The following issues are considered when determining significance: (1) Persistence of the discrete population segment in an unusual or unique setting for the taxon; (2) evidence that loss of the segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the population segment differs from other populations of the species in its genetic characteristics.

The Douglas County and Columbia River populations are considered significant under our policy based on two factors. First, the loss of either of the Douglas County or Columbia River population would result in a significant gap in the range of the subspecies. The loss of either population would substantially constrict the current range of the subspecies. Second, each population has genetic characteristics that are not found in the other population (Gavin and May 1988). Because the Douglas County and Columbia River populations of the Columbian white-tailed deer are discrete and significant, they warrant recognition as Distinct Vertebrate Population Segments under the Act. The following map illustrates the location of these two DPSs.

BILLING CODE 4310–55–P

Map of the Columbian white-tailed deer, Douglas County DPS and Columbia River DPS



BILLING CODE 4310–55–C

Review of the Columbian White-tailed Deer Recovery Plan

In accordance with the Act, we appointed a team of experts (the Columbian White-tailed Deer Recovery Team (Recovery Team)) to develop a recovery plan for the Columbian white-tailed deer. We approved the original Columbian White-tailed Deer Recovery Plan (Recovery Plan) in 1977, and the Recovery Team revised the Recovery Plan in 1983 to include the newly recognized Douglas County population (Service 1983).

Because of the distance between the Columbia River and Douglas County populations and differences in habitats and threats, the Recovery Plan addresses the recovery of each population separately. The Recovery Plan identified the following objectives for the Douglas County population: (1) To downlist the population to threatened, the Recovery Plan recommended the maintenance of 1,000 Columbian white-tailed deer in a viable status on lands within the

Umpqua Basin of Douglas County, while keeping the relative proportions of deer habitat within the known range of the subspecies from further deterioration; and (2) to delist the population, it recommended the maintenance of a minimum population of 500 animals from the larger population, to be distributed on 2,226 hectares (ha) (5,500 acres (ac)) of suitable, secure habitat within the Umpqua Basin of Douglas County on lands owned, controlled, protected, or otherwise dedicated to the conservation of the species (Service 1983).

The Recovery Plan defined secure habitat as those areas that are protected from adverse human activities (*e.g.*, heavy, unregulated grazing by domestic animals, clearing of woody plants) in the foreseeable future, and that are relatively safe from natural phenomena that would destroy their value to the subspecies (Service 1983). The Recovery Plan did not define secure habitat to include only publicly owned lands; rather, it provided further guidance on secure habitat by stating that local entities, including planning commissions, county parks departments, and farm bureaus, could secure habitat through zoning ordinances, land-use planning, parks and greenbelts, agreements, memoranda of understanding, and other mechanisms available to local jurisdictions (Service 1983). The Recovery Plan also recommended that private conservation organizations be encouraged to secure habitat for Columbian white-tailed deer through easements, leases, acquisitions, donations, or trusts (Service 1983).

The Recovery Plan identified a series of tasks that the Recovery Team recommended to meet the downlisting and delisting objectives for the Douglas County population of Columbian white-tailed deer (Service 1983). These tasks fall into five main categories: (1) Tracking population status; (2) Ensuring viability of the population through enforcement of existing laws and regulations; (3) Securing and protecting habitat to allow the population to increase; (4) Studying the ecology of the population and assessing the threat of hybridization with Columbian black-tailed deer; and (5) Encouraging public support for Columbian white-tailed deer restoration. Nearly all of the tasks listed in the Recovery Plan (Service 1983) have been accomplished. We provide a summary of recovery tasks, along with the status of their implementation, below.

1. *Tracking population status.* Tasks in this first category have been fully implemented. The ODFW, with our funding, has surveyed the population yearly since 1978. Data collected include spring and fall trend counts, estimates of overall population size, recruitment, and sex ratios. Surveys indicate that the population has grown from about 2,500 animals in 1982 to about 6,000 in 2002 (Service 1983; Lindsay Ball, ODFW, *in litt.* 2002). The Recovery Plan included a model to estimate the minimum population size necessary to avoid extinction; using this model, the Recovery Team concluded that a population of 500 deer in Douglas County could be considered safe from the potentially deleterious effects of inbreeding (Service 1983). The most recent estimate of the overall population of the Douglas County DPS is over 6,000 deer (ODFW, *in litt.* 2001).

2. *Ensuring viability of the population through enforcement of existing laws and regulations.* Tasks concerning enforcement of existing laws to protect the Columbian white-tailed deer have been fully implemented. It is currently illegal to take Columbian white-tailed deer under State law (ODFW 2001), and as proscribed in section 9 of the Act. Our biologists have coordinated with our agency's Law Enforcement Special Agents and our National Fish and Wildlife Forensics Laboratory in Ashland, Oregon, to refer illegal take cases to the Oregon State Police, which has successfully prosecuted a number of Columbian white-tailed deer poaching cases (Sgt. Joe Myhre, Oregon State Police, pers. comm. 2001). See additional discussion under Factor D, below, for more detail. We have also engaged in section 7 consultations with Federal agencies for those actions which were determined to have the potential to affect Columbian white-tailed deer.

3. *Securing and protecting habitat to allow the population to increase.* Since 1978, over 2,830 ha (7,000 ac) have come into public ownership and are being managed in a manner that is compatible with the needs of Columbian white-tailed deer (see full description of these parcels in Factor A, below). This acreage includes the North Bank Habitat Management Area (NBHMA), managed by the Bureau of Land Management (BLM), and Mildred Kanipe Memorial Park. Smaller parcels owned by Douglas County and The Nature Conservancy (TNC) also provide secure refugia for deer. In addition, Douglas County has used its authorities to conserve the Columbian white-tailed deer. The Douglas County Comprehensive Plan (Douglas County Planning Department (DCPD) 2000a), county zoning ordinances (DCPD 2000b), and the Douglas County Deer Habitat Protection Program (DCPD 1995), also have been essential in protecting open space and rural agricultural landscapes used by the deer.

The Recovery Plan recommended that we and the ODFW develop a long-term management plan for the Douglas County population of Columbian white-tailed deer (Service 1983). Although a single, population wide plan has not been prepared, this task has been accomplished, in part, through site-specific management plans for the NBHMA (BLM 2001), Douglas County's Habitat Protection Program for the Columbian white-tailed deer (DCPD 1995), and Mildred Kanipe Memorial Park (Douglas County Parks Department 2001a).

4. *Studying the ecology of the population and assessing the threat of hybridization with Columbian black-tailed deer.* Several tasks in the Recovery Plan recommended research on the ecology of the population. A substantial amount of research has been conducted by the ODFW and the Oregon State University (Smith 1981; ODFW 1995; Ricca 1999; Whitney 2001). The BLM used information from these studies to develop the NBHMA management plan, the largest property managed for the deer. Laboratory studies and field observations have been used to gauge the extent of hybridization between Columbian white-tailed deer and Columbian black-tailed deer in Douglas County (Gavin and May 1988; Kistner and Denney 1991; ODFW 1995); none of these studies has indicated that hybridization is a threat to the population.

5. *Encouraging public support for Columbian white-tailed deer restoration.* The final set of tasks in the Recovery Plan deals with providing the public with information about the Columbian white-tailed deer restoration program. This task continues to be implemented by our biologists and the ODFW. The ODFW has produced informational materials on the deer population in Douglas County for the public and landowners. Our staff and the ODFW also provide information and recommendations to private landowners who have Columbian white-tailed deer on their property.

Recovery plans are intended to guide and measure recovery. The Act provides for delisting whenever the best available information indicates that a species, subspecies, or distinct population segment is no longer endangered or threatened. The Douglas County DPS population is robust and expanding, and substantial habitat has been protected by Federal acquisition and Douglas County's zoning and open space regulations. The recovery plan calls for

500 deer on 5,500 acres of secure habitat. There are currently over 6,000 deer and over 7,000 acres of secure public lands managed to benefit the deer, plus zoning and other regulations and plans protecting additional habitat. It is not feasible, absent considerable expense, to demonstrate that 500 specific deer live entirely within secure lands managed for their benefit, as most deer move between public and private lands. However, the overall population increase and amount of secure habitat, as discussed previously, indicate that these recovery goals have been met. Accordingly, as discussed below in the listing factor analysis, we believe that the improved status of the Columbian white-tailed deer in Douglas County justifies its removal from the List of Endangered and Threatened Wildlife. We have reached this conclusion with the concurrence of the Recovery Team (Recovery Team, *in litt.* 2001).

Previous Federal Action

On March 11, 1967, the Columbian white-tailed deer was listed in the **Federal Register** as an endangered species under the Endangered Species Preservation Act of 1966 (32 FR 4001). At that time, the subspecies was believed to occur only along the Columbia River, whereas the population in Douglas County was believed to be hybridized with the Columbian black-tailed deer (ODFW 1995). On March 8, 1969, we again published in the **Federal Register** (34 FR 5034) a list of fish and wildlife species threatened with extinction under the Endangered Species Conservation Act of 1969. This list again included the Columbian white-tailed deer. On August 25, 1970, we published a proposed list of endangered species, which included the Columbian white-tailed deer, in the **Federal Register** (35 FR 13519) as part of new regulations implementing the Endangered Species Conservation Act of 1969. This rule became final on October 13, 1970 (35 FR 16047). Species listed as endangered on the above-mentioned lists were automatically included in the Lists of Endangered and Threatened Wildlife when the Endangered Species Act was enacted in 1973. In 1978, the State of Oregon determined that white-tailed deer in the Roseburg area belonged to the Columbian subspecies (ODFW 1995). This determination resulted in that population being considered as endangered, together with the Columbia River population.

On May 11, 1999, we published a proposed rule to remove the Douglas County DPS of the Columbian white-tailed deer from the List of Endangered and Threatened Wildlife; in the same notice, we also proposed to establish two distinct vertebrate population segments of the subspecies (the Douglas County and Columbia River populations) (64 FR 25263). We accepted public comments until July 12, 1999. We reopened the public comment period on November 3, 1999, to allow peer review of the proposed rule (64 FR 59729) until November 18, 1999. We opened the public comment period again from December 29, 1999, through January 13, 2000, in order to provide three peer reviewers an opportunity to review previous public comments, and to accept any new public comments on the proposed rule (64 FR 72992).

In response to significant new information, on June 21, 2002, we published a supplemental proposed rule to establish the Douglas County DPS and the Columbia River DPS, and to remove the Douglas County DPS from the Federal list of Endangered and Threatened Wildlife (67 FR 42217). We accepted public comments until August 20, 2002. During the public comment period we also solicited and received independent peer review of the supplemental proposed rule. We held a public hearing on the supplemental proposal to delist the Douglas County DPS on July 30, 2002, in Roseburg, Oregon.

Summary of Comments on the Supplemental Proposed Rule

We summarized and responded to comments on the 1999 proposed rule and subsequent comment period reopenings in the supplemental proposed rule published in June 2002. We will not repeat those comments and our responses here. In the June 21, 2002, supplemental proposed rule and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and asked them to comment. We also requested peer review from three independent scientists. We published newspaper notices in the Roseburg, Oregon, *News-Review,* and in *The Oregonian,* of Portland, Oregon, on June 21, 2002, which invited general public comment. We received 16 written comments, including those of 1 Federal agency, the State of Oregon, 3 county and municipal governments, 3 peer reviewers, and 8 individuals or groups; at the public hearing, we received 7 oral comments. Of the comments received, 22 supported and 1 opposed the proposed action.

Comments received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into three general issues.

Issue 1: We received seven comments concerning the post-delisting monitoring plan. Commenters recommended continuation of the ODFW's population trend surveys, and also suggested that the monitoring plan include tracking of predation and disease occurrence in the Douglas County DPS, as well as an assessment of habitat quality on managed parcels. Commenters also recommended that the post-delisting monitoring period extend beyond the minimum requirement of 5 years, saying that 10 years may be more appropriate.

Our Response: Section 4(g) of the Act requires us to implement a system, in cooperation with the State, to monitor the status of delisted recovered species for a minimum of 5 years. We are working closely with the State to develop and implement an effective post-delisting monitoring plan for the Douglas County DPS. The monitoring program will include spring and fall census counts, analysis of key population parameters, tracking of disease levels, and an assessment of habitat protection efforts. The duration of the post-delisting monitoring plan has not yet been determined, but will not be less than 5 years post delisting, as required by the Act. See the Monitoring section of this final rule, below, for more information.

Issue 2: We received five comments regarding the need for a translocation program. Two of the commenters suggested using a trap-and-transplant program to alleviate the effects of overcrowding in portions of the Douglas County DPS's range. One commenter requested that we postpone delisting until a third population (in addition to the Douglas County and Columbia River populations) had been established via translocation from the Douglas County DPS in the Willamette Valley. Two of the peer reviewers offered views on translocation. One advised that translocation is appropriate for establishing new populations, but would not be a useful method to achieve density reduction in the existing population; the other reviewer stressed that the fate of translocated deer should be followed to determine the efficacy of such a program.

Our Response: Translocation is likely to be an important component of the management of the Douglas County DPS after delisting. In order to augment the Douglas County DPS in the northern portion of its current range, the State

will likely continue to use trap-and-transplant operations, which may also be a useful tool to manage specific problem deer. Establishing a third population in the Willamette Valley before delisting the Douglas County DPS, is not necessary. A review of the threats to the Douglas County DPS (see the Summary of Factors Affecting the Species section, below) shows that it no longer requires the protection of the Act; therefore, delisting the Douglas County DPS is warranted.

Issue 3: In its comments, the ODFW provided recommendations on additional research projects for the Douglas County DPS. Among the research projects the State would like to see carried out: Additional genetic studies to elucidate affinities among the Douglas County DPS, the Columbia River DPS, and the Idaho white-tailed deer; a new habitat mapping program for the Douglas County DPS; and new research on parasite and disease levels and their effects on the Douglas County DPS.

Our Response: Continued research is likely to be needed for future management of the Douglas County DPS and is appropriate for the State to lead, because the State will assume management responsibility for the population after delisting.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. We may determine a species to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act; we must consider these same five factors in delisting species. We may delist a species according to section 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) The species has recovered and is no longer endangered or threatened; and/or (3) The original scientific data used at the time the species was classified were in error.

After a thorough review of all available information, we have determined that the Douglas County DPS is no longer endangered or threatened with extinction. A substantial recovery has taken place since its listing in 1978, and none of the five factors addressed in section 4(a)(1) of the Act currently threatens the continued existence of the subspecies in Douglas County. These factors, and their relevance to the Douglas County DPS, are discussed below.

A. *The present or threatened destruction, modification, or curtailment of habitat or range.* The Recovery Team recognized conversion of habitat to rural residential homesites and intensive livestock grazing as the prime threats to Columbian white-tailed deer habitat in Douglas County (Service 1983). A large area of habitat used by the deer has been protected, which has contributed to the Douglas County DPS's recovery. Since 1978, over 2,830 ha (7,000 ac) have come into public ownership within the range of the Douglas County DPS. This acreage includes the BLM's NBHMA and Douglas County's Mildred Kanipe Memorial Park. In addition, several smaller parcels owned by the county and private landowners provide important refuge or hiding cover for deer.

The largest publicly owned parcel that provides habitat for deer is the NBHMA. The NBHMA, formerly the Dunning Ranch, was previously managed as a working cattle ranch. It was acquired by the BLM in 1994 through a land exchange (BLM 1998) specifically to secure habitat for the deer since it lies within the Douglas County DPS's core habitat. The NBHMA is located east of Roseburg in the North Umpqua River Basin and is characterized by four distinct habitat types: Grasslands and oak savannah (29 percent); hardwood/conifer forest (52 percent); oak woodlands (17 percent); and other habitat such as rock outcrops, riparian areas, and wetlands (2 percent) (BLM 1998). As many as 348 Columbian white-tailed deer have been estimated to occur on the NBHMA (S. Denney, ODFW, pers. comm. 2001). No active management occurred at the NBHMA in the period between its acquisition in 1994 and the completion of a management plan in 2001; this lack of management has resulted in a decline in habitat quality (BLM 2000). Thatch (rank vegetation) has built up in grassland areas, and invasion of undesirable shrub species, cedar encroachment in meadow areas, and conifer seedling establishment in oak woodlands have contributed to the decline in habitat quality by inhibiting forb production for deer forage, and by reducing the availability of preferred cover (BLM 1998). Even with this decline in habitat quality, the site continues to provide habitat for over 300 deer in the core of the Douglas County DPS's range. The delay in initiation of management activities resulted from the need to develop and approve a management plan for the parcel. A final management plan was approved in June 2001 (BLM 2001).

Management objectives identified in the final NBHMA management plan include: (1) Increased availability, palatability, and nutritional quality of deer forage and browse; (2) maintenance of mature oak, shrub, and herbaceous vegetation components; (3) control of noxious weeds; and (4) development of water sources (BLM 2001). Livestock grazing, prescribed burning, thinning, and timber management are some of the management tools that will be used to achieve these objectives (BLM 2001); these activities will be scheduled to avoid sensitive periods (such as fawning and nursing) for the deer (Service 2001).

Livestock grazing and prescribed burning will be used to increase the abundance of desirable forage plants, and thinning in oak woodlands and removal of encroaching conifers will provide more preferred open canopy hiding cover for the deer (BLM 2001; Service 2001). Heavy unregulated livestock grazing can be considered a threat to the Columbian white-tailed deer (Service 1983); the BLM recognizes that livestock grazing as a tool to improve deer habitat will have to be managed carefully on the NBHMA (BLM 2001). Poorly managed grazing can lead to the introduction or spread of non-native plant species, soil erosion and compaction, and reduction of desirable deer forage plants. However, the BLM will use livestock grazing as a tool to reduce thatch and annual grasses in favor of native perennial vegetation that the deer prefer, particularly in areas that are inaccessible to equipment used for mowing or seed drilling (BLM 2001). In the final management plan for the NBHMA, the BLM has stated that it will manage cattle herd dynamics, seasonal rotation, and stocking rates to enhance habitat for the deer (BLM 2001).

The final management plan also calls for development of water guzzlers (small mechanized watering trough), development of springs, pond construction, stream rehabilitation, and wetland enhancement to increase the use of habitats that are lightly used by the deer at present due to limited water availability (BLM 2001). This, in conjunction with forage and habitat improvement, should increase the carrying capacity of the NBHMA for Columbian white-tailed deer and would likely result in a better distribution of animals across the management area (Service 2001).

Implementation of the NBHMA final management plan will improve habitat quality for the deer (Service 2001). In

October 2001, the BLM began implementing the management plan by conducting a controlled burn to remove thatch on 162 ha (400 ac); subsequent monitoring shows that the burn was successful, and new forage plants have sprung up in the burn zone (Ralph Klein, BLM, pers. comm. 2001). In 2002, the BLM implemented several habitat improvements, including prescribed burning, mowing, water developments, stream restoration, interior fence removal, and noxious weed control (District Manager, BLM, *in litt.* 2002). We will continue to track the implementation of the NBHMA management plan through annual monitoring reports from the BLM, and as part of the post-delisting monitoring program.

The management plan also provides for a range of recreational opportunities within the NBHMA (nonmotorized trail use, hunting, and a boat ramp) (BLM 2001). In our Biological Opinion on the management plan, we concluded that these activities are compatible with management for Columbian white-tailed deer and other special status species, because the potential increase in public use that may result is not anticipated to negatively impact the deer, and the large amount of escape cover and forage areas available will provide an ample amount of refuge where disturbance may be avoided (Service 2001).

Mildred Kanipe Memorial Park, managed by the DCPD, is the second largest parcel of publicly owned land (445 ha) (1,100 ac) within the range of the Douglas County DPS; it lies about 16 km (10 mi) north of the NBHMA. Ms. Kanipe left the ranch to Douglas County in her will and directed the County to manage it as a wildlife refuge and working ranch (Kanipe 1983). Park activities, including recreation (equestrian and hiking trails), timber harvest, farming, and grazing are guided by the provisions in Ms. Kanipe's will, a new management plan, and the Douglas County Farm Lease program (Kanipe 1983; Douglas County Parks Department 2001a; Douglas County Parks Department 2001b). Ms. Kanipe's will states that the ranch is to be used for park purposes and includes a number of conditions relating to its management as a park: (1) No hunting or trapping is allowed; (2) all animals, birds, and fish are protected as in a refuge, provided that the county, for park purposes, may plant and permit fishing in the ranch ponds; (3) trapping and hunting of predatory animals is allowed in the event that they become a nuisance and harmful to domestic and wild animals both within the park and on adjoining lands; (4) the County may establish a limited picnic ground and associated parking facilities, but no motorized vehicles are permitted within the park except as may be required for park construction and maintenance; (5) pasture lands are to be cared for and continued in grass, and equestrian trails shall be permitted; and (6) no timber shall be cut or harvested except as may be necessary, and even then, only upon a sustained yield basis with all revenue from timber cutting used by the county in capital improvements upon the park (Kanipe 1983). The current farm lease at the park allows the lessee to graze sheep and cattle at the ranch. The terms of the lease include provisions to maintain pasture quality, minimize soil erosion, eradicate noxious non-native plants, and protect native wildlife and watercourses (Douglas County Parks Department 2001b). The annual farm lease provisions are reviewed and approved by the ODFW biologists (M. Black, ODFW, pers. comm. 2001).

Douglas County has prepared Coordinated Resource Management Plan Recommendations for Mildred Kanipe Memorial Park; a Steering Committee has been established, which includes representatives from our staff, local environmental and recreation groups, the Douglas County Parks Advisory Board, and individuals with forestry and range expertise (Douglas County Parks Department 2001a). The management plan covers a wide range of issues, including recreation, wildlife, grazing, timber management, and riparian conservation (Douglas County Parks Department 2001a).

Since 1998, the ODFW has conducted three translocations of marked Columbian white-tailed deer to the park. Of the 18 deer transplanted to the park, 7 are known to have died. Of those that died, one was an accidental death, two were killed by vehicles, one is suspected to have died of natural causes, two were likely the result of predation, and one was most likely an illegal kill (M. Black, ODFW, pers. comm. 2001; S. Denney, ODFW, pers. comm. 2001). The survivors have remained in or near the park, and at least two radio collared does have been observed with fawns (S. Denney, ODFW, *in litt.* 2001). In 2001, 25 deer were counted in the park (S. Denney, ODFW, pers. comm. 2001).

Between the years of 1996 and 2002, the ODFW implemented 23 enhancement projects to improve habitat for Columbian white-tailed deer on private property in Douglas County; most of the projects focused on improving riparian habitat conditions (Lindsay Ball, ODFW, *in litt.* 2002). These projects resulted in over 66 acres of stream-side habitat improvements for deer.

One parcel on private property provides protection for Columbian white-tailed deer habitat in perpetuity. In 1992, TNC purchased the Oerding Preserve at Popcorn Swale, a 14-ha (35-ac) site which is managed primarily for the endangered rough popcorn flower (*Plagiobothrys hirtus*) (Service 2000). The management objective at the preserve is to restore the native wet prairie (TNC 2001), but the preserve also provides some suitable foraging habitat for deer. Surveys have detected about 20 Columbian white-tailed deer on the parcel (S. Denney, ODFW, pers. comm. 2001).

Douglas County has implemented land-use plans and zoning ordinances that apply to private lands to protect habitat and assist in deer recovery (DCPD 2000a). These protective measures include retention of existing land uses that maintain essential habitat components. Minimum lot sizes for farm use and timberlands, as well as building setbacks along riparian zones, have been established to ensure maintenance of habitat and travel corridors (ODFW 1995; DCPD 2000a).

Douglas County's Columbian White-tailed Deer Habitat Protection Program was established in 1980 (DCPD 2000a). The County, in conjunction with the ODFW and us, identified the range of habitat with the greatest density of Columbian white-tailed deer, and 29,743 ha (73,495 ac) were designated as Essential Habitat Areas (DCPD 1995). Potential conflicting uses within the Essential Habitat Areas were identified as: (1) Residential development in native riparian habitat; (2) additional livestock development in lowland river valleys; and (3) brush clearing, aimed at creating and improving pastures for livestock, that removes cover for deer (DCPD 2000a). To address these concerns, 96.5 percent (28,553 ha) (70,555 ac) of the resource lands (agricultural or farm/forest) within the Essential Habitat Area are subject to a minimum parcel size of 32 ha (80 ac); any land division requests of less than 30 ha (75 ac) must be reviewed by the ODFW (DCPD 2000a). Land zoned as nonresource lands within the Essential Habitat Area (3.5 percent) is limited to single family dwellings, and rural residential development is limited to 0.8 ha (2 ac) and 2 ha (5 ac) lots (DCPD 1995; DCPD 2000a). Another component of Douglas County's program to preserve habitat for the subspecies is a 30-m (100-ft) structural development setback from streams to preserve riparian corridors within the Essential Habitat Area (DCPD 2000a).

Douglas County's application of zoning to protect Columbian white-tailed deer has been an essential factor in the Douglas County DPS's recovery. The county has succeeded in limiting development and maintaining low human densities in the core of the deer population's range. The maintenance of open space on private lands significantly enhances the value of small publicly owned parcels used by the deer, such as Whistler's Bend County Park. Whistler's Bend County Park is directly south of the NBHMA, across the North Umpqua River. The park is 71 ha (175 ac) in size and has a population of about 100 Columbian white-tailed deer (S. Denney, ODFW, pers. comm. 2001). The park is managed for human recreation needs (DCPD 2000a), but also provides hiding cover for deer, which make forays onto adjacent private lands to forage in the pastures and suburban yards surrounding the park (S. Denney, ODFW, pers. comm. 2001). Small parcels such as this park function as important refugia for deer that meet many of their foraging requirements on adjacent private lands (Recovery Team, *in litt.* 2001).

Since management actions began, the Douglas County DPS population has increased, and its range has expanded. In the 1930s, the Columbian white-tailed deer population in Douglas County was estimated at fewer than 300 individuals within a range of about 79 km^2 (31 mi^2) (Crews 1939). By 1983, the population had increased to about 2,500 deer (Service 1983). The population has continued to grow and is currently estimated at over 6,000 deer (Lindsay Ball, ODFW, *in litt.* 2002). Along with this increase in numbers, the range also has expanded to the north and west, and the subspecies now occupies an area of approximately 800 km^2 (309 mi^2) (ODFW 1995).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The white-tailed deer is a popular big-game animal. Past overutilization was considered a threat to the Douglas County DPS, and was one of the several factors leading to its listing as endangered.

Currently, the State of Oregon does not permit any hunting of white-tailed deer in western Oregon (ODFW 2001), and measures have been taken to reduce accidental shooting of white-tailed deer. For example, at present, black-tailed deer hunting is allowed on the NBHMA, but is limited by special permit only, usually 25 permits or fewer, and is limited to 1 or 2 weekends of the general deer season. Pre-hunt training on deer identification is mandatory to prevent the accidental shooting of white-tailed deer. This has resulted in hunting having no significant impacts to the Douglas County DPS population in this area (Service 2001).

Recreational hunting and the possession of loaded firearms are not permitted in Douglas County parks, with the exception of limited waterfowl hunting in some reservoir parks. Therefore, deer hunting is prohibited at Mildred Kanipe Memorial Park and at Whistler's Bend County Park (J. Powers, pers. comm. 2001). Ms. Kanipe's will also states that no hunting or trapping is to be allowed in the park (Kanipe 1983). TNC also prohibits hunting on the Oerding Preserve in order to maintain a refugia for Columbian white-tailed deer (TNC 2001).

With the delisting of the Douglas County DPS, the Oregon Fish and Wildlife Commission, with input from the ODFW, will be responsible for determining whether a sport hunting season is justified. State guidelines direct the ODFW to manage wildlife populations to assure population health for present and future generations of Oregonians to enjoy (ODFW, *in litt.* 2001). Initially, the ODFW intends to focus its efforts on expanding the range of the Columbian white-tailed deer with a trap and relocation program (ODFW, *in litt.* 2001). A recreational hunt could be considered as another tool to reduce population densities and improve herd health in selected areas (ODFW, *in litt.* 2001). The population currently numbers more than 6,000 deer, a number considered large enough to withstand some level of regulated harvest (ODFW, *in litt.* 2001).

Poaching, or illegal hunting, of Columbian white-tailed deer has been documented in the Douglas County DPS (Ricca 1999; ODFW, *in litt.* 2001). During a recent 3-year study, 3 deer, out of 64 marked, were believed to have been taken by poachers (Ricca 1999). The Oregon State Police actively prosecutes poachers in Douglas County; cooperation among the Oregon State Police, the ODFW, our local biologists, and our National Fish and Wildlife Forensics Laboratory has resulted in many successful cases. In each of the past 3 years, the Oregon State Police has successfully prosecuted three to five poaching cases. Nine of these illegal kills were proved to be intentional poaching, whereas four were cases of misidentification (*i.e.*, confusion with legally hunted black-tailed deer) (Sgt. J. Myhre, pers. comm. 2001). This low level of illegal hunting is not considered a threat to the survival of the population (ODFW 1995).

Other than sport hunting, we do not anticipate an appreciable demand for Columbian white-tailed deer for commercial or recreational purposes. There may be a small demand for deer for research. Scientific studies, permitted under section 10(a)(1)(A) of the Act, have resulted in the take of as many as 40 deer during 1 year from the Douglas County DPS (Kistner and Denney 1991). These permitted takings have not had measurable impacts on population trends in the Douglas County DPS. Once the Douglas County DPS is delisted, the ODFW will administer scientific taking permits based on the merits of the proposed research and with consideration of the effects to the population (ODFW, *in litt.* 2001).

We believe that ample protections are in place under State law and regulations, and thus overutilization is unlikely to be a threat to the population in the future. Our proposed monitoring plan (see the Monitoring section, below) will track the status of the Douglas County DPS for at least 5 years following delisting, which would alert us to any new threat of overutilization.

C. *Disease or predation.* No known epizootic (epidemic in animals) diseases have affected the Douglas County DPS, although several studies have documented the incidence of bacterial and parasitic infections. For example, in a recent study, disease was determined to have contributed to the deaths of adult deer in poor nutritional condition. Of 29 adult deer that died during a 3-year study, 28 percent died of a combination of disease and emaciation (Ricca 1999; Ricca *et al.* 2002). Necropsies revealed pneumonia, lungworms, and high levels of ectoparasite infestation; none of these diseases would have been likely to kill an otherwise healthy adult deer, but in combination with a poor nutritional state (as evidenced by emaciation), these diseases were likely a factor in the cause of death (Ricca 1999; Ricca *et al.* 2002). Diseases noted in fawn necropsies also included pneumonia and occasional instances of bacterial or viral infections (Ricca 1999). An earlier study by the ODFW found moderate to high levels of internal and external parasites on adult deer and fawns, with low levels of viral diseases communicable to livestock (Kistner and Denney 1991).

High internal parasite loads have been considered an indication of high deer densities (ODFW, *in litt.* 2001), and recent research has found evidence that some Columbian white-tailed deer in Douglas County are suffering poor health resulting from high density (Ricca 1999). Delisting the Douglas

County DPS would allow more management flexibility, such as hazing to disperse the deer to reduce or prevent large deer concentrations, or a regulated harvest, which could reduce the density of deer, resulting in improved herd health.

Deer hair-loss syndrome has been a concern in the Columbia River DPS, but has not been prevalent in the Douglas County DPS. This syndrome appears to be caused by a combination of internal and external parasites; internal parasites such as *Dictyocaulus viviparus* and *Parelaphostrongylus* spp. invade the lungs of infected deer, resulting in a low-grade pneumonia (Washington Department of Fish and Wildlife (WDFW) 1999; Biederbeck 2002). The pneumonia infection may suppress the deer's immune system, making infected deer more susceptible to external parasites. The disease is not necessarily fatal, but hair loss can result in death due to hypothermia in winter (WDFW 1999; Biederbeck 2002). Spotlight surveys by the ODFW noted 2 deer, out of 329 counted, with obvious hair loss problems (ODFW, *in litt.* 2001). Two marked deer on the NBHMA are known to have died with hair loss; an infected fawn was noted, but is not known to have died from the disease (ODFW, *in litt.* 2001). Deer hair-loss syndrome is not currently considered to be a threat to the Douglas County DPS, but the post-delisting monitoring program will include tracking the incidence of this disease.

In August 2001, a probable case of adenovirus, a viral disease, was identified through laboratory analysis in a Columbian white-tailed deer fawn in Douglas County. It is likely that the fawn contracted the disease while being held in a rehabilitation facility. This would be the first known incidence of this disease in white-tailed deer (Dr. Beth Valentine, Veterinary Diagnostic Laboratory, Oregon State University, *in litt.* 2001; Dr. Terry Hensley, D.V.M., U.S. Department of Agriculture, Veterinary Services, pers. comm. 2001). Adenovirus infection is potentially fatal to young deer, which may succumb to respiratory failure, hemorrhagic syndromes, or acute diarrhea and dehydration caused by the disease (Dr. T. Hensley, pers. comm. 2001). The disease has been previously detected in mule deer (*Odocoileus hemionus*) in northern California. An outbreak in the 1990s caused widespread mortality, but appears to have had no long-term effect on the population in California (Tapscott 1998). Therefore, we have determined that adenovirus is not a significant threat to the Douglas DPS. However, since its existence had been confirmed in the Douglas County DPS, the post-delisting monitoring program will include tracking the incidence of this disease.

Predation is known to be a leading cause of death in white-tailed deer populations (Halls 1978). Ricca *et al.* (2002) studied survival of Columbian white-tailed deer fawns, and found that predation was the most frequent known cause of death for fawns in his study. Bobcats (*Lynx rufus*) were the dominant predator, and researchers found some evidence of predation by red foxes (*Vulpes vulpes*) and domestic dogs (Ricca *et al.* 2002). Coyotes (*Canis latrans*) are frequent predators of white-tailed deer elsewhere (Halls 1978), but recent research (Ricca *et al.* 2002) found no evidence of fawns killed by coyotes in Douglas County. The apparent absence of coyote predation may be due in part to the Wildlife Services predator control program at the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS). Douglas County contracts with APHIS, Wildlife Services, to conduct predator control. The program focuses mainly on coyotes, but also responds to fox, bobcat, and cougar (*Puma concolor*) complaints (Stan Thomas, District Supervisor, APHIS, Wildlife Services, pers. comm. 2001). The purpose of the program is to protect sheep and cattle ranching operations in the area, but it may also provide incidental benefits to the Douglas County DPS by reducing the number of potential predators on fawns. In summary, disease and predation are not considered threats to the Douglas County DPS.

D. *Inadequacy of existing regulatory mechanisms.* The lack of adequate Federal, State, or local regulatory mechanisms for protecting habitat and controlling take was largely responsible for the decline of the deer. Columbian white-tailed deer in Douglas County have recovered because Federal, State, and local governments have exercised their authorities to protect the subspecies and its habitat.

For example, the State of Oregon currently prohibits hunting of all white-tailed deer in western Oregon (described in Factor B, above). Delisting would provide the State with the flexibility to allow some regulated harvest to reduce population density if necessary to improve herd health.

Douglas County also provides important regulatory protection for Columbian white-tailed deer habitat on private lands through its Comprehensive Plan and Deer Habitat Protection Program (DCPD 1995; 2000a). The Comprehensive Plan addresses Oregon's Statewide Planning Goals. Goal 5 requires local governments to conserve open space and protect natural and scenic resources for future generations; Douglas County's Columbian White-Tailed Deer Habitat Protection Program, which is described in more detail under Factor A, was established in 1980 under Goal 5 (DCPD 2000a). Statewide planning Goals 3 and 4 provide guidelines to maintain the rural landscape in Douglas County by protecting agriculture, timber, and transitional (farm/forest) lands. These goals were also incorporated into Douglas County's Columbian White-tailed Deer Habitat Protection Program, and also provide a measure of protection for deer habitat (DCPD 2000a). Douglas County's zoning and planning ordinances and county park designations are recognized in the Recovery Plan as valid methods to secure habitat, and will provide continuing regulatory protection of Columbian white-tailed deer habitat unless changed through a public process.

E. *Other natural or manmade factors affecting its continued existence.* There are a number of other threats to the survival of individual Columbian white-tailed deer in Douglas County. These include road kill, hybridization with black-tailed deer, emaciation, conflicts with private landowners, and fire.

Road kill is one of the major sources of mortality for white-tailed deer in the United States (Halls 1978). Ricca *et al.* (2002) concluded that road kill was the second most frequent cause of death in his study; they determined that five deer (17 percent of marked adult deer) over a period of 3 years were killed by vehicle collisions. Apparently, the incidence of road kill is fairly constant. Almost 20 years earlier, Smith (1981) found car collisions to be the second most frequent cause of death for deer in Douglas County. Although road kill is a major source of mortality for the Douglas County DPS, it has not been a limiting factor for population growth (D. Jackson, ODFW, pers. comm. 2001).

Hybridization between Columbian white-tailed deer and Columbian black-tailed deer has long been suspected to occur, and probable hybrids have been observed in Douglas County for many years (ODFW 1995). Biologists from the ODFW have noted evidence of hybridization (*i.e.*, deer with physical characteristics of both white-tailed and black-tailed deer), but concluded that the rate of cross-breeding is not a threat to the continued existence of the Douglas County DPS (Kistner and Denney 1991). Gavin and May (1988) conducted laboratory analyses of muscle samples from Columbian white-tailed

deer and Columbian black-tailed deer in Douglas County and found no evidence of hybridization between the two subspecies.

Emaciation, which may be the result of poor forage quality, was determined to be the leading cause of death in a recent study. During 3 years of research on marked deer, Ricca (1999) found that 28 percent of the deer that died during the study were emaciated and diseased (see disease discussion in Factor B, above). This finding is also consistent with an earlier study (Smith 1981). High deer density may result in poor habitat quality through overuse of habitat resources (Ricca 1999). Management actions to reduce deer density or increase habitat quality could reduce the incidence of emaciation. Active habitat management (prescribed burning) to improve forage quality has begun at the *NBHMA®. Klein, pers comm.*, 2001; District Manager, BLM, *in litt.* 2002).

With growth of the deer population, deer-human conflicts have increased. From 1996 to 2000, the ODFW recorded 249 complaints from private property owners with deer depredation problems (ODFW, *in litt.* 2001). Resident suburban deer can cause serious damage to croplands, gardens, and ornamental plantings. Conflict ensues because under the Act it is illegal to ''take'' listed deer, which includes such actions as hazing or harassing to disperse the deer, even where serious continued damage is occurring. Delisting the Douglas County DPS allows more flexibility in development and implementation of a management plan to control and enhance deer populations, while fostering better relationships with landowners and more effective long-term conservation.

Fire has historically played a large part in shaping habitat for Columbian white-tailed deer in Douglas County. Although fire may have negative short-term impacts on habitat, deer distribution, and numbers, the long-term effects can be beneficial by removing decadent brush, promoting the growth of nutritious vegetation, and maintaining the oak/grassland habitat that the deer prefer (Halls 1978; BLM 2000). Columbian white-tailed deer evolved with the occurrence of fire in the ecosystem, and prescribed burning is one of the key management prescriptions for restoring and maintaining habitat quality for the deer at the NBHMA (BLM 2000; Service 2001). The occurrence of a large-scale devastating wildfire is unlikely. The growing human population of Douglas County demands active fire suppression on public and private lands which, will likely convey some protection for the deer.

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by the Douglas County DPS. On the basis of this evaluation, we conclude the threats that caused the Douglas County population of Columbian white-tailed deer to decline no longer pose a risk to the continued survival of the DPS, and its removal from the List of Endangered and Threatened Wildlife is appropriate. The population is robust, and protection of abundant habitat used by the deer in Douglas County justifies delisting the DPS. During the public comment period on the supplemental proposed rule, we asked for review from three independent peer reviewers. All three peer reviewers agreed that the data support our decision to delist.

In accordance with 5 U.S.C. 553(d), we have determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting formal section 7 consultation on actions that may affect a species no longer in need of the protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the Douglas County DPS of Columbian white-tailed deer.

Effects of the Rule

Promulgation of this final rule will affect the protection afforded to the Douglas County DPS under the Act. Taking, interstate commerce, import, and export of deer from the Douglas County DPS are no longer prohibited under the Act. In addition, with the removal of the Douglas County DPS from the List of Endangered and Threatened Wildlife, Federal agencies are no longer required to consult with us under section 7 of the Act to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of the deer in Douglas County, Oregon.

Harvest and permitted scientific take will be regulated by the State of Oregon, and will be considered in the context of potential effects to population stability (ODFW, *in litt.* 2001). Biological data such as sex ratios, age, reproductive status, and health status (*i.e.*, parasitism and bacterial infections) from individual deer taken through legal harvest or the issuance of special permits will be available to inform future management. Delisting the Douglas County DPS is expected to have positive effects in terms of management flexibility to State and local governments. Deer densities in selected areas may be reduced by management actions. Individual deer could be controlled by hazing, and targeted individuals could be removed where repeated severe damage to agricultural crops, gardens, or ornamental plantings was documented. Thus, delisting will allow managers greater flexibility to take actions to reduce overcrowding in selected areas, which could result in a healthier deer population.

The delisting of the Douglas County DPS of Columbian white-tailed deer will not change the endangered status of the Columbia River DPS of this subspecies. It remains fully protected by the Act.

Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

A monitoring plan is being developed for the Douglas County DPS. The plan will be designed to detect changes in the status of the population, and will be comprised of three components: (1) Monitoring population size and other key population parameters; (2) tracking the incidence of disease in the herd; and (3) periodic assessment of habitat protection efforts in the Douglas County DPS's range.

The three components of the plan will likely be addressed as follows: (1) We will work with the ODFW to continue spring and fall population surveys; data from these surveys will allow us to assess key population parameters including population size, trend, recruitment, and distribution. (2) Data on the incidence of disease will be gathered to follow trends in contagious diseases in the herd, particularly those diseases that have a potential to become epizootic (*e.g.*, adenovirus and deer hair loss syndrome). Additional research into potential epizootic diseases may be conducted, when warranted, in cooperation with other agencies during the monitoring period. (3) Habitat protection efforts will be assessed in a

coordinated periodic review of the various management plans (*i.e.*, NBHMA, Mildred Kanipe Memorial Park, and Douglas County's Deer Habitat Protection Program). Data from the three components of the monitoring program will be evaluated by our experts, the ODFW, and the Recovery Team, as appropriate.

If at any time during the monitoring period we detect a significant change in the population, we will evaluate and change the monitoring methods, if appropriate, and/or consider relisting the DPS, if warranted. At the end of the monitoring period, we will decide if relisting, continued monitoring, or an end to monitoring activities is appropriate. If warranted (*e.g.*, data show a significant decline or increased threats), we will consider continuing monitoring beyond the specified period and may modify the monitoring program based on an evaluation of the results of the initial monitoring program.

The monitoring plan is being developed with the assistance of our technical staff and the ODFW, and will be peer reviewed. When a draft of the monitoring plan is complete, we will publish a notice of its availability in the **Federal Register** inviting public comment.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and recordkeeping activities (5 CFR 1320.8(d)). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that ''ten or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period.

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act. The information needed to monitor the status of the Columbian white-tailed deer will be collected primarily by Service, ODFW, and the BLM. We do not anticipate a need to request data or other information from the public, other than the ODFW, to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more individuals, groups, or organizations per year, we will first obtain information collection approval from OMB.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this designation in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES** section, above).

Author

The primary author of this final rule is Cat Brown, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **ADDRESSES** section, above).

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

■ For the reasons set out above, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 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. We amend section 17.11(h) by revising the entry for ''deer, Columbian white-tailed, *Odocoileus virginianus leucurus*, under ''Mammals'' in the table ''List of Endangered and Threatened Wildlife'', to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Deer, Columbian white-tailed.	*Odocoileus virginianus leucurus*.	U.S.A. (WA, OR)	Columbia River (Clark, Cowlitz, Pacific, Skamania, and Wahkiakum Counties, WA, and Clatsop, Columbia, and Multnomah Counties, OR).	E	1,738	NA	NA
*	*	*	*	*	*		*

Dated: July 1, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–17756 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 68, No. 142
Thursday, July 24, 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

Animal and Plant Health Inspection Service

7 CFR Part 331

[Docket 03–070–1]

Public Meetings; Listing of Biological Agents and Toxins

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: This is to notify individuals and entities possessing, using, or transferring biological agents and toxins listed in 7 CFR 331.3, as well as other interested parties, that the Animal and Plant Health Inspection Service will hold a series of public meetings to provide a forum for discussion of the criteria used to determine whether an agent has the potential to pose a severe threat to plant health or products.

DATES: We will consider all comments that we receive on or before September 8, 2003.

Three public meetings are scheduled for August 2003. They will be held on August 12, 2003, from 5:30 to 8:30 p.m. in Charlotte, NC; on August 19, 2003, from 9 a.m. to 3 p.m. in Riverdale, MD; and on August 21, 2003, from 9 a.m. to 3 p.m. in Sacramento, CA.

ADDRESSES: If you cannot attend the meetings and wish to submit comments, you may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–070–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–070–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–070–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

The public meetings will be held at the following locations:

1. Charlotte, NC. The Charlotte Convention Center, 510 South College Street, Room 217AB, Charlotte, NC 28202.

2. Riverdale, MD. The USDA Center at Riverside, 4700 River Road, Riverdale, MD 20737. Travel directions to the USDA Center at Riverside are available on the Internet at *http://www.aphis.usda.gov/ppq/direct.html*. Picture identification is required to gain access to the building. Parking is available next to the building for a $2.25 fee (please have quarters or $1 bills available). The nearest Metro station is the College Park station on the Green Line, which is within walking distance.

3. Sacramento, CA. The John E. Moss Federal Building, General Services Administration, 650 Capital Mall, 1st Floor Conference Center, Stanford Room, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Firko, Assistant Director, Plant Health Programs, USDA, APHIS, PPQ, 4700 River Road Unit 137, Riverdale, MD 20737–1236; (301) 734–8758.

SUPPLEMENTARY INFORMATION: On June 12, 2002, the President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188). Title II of Public Law 107–188, ''Enhancing Controls on Dangerous Biological Agents and Toxins'' (sections 201 through 231), provides for the regulation of certain biological agents and toxins by the Department of Health and Human Services (subtitle A, sections 201–204) and the Department of Agriculture (subtitle B, sections 211–213), and provides for interagency coordination between the two departments regarding overlap agents and toxins (subtitle C, section 221). For the Department of Health and Human Services, the Centers for Disease Control and Prevention (CDC) has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the Department of Agriculture (USDA).

In subtitle B (which is cited as the ''Agricultural Bioterrorism Protection Act of 2002,'' referred to below as the Act), section 212(a) provides, in part, that the Secretary of Agriculture (the Secretary) must establish by regulation a list of each biological agent and each toxin that she determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products. In determining whether to include an agent or toxin on the list, the Act requires the Secretary to consider:

1. The effect of exposure to the agent or toxin on animal or plant health, and on the production and marketability of animal or plant products;

2. The pathogenicity of the agent or the toxicity of the toxin and the methods by which the agent or toxin is transferred to animals or plants;

3. The availability and effectiveness of pharmacotherapies and prophylaxis to treat and prevent any illness caused by the agent or toxin; and

4. Any other criteria that the Secretary considers appropriate to protect animal or plant health, or animal or plant products.

In accordance with these statutory requirements, on August 12, 2002, we published in the **Federal Register** (67 FR 52383–52389, Docket No. 02–082–1) an interim rule that established the initial lists of biological agents and toxins. To accomplish this, we established new parts in the Code of Federal Regulations (CFR), one part in the plant-related provisions of title 7, chapter III, and one part in the animal-related provisions of title 9, chapter I. Then, on December 13, 2002, we published in the **Federal Register** (67 FR 76908–76938, Docket No. 02–088–1) an interim rule that amended the initial

lists of biological agents and toxins in both 7 CFR 331.3 and 9 CFR 121.3.

The Act requires that the lists of biological agents and toxins be reviewed and republished biennially, or more often as needed, and revised as necessary. In addition, the Act requires that, when determining whether to include an agent or toxin, the Secretary shall consult with appropriate Federal departments and agencies and with scientific experts representing appropriate professional groups.

In preparation for the biennial review of the list required by the Agricultural Bioterrorism Protection Act of 2002, APHIS' Plant Protection and Quarantine program intends to reevaluate and further develop the criteria used to determine whether an agent has the potential to pose a severe threat to plant health or products. Accordingly, we are holding a series of public meetings to provide a forum for discussion of the criteria that should be used.

The meetings will be held on August 12, 2003, from 5:30 to 8:30 p.m. in Charlotte, NC; on August 19, 2003, from 9 a.m. to 3 p.m. in Riverdale, MD; and on August 21, 2003, from 9 a.m. to 3 p.m. in Sacramento, CA. Information regarding the meetings may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments

If you cannot attend the meeting, you may submit written comments on the topics outlined in this notice. To submit written comments, please follow the instructions listed under the heading **ADDRESSES** near the beginning of this document.

Done in Washington, DC, this 21st day of July, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18951 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 00–024–1]

Veterinary Diagnostic Services User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to increase the user fees for veterinary diagnostic services to reflect changes in our operating costs and changes in calculating our costs. We are also proposing to set rates for multiple fiscal years. These proposed actions are necessary to ensure that we recover the actual costs of providing these services. We are also proposing to provide for a reasonable balance, or reserve, in the veterinary diagnostics user fee account. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes us to set and collect these user fees.

DATES: We will consider all comments that we receive on or before September 22, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–024–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–024–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–024–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Dr. Randall Levings, Director, National Veterinary Services Laboratories, 1800 Dayton Road, P.O. Box 844, Ames, IA 50010; (515) 663–7357.

For information concerning rate development for the proposed user fees, contact Mrs. Kris Caraher, Accountant, User Fees Section, MRPBS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import and export related services for live animals and birds and animal products are contained in 9 CFR part 130 (referred to below as the regulations). These user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended (21 U.S.C. 136a), which provides that the Secretary of Agriculture may, among other things, prescribe regulations and collect fees to recover the costs of veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States.

In this document, we are proposing to amend the regulations by increasing the user fees for certain veterinary diagnostic services, including certain diagnostic tests, reagents, and other veterinary diagnostic materials and services. Operating costs have increased since these user fees were established in a final rule published in the **Federal Register** on October 7, 1998 (63 FR 53783–53798, Docket No. 94–115–2). Therefore, the user fees need to be updated to reflect those increases. However, the main reason for the increase in the fees is due to new cost-finding techniques employed by APHIS. The Statement of Federal Financial Accounting Standards (SFFAS) No. 4, ''Managerial Cost Accounting Standards and Concepts,'' issued by the Office of Management and Budget, mandated that APHIS capture cost accounting data in its program costs. We were required to accumulate and report the costs of veterinary diagnostic activities on a regular basis through the use of cost accounting systems and cost finding techniques. In order to comply with SFFAS No. 4, APHIS conducted an Activity Based Costing (ABC) project at the National Veterinary Services Laboratories (NVSL) in Ames, IA, which identified the sources of all costs for veterinary diagnostic services. As a result of that project, we determined that costs for user fee-related services were not adequately being recovered through user fee collections. Based on this determination, we are proposing new fees to recover these newly identified costs. Each of the updated user fees contains a proportionate share of the costs identified in the ABC study.

The user fees that we are proposing for veterinary diagnostic goods and services would cover multiple fiscal years (2004 through 2007 and beyond). Establishing annual user fee changes in

advance would allow users to incorporate the fees into their budget planning.

Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells and, if so, to identify those organisms or agents. Services in this category include: (1) Performing laboratory tests and providing diagnostic reagents and other veterinary diagnostic materials and services at the NVSL Foreign Animal Disease Diagnostic Laboratory (NVSL FADDL) in Greenport, NY; and (2) performing identification, serology, and pathobiology tests and providing diagnostic reagents and other veterinary diagnostic materials and services at NVSL in Ames, IA.

APHIS veterinary diagnostic user fees fall into six categories:

(1) Laboratory tests, reagents, and other veterinary diagnostic services performed at NVSL FADDL;

(2) Laboratory tests performed as part of isolation and identification testing at NVSL in Ames;

(3) Laboratory tests performed as part of serology testing at NVSL in Ames;

(4) Laboratory tests performed at the pathobiology laboratory at NVSL in Ames;

(5) Diagnostic reagents produced at NVSL in Ames or other authorized sites; and

(6) Other veterinary diagnostic services or materials provided at NVSL in Ames.

Need for Regulation

User fees recover the cost of operating a public system by charging those members of the public who use the system, rather than the public as a whole, for its operation. Financing veterinary diagnostic services and products by charging for the right to use the incremental service internalizes those costs to those who require the service and benefit from it.

Veterinary diagnostic services and products enhance livestock production, trade, and research. The socially optimal prices for such commodities, of which veterinary diagnostics are inputs, are those price levels that induce the output level where the marginal benefit (what people are willing to pay for the good) is exactly equal to the marginal social cost (all costs associated with the production of the final output, including veterinary diagnostics). As it stands now, veterinary diagnostic services and products are provided at levels below their full cost to APHIS. These costs are, therefore, only partly incorporated into producers' costs of production. Our proposed revisions of the fee-for-service charges to recover the costs incurred by APHIS would move the private costs of individuals closer to the true cost of producing their outputs. The proposed annual increases, which would span fiscal years 2004 through 2007, would help ensure that the fees accurately reflect the cost of providing the service.

Development of Fee Structure

User fee components. The user fees proposed in this document are based on average laboratory employee salaries and benefits in each of the fiscal years 2004 through 2007, and estimates of the number of direct labor hours required to provide each service. The proposed user fees have been calculated to recover the full costs for tests, diagnostic reagents, and other veterinary diagnostic services. These costs include direct labor costs, administrative support costs, premium costs (if any), agency overhead costs, and departmental charges. These components are described below; the user fee calculation for the proposed virus isolation fee for fiscal year (FY) 2004 is used throughout as an example.

We are proposing to charge a specific dollar amount for each service we provide (*i.e.*, for each test we perform or each diagnostic reagent or other veterinary diagnostic service we provide). We have attempted to minimize the costs of our services, thereby keeping APHIS user fees at the lowest possible level. If, in the future, a user requests a test, diagnostic reagent, or other veterinary diagnostic material or service that is not specifically listed in our regulations, we would charge the proposed hourly user fee set forth in proposed § 130.19 for the amount of time required to perform the service, calculated to the nearest quarter of an hour.

Each user fee varies based on the direct labor hours required to perform the test or provide the diagnostic reagent or other veterinary diagnostic material or service. For example, the time spent by laboratory personnel to prepare a sample, conduct the test, and read the test would be part of the direct labor hours for testing a tissue sample for disease-causing organisms. In cases where a test is performed for more than one disease, it may take different amounts of time for each disease. Those times have been averaged to calculate the user fee for the test. We have carefully calculated all of our proposed user fees to correctly reflect the direct labor hours required for each test, reagent, or service. We took into account variations in the time needed to provide a service by determining the average time necessary to provide the service; similar user fee components are used for other agency user fees throughout the regulations.

Direct labor costs. Direct labor costs are the average salary and benefit costs of the laboratory employees performing the service multiplied by the estimated direct labor hours required. Average laboratory costs were used to calculate direct labor costs because we have determined that it is more accurate to use the average salary for laboratory employees to calculate the user fee. For example, the estimated average laboratory salary at the Diagnostic Virology Lab for FY 2004 is $28.85 per hour. On average, it takes 0.295 hours per virus isolation test, leading to direct labor costs of $8.51.

Administrative support costs. Administrative support costs are incurred at the laboratories. They include clerical and administrative activities; direct materials; indirect labor hours; rent; billing and collection costs; travel and transportation for personnel, supplies, equipment, and other necessary items; training; legal counsel; capital equipment costs; general supplies for offices, washrooms, and cleaning; contractual services; grounds maintenance; and utilities. Direct materials include the cost of any materials needed to conduct the test or to provide the diagnostic reagent, slide set, tissue set, or service. For example, direct materials for conducting a laboratory test include, but are not limited to, glassware, chemicals, and other supplies necessary to perform the test. Indirect labor hours include supervision of personnel and time spent doing necessary work, such as repairing equipment, that is not directly connected with a specific test, diagnostic reagent, or other veterinary diagnostic material or service. Contractual services may include, but are not limited to, guard service, trash pickup, and maintenance. Utilities include water, telephone, electricity, natural and propane gas, and heating and diesel oil.

The costs of administrative support are applied as a percentage of the base direct labor amount; at NVSL in Ames, administrative support is 296 percent of direct labor, and at NVSL FADDL, administrative support is 1,638 percent of direct labor. For example, the administrative support costs for the virus isolation test are calculated at 296 percent of its direct labor costs of $8.51 to be $25.19. The total direct labor and administrative support costs for one virus isolation test are $33.70.

NVSL FADDL administrative support costs compared to NVSL in Ames costs.

Readers may note that our proposed user fees for tests performed at NVSL FADDL are higher than our proposed user fees for the same tests performed at NVSL in Ames. Both NVSL FADDL and NVSL in Ames work with infectious and contagious disease agents. However, NVSL FADDL, which is isolated from the U.S. mainland, is designed to work specifically with highly infectious diseases exotic to the United States. Because of this, special biosecurity measures are required at NVSL FADDL that are not required at NVSL in Ames. As a result, NVSL FADDL operating costs are higher than NVSL in Ames' operating costs. The user fees we are proposing reflect this difference in costs.

Premium costs. Premium costs are expenses that are incurred solely for a specific test or service. For example, certain tests require expensive reagents in addition to the direct labor time and laboratory materials included in administrative support costs. Premium costs for the proposed flat rate user fees have been included in the proposed calculated fees. For example, each sterilization by gamma radiation at NVSL FADDL requires special radioactive materials, irradiation costs, and travel costs for an APHIS employee to hand-carry the material. Based on the high amount of costs involved, these premium costs have been added to the proposed specific fee involved rather than included as an administrative support cost that is spread among all fees for tests, reagents, and other services.

Agency overhead. Agency overhead is the pro rata share, attributable to a particular diagnostic reagent, material, or veterinary diagnostic service, of the management and support costs for all Agency activities at the regional level and above. Included are the costs of providing budget and accounting services, management support at the headquarters and regional levels, including the Administrator's office, and personnel services, public information services, and liaison with Congress. Agency overhead is calculated at 16.15 percent of total direct labor and support costs. For example, the agency overhead for one virus isolation test is $5.44, which is the product of virus isolation direct labor and administrative support costs of $33.70 multiplied by 16.15 percent.

Departmental charges. Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the U.S. Department of Agriculture. Services the Department provides centrally include the Federal telephone service; mail; National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and departmental forms. The Department notifies APHIS how much the agency owes for these services.

We have included a pro rata share of these departmental charges, as attributed to a particular test, diagnostic reagent, or other veterinary diagnostic material or service, in our user fee calculations at the rate of 5.23 percent. For example, departmental charges to perform one virus isolation test are $2.05. This amount equals 5.23 percent of total direct labor costs, administrative support costs, and Agency overhead costs of $39.14 described above.

Reserve. We are proposing to add an amount that would provide for a reasonable balance, or reserve, in the veterinary diagnostics user fee account. All user fees would contribute to the reserve proportionately. The reserve would ensure that we have sufficient operating funds in cases of fluctuations in activity volumes, bad debt, program shutdown, or customer insolvency. We intend to monitor the reserve balance closely and propose adjustments in our fees as necessary to ensure a reasonable balance. For example, the reserve amount included in the calculation for one virus isolation test is $2.06 per test. The total costs in this example thus far equal $43.25.

Calculation of proposed user fees. The basic steps in the calculation for each particular service are: (1) Calculate direct labor costs by determining the average amount of direct labor required to perform the service and multiply the average direct labor hours by the average salary and benefit costs for laboratory employees; (2) calculate the pro rata share of administrative support costs; (3) determine the premium costs (if any); (4) calculate the pro rata share of agency overhead and departmental charges, respectively; (5) add all costs; and (6) round up to the next $0.25 for all fees less than $10 or round up or down to the nearest dollar for all fees greater than $10. For example, the total virus isolation cost per test for FY 2004 of $43.25 is rounded down to $43 per test. The result of these calculations is a user fee that covers the total cost to perform a particular test or provide a particular veterinary diagnostic material or service one time. As is the case with all APHIS user fees, we intend to review, at least annually, the user fees proposed in this document. We will publish any necessary adjustments in the **Federal Register**.

In addition, we would remove the following tests because they are either obsolete, no longer being performed at NVSL in Ames or NVSL FADDL, or are being performed but being incorporated into another published rate:

Avian origin bacterial antiserums, mycoplasma
Equine origin glanders antiserum
Leptospira culturing
Leptospira serotyping
Mycobacterium avium serotyping
Mycology culture identification
Mycology/fungus culture or isolation
Mycoplasma isolation
Mycoplasma identification
Plasmid typing
Warburg
Virus isolation for Newcastle disease virus
Brucella milk ELISA
Mercaptoehanol
Mycology/fungus serology
Check tests, anaplasma complement fixation
Manual, Brucellosis complement fixation
Manual, Anaplasmosis, Johnes's disease

We would also remove a footnote that appears in the tables in §§ 130.15(a) and 130.16(a) and (b). The footnote describes a discount that applies to all diagnostic, non-import-related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody virus neutralization, and peroxidase linked antibody tests. The discount applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. We have reevaluated the time it takes to conduct these additional tests and have determined that it is no longer cost effective to perform the tests at a discount. Therefore, we would remove the footnote from those tables.

Finally, in §§ 130.15(a), 130.16(a), and 130.18, we would amend the tables by updating several of the entries to reflect the designations currently used by NVSL to refer to the particular test or service. There would be no change in the services or tests themselves; the names would simply be changed to be consistent with the terminology used by NVSL.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to increase the user fees for veterinary diagnostic services to reflect changes in operating costs and changes in calculating our costs. These

proposed actions are necessary to ensure that we recover the actual costs of providing these services. We are also proposing to provide for a reasonable balance, or reserve, in the veterinary diagnostics user fee account. The reserve would ensure that we have sufficient operating funds in cases of fluctuations in activity volumes, bad debt, program shutdown, or customer insolvency. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes us to set and collect these user fees.

Estimated Impact of Changes in Veterinary Diagnostic User Fees

The calculation of impacts of the revision of veterinary diagnostic user fees is hindered by the difficulty in determining the elasticities of demand for the covered services and products. Therefore, Government savings are assumed equivalent to the total additional user fee collections for each category addressed in this proposed rule. Projections of changes in collections are based on estimates of the annual volume of the affected services and products. Estimates of the annual volumes were made by the Financial Management Division of APHIS using actual volumes from prior years and input from the laboratories.

Change in Collections

Table 1 summarizes the estimated changes in user fee collections for FY 2004 through FY 2007 that are necessary to recover fully the costs of performing these services. These proposed changes would result in a total increase in annual user fee collections of about $2.9 million over the period discussed in the proposed rule (from $2.7 million at current fee levels to $5.6 million in FY 2007). There would be increases in each year from FY 2004 to FY 2007. There would be an increase of about $2.4 million in FY 2004, about an additional increase of $101,200 increase in FY 2005, about a $231,500 increase in FY 2006, and about a $98,100 increase in FY 2007. If APHIS were to continue to collect user fees at the current rates over this time period, total collections would be approximately $10.8 million. At the proposed rates, the total would be about $21.4 million. Because the proposed changes in user fees are intended to cover cost changes that have already occurred and that are projected to occur over the period covered in the proposed rule, this difference of about $10.6 million demonstrates the shortfall in cost recovery that would occur absent the changes, and, conversely, the savings to taxpayers associated with this proposal.

TABLE 1.—SUMMARY OF CURRENT AND PROJECTED COLLECTIONS OF APHIS VETERINARY DIAGNOSTIC USER FEES

User fee categories	Collections under current fee levels	Estimated additional annual collections from user fee changes				
		FY 2004	FY 2005	FY 2006	FY 2007	Total
FADDL, all	$164,754	$140,959	$9,990	$10,533	$10,975	$172,457
Identification Testing, NVSL	431,920	304,900	26,497	22,913	26,067	380,377
Serology Testing, NVSL	1,076,474	948,408	7,027	134,273	2,210	1,091,918
Pathobiology Testing, NVSL	89,249	29,495	4,050	4,806	4,802	43,153
Diagnostic Reagents, NVSL	480,692	591,526	34,045	38,130	32,866	696,587
Other Veterinary Diagnostic Services, NVSL	461,153	408,962	19,571	20,851	21,184	470,568
Total	2,704,242	2,424,299	101,180	231,506	98,124	2,855,059

The largest increase in collections would occur in FY 2004. The fee increases in FY 2004 cover cost increases that have occurred since the last revision of these fees, in addition to cost increases expected to occur in FY 2004. The increase of about $2.4 million in veterinary diagnostic user fee collections in FY 2004 would be accounted for in the following manner. Collections from laboratory tests, reagents, and other veterinary services preformed at NVSL FADDL would increase by about $141,000; user fee collections for veterinary diagnostic isolation and identification tests performed at NVSL in Ames would increase by about $305,000; user fee collections for serology tests performed at NVSL in Ames would increase by about $948,000; user fee collections for veterinary diagnostic tests performed at the pathobiology laboratory at NVSL in Ames would increase by about $29,000; user fee collections for reagents produced at NVSL in Ames would increase by about $592,000; and user fee collections for other veterinary diagnostic services performed at NVSL in Ames would increase by about $409,000.

Impact on Users

Veterinary diagnostic services and products are provided to animal importers and exporters, veterinarians, State and Federal agencies and laboratories, commercial laboratories, educational institutions, and foreign governments. To the extent that the proposed changes in user fees would impact operational costs, any entity that utilizes APHIS veterinary diagnostic products or services subject to user fees could be affected by the proposed fee increases. The degree to which any entity could be affected depends on its market power (the extent to which costs can be either absorbed or passed on to its buyers). While the lack of information on profit margins and operational expenses of the affected entities, or the supply responsiveness of the affected industry, prevents the precise prediction of the scale of impacts, some conclusions on overall impacts to domestic and international commerce can be drawn.

The increases in user fees in this proposal represent significant percentages, primarily in the first year covered by this proposed rule. In all six categories, the average proposed fee change exceeds 80 percent in the first year and 100 percent in total over the period covered in the proposed rule. If the user fees cannot be passed on to their customers, the profit margins of some entities may decline as user fees are increased. However, new techniques now allow APHIS to better identify the true costs of providing the veterinary diagnostic services and products covered by user fees. These techniques have shown that there are considerable differences between those true costs and the user fees APHIS has been charging. Operating costs have increased since the last time these fees were adjusted. In addition, it has been shown that the direct labor portion of the fee calculations was vastly underestimated for many of the fees in previous calculations. When a user fee does not cover all associated costs, those costs are shifted away from those receiving and benefitting from the service and

onto APHIS, and thus ultimately to the taxpayer.

There is also reason to believe that the economic effects of the proposed changes on most users would be small. The majority of the user fees would increase by $50 or less. The majority of the proposed fees should also make only a small contribution to the total additional collections and, therefore, would have a minor impact on the users of those services. This is either because the proposed change is small or the projected volume associated with the user fee is small, or both. In addition, user fees are not charged when tests are provided in the United States in association with a Federal or cooperative disease control program. Also, in addition to the role they play in protecting American agriculture, the veterinary diagnostic services and products we provide facilitate international trade and thereby enhance the business interests of many of those requesting these services.

Nearly 59 percent of the total projected change in collections would come from changes in only 9 of the 190 fees, and more than 93 percent of the change would come from changes in just 43 of the fees covered in this proposed rule. These 43 proposed fee changes are projected to generate $10,000 or more each in additional annual collections by the end of the period covered by the proposed rule. Several factors suggest, however, that these fee increases should not have a significant impact on users. These fees include small fees applied to a large annual volume of users, large fees applied to a very small volume of users, fees that represent a small percentage of the overall costs associated with a user's output, single fees for reagents with numerous final users, and fees that enhance the marketability of the users' final outputs.

Small Change in Collections

The majority of the individual user fee changes in this proposal would make only small contributions to the total additional collections, and, therefore, would have a minor effect on the users of those services. This is either because the change in the fee is small or the projected volume associated with the user fee is small, or both (see Table 2).

1. More than 60 percent of the user fees would change by less than $50, and nearly 16 percent by less than $10.

2. Nearly 50 percent of the user fees are projected to have an annual volume of 10 or fewer users, and about 65 percent fewer than 90.

3. More than 31 percent of the user fees would change by $50 or less and have a projected annual volume of 50 or fewer users.

4. More than 62 percent of the fees with more than 100 annual users would change by $25 or less, and about 62 percent of the fees that would change by more than $50 have an estimated annual volume of 10 or fewer users.

TABLE 2.—INCREASES AND VOLUMES ASSOCIATED WITH VETERINARY DIAGNOSTIC USER FEES

Total increase in user fee:	Number of fees with estimated annual volume of:				
	10 or fewer	11 to 20	20 to 50	51 to 100	More than 100
$10 or less	10	1	1	2	15
$10.01 to $25	16	3	3	1	26
$25.01 to $50	21	2	2	0	10
$50.01 to $100	29	1	4	1	9
More than $100	16	2	4	1	6

Program Diseases

When considering the proposed user fee changes, it is important to realize that user fees are not charged for tests and diagnostic reagents provided in the United States required in connection with current Federal or cooperative programs to control or eradicate various domestic diseases or pests, known as ''program diseases.'' Examples of program diseases are tuberculosis, brucellosis, and pseudorabies. In those situations, no user fee would be charged for veterinary diagnostics.

Large Contributions to Collections

The following factors suggest that even those proposed user fee changes that would generate more than $10,000 in additional annual collections may have a minimal impact on users.

Thirty-six of the 43 proposed user fees that we expect would generate more than $10,000 each in additional annual collections would change by less than $75 each, and 14 would change by less than $25 each. In addition, most of the user fees covered in this proposal are collected in association with imports or exports. While those user fees would increase under this proposed rule, the fees continue to represent only a small fraction of the typical costs of purchasing and importing breeding grade registered animals into the United States, which can be between $1,500 and $5,000 per head. Purchase and import costs for feeder and slaughter animals are often significantly lower per animal but can easily exceed $1,500 per shipment depending on the number and type of animals in the shipment. About 18 percent of the total change in collections would come from a single user fee, that for complement fixation (CF) tests. About 90 percent of the CF test user fees are collected for import and export. The $5 change in the first year under the proposed fees and the $7 total change in the user fee for CF tests in § 130.16 would be very small in relation to the value of the animals involved and to the costs associated with importing and exporting animals. By providing the tests, this movement is facilitated.

A number of the proposed reagent user fees should generate considerable additional annual collections under this proposal. However, while these proposed changes represent considerable percentage increases in those fees, each purchasing laboratory can use the reagents to perform several hundred tests. Therefore, the purchasing laboratory can spread its costs across those several hundred tests for its customers. In addition, provision of the reagents enhances the purchasing laboratory's business, for without the reagents the tests would not be possible.

Along this same line, the fact that check tests would generate considerable additional collections under this proposal should have only a small impact. By passing (getting the correct results on a check test kit), the laboratory is certified to conduct the particular test on samples that are received by the laboratory. Being certified by APHIS to conduct a test enhances a laboratory's ability to attract customers.

Laboratory Tests, Reagents, and other Veterinary Services Performed at NVSL FADDL

The proposed user fee changes for NVSL FADDL veterinary diagnostic services and products could generate additional annual collections of about $141,000 in the first year and about $172,000 after all increases covered in this proposal have been implemented. These user fees cover veterinary diagnostic services and products associated with foreign animal diseases, including the diagnosis of foreign animal diseases, training in foreign animal disease recognition, reagent production, and vaccine testing. It should be noted that the NVSL FADDL laboratory is isolated from the mainland United States. Because the laboratory works with diseases exotic to the United States, special biosecurity measures are required at NVSL FADDL that are not required at NVSL in Ames, IA. The proposed user fees reflect the higher operating costs at NVSL FADDL.

Most of the user fees in this category would increase substantially under this proposed rule. The average increase in the first year would be about 89 percent. However, the total impact of the proposed changes should be small. Of the 35 fees in this category, only 4 are associated with increased annual collections of more than $10,000 each over the entire time period covered in the proposal. These four fees would account for more than 86 percent of the additional collections in this category. By the end of FY 2007, collections from hourly fees would have increased by about $64,000 annually, collections for virus neutralization tests would have increased by about $55,000 annually, collections for enzyme linked immunosorbent assay tests would have increased by about $17,000, and collections for indirect fluorescent antibody tests would have increased by about $12,000. In addition, the nature of the work at NVSL FADDL should limit the impact of the proposed changes in the user fees. The user fee work at NVSL FADDL is restricted to work associated with foreign animal diseases, and this limits the volume of user fee work at the laboratory. The majority of the user fee work is associated with imports. For example, the virus neutralization test is often used as a prescreening test for foot-and-mouth disease prior to an animal leaving its country of origin to ensure that the animal will not be refused entry into the United States and reexported. Also, a good deal of the user fee work at NVSL FADDL is performed in conjunction with the import of master seeds/cells for vaccines. The overall cost of developing and importing these vaccines is very high. Because of this, the user fees and the proposed increases in those fees represent a very small portion of an importer's costs.

Veterinary Diagnostic Isolation and Identification Tests Performed at NVSL in Ames

The proposed user fee changes for veterinary diagnostic isolation and identification tests performed at NVSL in Ames could generate additional annual collections of about $305,000 in FY 2004 and about $380,000 by the end of FY 2007. The average proposed increase in the fees in this category is more than 100 percent in the first year. However, the total impact of the changes should be small. The average increase in the first year would be less than $36, and 12 of the 20 fees in this category would change in total by less than $30 each. Only six of these fees should generate $10,000 or more in additional annual collections. Two of these fees are primarily associated with required testing at poultry slaughtering facilities, and are paid for by the Food Safety and Inspection Service (FSIS): Bacterial serotyping (Salmonella), which is projected to generate a total of about $119,000 in additional annual collections, and phage typing (all other), which is projected to generate a total of about $14,000 in additional annual collections. User fees for these tests are only charged for research and for confirming the FSIS tests. The proposed changes in the user fee for virus isolation tests are projected to generate total additional collections of $75,000. However, the change in this fee would be only $11.50 in the first year and $16.50 in total for virus isolations other than for Newcastle disease.

Veterinary Diagnostic Serology Tests Performed at NVSL in Ames

The proposed user fee changes for veterinary diagnostic serology tests performed at NVSL in Ames could generate additional annual collections of about $948,000 in FY 2004 and about $1.1 million by the end of FY 2007. The average total increase in the fees in this category would be more than 100 percent. However, the total impact of these proposed changes should be small. The average increase in the first year would be less than $9 and would increase by less than $10 in total. Only three of the fees in this category would increase in total by more than $20, and 16 would increase by less than $10. The proposed user fee for CF tests should generate about $509,000 in total additional annual collections, but the increase in this fee would be only $6 in the first year and $7 in total. About 90 percent of the CF test user fees are collected for import and export. The increases in this user fee would be very small in relation to the value of the animals involved and the costs associated with importing and exporting animals. For example, moving horses into or out of the United States generally requires four CF tests. Breeding stallions move between the northern and southern hemispheres to double the number of annual breeding seasons. These stallions, valued on average at approximately $400,000 and reaching $2 to $4 million, can command breeding fees of at minimum $10,000 per mare covered. Moving horses by air can cost between $6,000 and $9,000 per horse. The user fees represent a tiny portion of the total cost of moving these animals into the country, and by providing the tests, this movement is facilitated.

Veterinary Diagnostic Tests Performed at the Pathobiology Laboratory at NVSL in Ames

The proposed changes in the user fees for veterinary diagnostic tests performed at the pathobiology laboratory at NVSL in Ames could generate additional annual collections of about $29,000 in FY 2004 and about $43,000 by the end of FY 2007. The average increase in the fees in this category would be less than $30 in the first year and $35 in total. Only two of the proposed fees in this category are projected to generate more than $10,000 each in additional total annual collections, and the rest less than $1,000 each. Both of these two fees would change by less than $10 each in the first year, and by less than $15 each in total.

Veterinary Diagnostic Reagents Produced at NVSL in Ames

The proposed changes in user fees for veterinary diagnostic reagents produced at NVSL in Ames could generate additional annual collections of about $592,000 in FY 2004 and about $697,000 by the end of the FY 2007. The proposed changes to 16 of these fees should generate a total of more than $10,000 each in additional annual collections. The average increase in this category is less than $60 in the first year and $70 in total. Thirty-one of the fees increase by less than $50 each in total, and 20 by $25 or less each. While these proposed changes represent considerable percentage increases in those fees, the reagents are the basis for doing tests. The purchasing laboratory can use the reagent to perform several hundred tests. Therefore, the purchasing laboratory can spread its costs across those several hundred tests for its

customers. In addition, the ability to obtain these reagents from APHIS enhances the purchasing laboratory's business, for without the reagents the tests would not be possible.

Other Veterinary Diagnostic Services or Materials Provided at NVSL in Ames

The proposed changes in user fees for other veterinary diagnostic services or materials provided at NVSL in Ames could generate additional annual collections of about $409,000 in FY 2004, and about $471,000 by the end of FY 2007. Providing check tests could account for about 47 percent of the total additional collections in this category, about $221,000. NVSL in Ames certifies laboratories to conduct certain tests, employing ''check test kits'' to perform the certification. The kits consist of about 20 sera (or live organisms if it is for culture), and the laboratory conducts the test it wants to be certified to perform using the sera in the check test kit. The laboratory must get a predetermined number of the sera right (positive or negative) in order to pass and be certified to run the tests. The proposed user fees for this service should not have a significant impact on the laboratories because being certified by APHIS to conduct a test enhances their ability to attract customers who pay the laboratory to conduct tests. Another large portion of the additional annual collections would be from the proposed fee for fetal bovine serum safety test. The proposed changes to this fee are projected to generate total additional annual collections of about $131,000 by the end of FY 2007. This fee is for testing fetal bovine serum to be sure it is free of foreign viruses. This serum is needed to grow viruses and is used by biologics manufacturers and diagnostic laboratories. Its value is high even relative to the large fee for the test.

Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact associated with their rules on small entities. The Small Business Administration (SBA) has set size criteria according to the categories of the North American Industrial Classification System (NAICS), which is used as a guide in determining which economic entities meet the definition of a small business.

The veterinary diagnostic services provided by APHIS at NVSL FADDL and NVSL in Ames are provided to determine if a disease-causing organism or chemical agent is present in body tissues or cells and to identify those organisms or agents. As such, the users of these services and products include importers, exporters, non-APHIS veterinarians, commercial laboratories and pharmaceutical manufacturers, State laboratories, universities, and foreign governments. These users may be affected by the proposed changes to user fees for veterinary diagnostic services and products.

The SBA's criterion for a small entity engaged in importing and exporting live animals, poultry, and birds is 100 or fewer employees. The criterion for a small veterinary testing laboratory is $6 million or less in annual sales. The criterion for a small pharmaceutical manufacturing company is 750 or fewer employees.

The number of entities specifically using the veterinary diagnostic products and services covered in this proposal that would qualify as a small entity under SBA criteria cannot be determined at this time. However, more than 99 percent [1] of the entities in livestock wholesale, poultry wholesale, and other farm product raw material wholesale (including horses and mules) can be considered small. Under NAICS, import and export merchants, agents, and brokers are included in the wholesale trade sector. According to the latest available information,[2] 94 percent of all testing laboratories, including veterinary testing laboratories, can be considered small. According to the 1997 Economic Census, at least 97.9 percent [3] of all chemical manufacturers can be considered small. Pharmaceutical manufacturing is included in this category under NAICS. It is, therefore, likely that the majority of users affected can be considered small. However, because the overall impacts of the proposal are expected to be limited, the impacts on small entities should be limited as well.

Costs and Benefits of User Fees

User fees for veterinary diagnostic services and products are intended to meet broad economic objectives. User fees promote the internalization of the real cost of providing veterinary diagnostic services and products in consumer transaction decisions. User fees also achieve savings in Government expenditures, and, therefore, reduce the tax support necessary for the system to operate at a given level. These tax funds can then be used in other programs or to reduce taxes overall and, thus, diminish the efficiency losses associated with the generation of taxes (deadweight loss plus collection costs).

Cost of Services

User fees reduce Government expenditures for fee-based services by shifting the burden of financing Federal services from general taxpayers to users and by curtailing the amount demanded for veterinary diagnostic service-related products. The consumer response to user fees is a movement toward a more socially optimal level of demand where users incorporate the cost of veterinary diagnostic services and products into their private costs.

As circumstances affecting the cost of providing services and products change, the amount of the user fees must be reevaluated to ensure that the user fee accurately reflects the cost of providing the services at that point in time. The socially optimal level of output, where the true cost is more fully incorporated into the transaction, is therefore maintained.

Benefits of Services

The net gain associated with the adjustment in consumer demand is quantified by subtracting the consumer welfare losses from the savings in Government expenditures. The magnitude of this gain depends on the elasticities of demand for each particular service or product (consumer responsiveness to changes in user fees). These elasticities are unknown. The demand for veterinary diagnostic services and products is intertwined with the demand for the commodities of which the products and services are inputs. However, there is no evidence to suggest that a significant change in demand for veterinary diagnostics has occurred due to the imposition or alteration of user fees in the past. When consumer adjustment is small, there is a correspondingly low net social gain.

Additional social gain can be expected from the reduction in losses associated with collecting and apportioning taxes to finance the veterinary diagnostic products and services. This reduction in losses arises from the internalization by consumers of the social cost of obtaining veterinary diagnostic products and services, and from the reduction in deadweight losses due to taxation.

Comparison of Benefits and Costs

To evaluate the overall costs and benefits of the user fee program, the two types of net benefits must be compared with the cost of the user fees. Because the demand elasticities for the veterinary diagnostic service-related products are unknown, the only

[1] U.S. Census Bureau, 1997 Economic Census.

[2] U.S. Census Bureau, 1992 Economic Census.

[3] In 1997, 13,187 of 13,474 chemical manufacturing establishments had fewer than 500 employees.

measures are the savings in Government expenditures and the administrative cost involved in obtaining these savings. APHIS already has a user fee program and a mechanism for collecting these fees in place. This proposal would update existing fees. Therefore, increases in administrative costs would be very small. Differences between the level of the user fees and actual cost of performing the services have become considerable. Therefore, the Government savings associated with this proposal should be substantial. It is likely that the net gain in reducing the burden on taxpayers as a whole would outweigh the cost of administering the revisions of the user fees.

The proposed user fee increases are needed to move toward economic efficiency. From the point of view of society, the optimal level of output is where the marginal benefit to society equals the marginal cost to society. User fees help to internalize the cost of performing the veterinary diagnostic services into the private transaction, and their revision helps ensure that the user fees adequately reflect the cost of performing the services over time.

Summary

The impacts of the proposed increases in veterinary diagnostic user fees in this proposal are expected to be muted. The majority of the proposed changes to the user fees are either small, associated with few users, or both. Over the period covered by the proposed rule, more than 60 percent of the individual increases are less than $50, nearly 16 percent increase by less than $10, and about 65 percent are associated with 100 or fewer users. The majority of the proposed fees should also make only small contributions to the total additional collections and, therefore, would have a minor impact on the users of those services. This is either because the proposed change is small or the projected volume associated with the user fee is small, or both. Even in those instances in which the change in a user fee would generate a larger total increase in collections, the impact should not be significant because they are small fees applied to a large annual volume of users, large fees applied to a very small volume of users, fees that represent a small percentage of the overall costs associated with a user's output, single fees for reagents with numerous final users, or fees that enhance the marketability of the user's final outputs. Therefore, the increases are not generally expected to substantially reduce profits or impede exports or imports. Indeed, the full burden of the proposed user fee changes is not likely to be borne entirely by the purchasers of products and services.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 would continue to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

2. In § 130.14, paragraphs (a), (b), and (c), the tables would be revised to read as follows:

§ 130.14 User fees for FADDL veterinary diagnostics.

(a) * * *

Reagent	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Bovine antiserum, any agent	1 mL	$150.00	$155.00	$160.00	$165.00
Caprine antiserum, any agent	1 mL	184.00	189.00	195.00	202.00
Cell culture antigen/microorganism	1 mL	103.00	106.00	109.00	111.00
Equine antiserum, any agent	1 mL	186.00	192.00	198.00	204.00
Fluorescent antibody conjugate	1 mL	169.00	172.00	176.00	179.00
Guinea pig antiserum, any agent	1 mL	184.00	189.00	194.00	200.00
Monoclonal antibody	1 mL	222.00	229.00	235.00	243.00
Ovine antiserum, any agent	1 mL	176.00	181.00	187.00	193.00
Porcine antiserum, any agent	1 mL	152.00	157.00	162.00	167.00
Rabbit antiserum, any agent	1 mL	179.00	185.00	190.00	196.00

(b) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Agar gel immunodiffusion	Test	$30.00	$31.00	$32.00	$33.00
Card	Test	17.00	17.00	18.00	18.00
Complement fixation	Test	36.00	37.00	38.00	40.00

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Direct immunofluorescent antibody	Test	22.00	23.00	24.00	25.00
Enzyme linked immunosorbent assay	Test	26.00	27.00	28.00	29.00
Fluorescent antibody neutralization (classical swine fever).	Test	194.00	201.00	208.00	215.00
Hemagglutination inhibition	Test	57.00	59.00	61.00	63.00
Immunoperoxidase	Test	29.00	30.00	31.00	32.00
Indirect fluorescent antibody	Test	35.00	36.00	37.00	39.00
In-vitro safety	Test	570.00	589.00	609.00	630.00
In-vivo safety	Test	5,329.00	5,387.00	5,447.00	5,509.00
Latex agglutination	Test	23.00	24.00	25.00	26.00
Tube agglutination	Test	28.00	28.00	29.00	30.00
Virus isolation (oesophageal/pharyngeal)	Test	180.00	186.00	192.00	199.00
Virus isolation in embryonated eggs	Test	346.00	358.00	370.00	383.00
Virus isolation, other	Test	155.00	160.00	166.00	171.00
Virus neutralization	Test	52.00	54.00	56.00	58.00

(c) * * *

Veterinary diagnostic service	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Bacterial isolation	Test	$112.00	$115.00	$119.00	$123.00
Hourly user fee services [1]	Hour	445.00	460.00	476.00	492.00
Hourly user fee services—Quarter hour	Quarter hour	111.00	115.00	119.00	123.00
Infected cells on chamber slides or plates	Slide	49.00	50.00	51.00	53.00
Reference animal tissues for immunohistochemistry.	Set	171.00	177.00	182.00	187.00
Sterilization by gamma radiation	Can	1,740.00	1,799.00	1,860.00	1,923.00
Training (school or technical assistance)	Per person per day	910.00	941.00	973.00	1,006.00
Virus titration	Test	112.00	115.00	110.00	123.00

[1] For all veterinary diagnostic services for which there is no flat rate user fee, the hourly rate user fee will be calculated for the actual time required to provide the service.

* * * * *

3. In § 130.15, paragraphs (a) and (b), the tables would be revised to read as follows:

§ 130.15 User fees for veterinary diagnostic isolation and identification tests performed at NVSL(excluding FADDL) or other authorized site.

(a) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Bacterial identification, automated	Isolate	$48.00	$50.00	$51.00	$53.00
Bacterial identification, non-automated	Isolate	81.00	84.00	87.00	90.00
Bacterial isolation	Sample	33.00	34.00	35.00	36.00
Bacterial serotyping, all other	Isolate	51.00	52.00	53.00	55.00
Bacterial serotyping, Pasteurella multocida	Isolate	16.00	17.00	18.00	18.00
Bacterial serotyping, Salmonella	Isolate	33.00	34.00	35.00	36.00
Bacterial toxin typing	Isolate	109.00	112.00	116.00	120.00
Bacteriology requiring special characterization	Test	83.00	86.00	89.00	92.00
DNA fingerprinting	Test	54.00	56.00	58.00	59.00
DNA/RNA probe	Test	77.00	79.00	81.00	83.00
Fluorescent antibody	Test	17.00	17.00	18.00	19.00
Mycobacterium identification (biochemical)	Isolate	104.00	107.00	111.00	114.00
Mycobacterium identification (gas chromatography).	Procedure	87.00	90.00	93.00	96.00
Mycobacterium isolation, animal inoculations	Submission	770.00	791.00	814.00	837.00
Mycobacterium isolation, all other	Submission	136.00	141.00	146.00	151.00
Mycobacterium paratuberculosis isolation	Submission	65.00	67.00	70.00	72.00
Phage typing, all other	Isolate	38.00	39.00	41.00	42.00
Phage typing, Salmonella enteritidis	Isolate	21.00	22.00	23.00	24.00

(b) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Fluorescent antibody tissue section	Test	$27.00	$27.00	$28.00	$29.00
Virus isolation	Test	43.00	45.00	46.00	48.00

* * * * *

4. In § 130.16, paragraphs (a) and (b), the tables would be revised to read as follows:

§ 130.16 User fees for veterinary diagnostic serology tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Brucella ring (BRT)	Test	$33.00	$34.00	$35.00	$36.00
Brucella ring, heat inactivated (HIRT)	Test	33.00	34.00	35.00	36.00
Brucella ring, serial (Serial BRT)	Test	49.00	51.00	53.00	54.00
Buffered acidified plate antigen presumptive	Test	6.00	7.00	7.00	7.00
Card	Test	4.00	4.00	4.00	4.00
Complement fixation	Test	15.00	15.00	16.00	16.00
Enzyme linked immunosorbent assay	Test	15.00	15.00	16.00	16.00
Indirect fluorescent antibody	Test	13.00	13.00	14.00	14.00
Microscopic agglutination-includes up to 5 serovars.	Sample	21.00	22.00	23.00	24.00
Microscopic agglutination-each serovar in excess of 5 serovars.	Sample	4.00	4.00	4.00	4.00
Particle concentration fluorescent immunoassay (PCFIA).	Test	33.00	34.00	35.00	36.00
Plate	Test	6.00	7.00	7.00	7.00
Rapid automated presumptive	Test	6.00	6.00	6.00	7.00
Rivanol	Test	6.00	7.00	7.00	7.00
Tube agglutination	Test	6.00	7.00	7.00	7.00

(b) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Agar gel immunodiffusion	Test	$15.00	$15.00	$16.00	$16.00
Complement fixation	Test	15.00	15.00	16.00	16.00
Enzyme linked immunosorbent assay	Test	15.00	15.00	16.00	16.00
Hemagglutination inhibition	Test	13.00	13.00	14.00	14.00
Indirect fluorescent antibody	Test	13.00	13.00	14.00	14.00
Latex agglutination	Test	15.00	15.00	16.00	16.00
Peroxidase linked antibody	Test	14.00	14.00	15.00	15.00
Plaque reduction neutralization	Test	16.00	17.00	17.00	18.00
Rabies fluorescent antibody neutralization	Test	41.00	42.00	44.00	45.00
Virus neutralization	Test	12.00	12.00	13.00	13.00

* * * * *

5. In § 130.17, paragraph (a), the table would be revised to read as follows:

§ 130.17 User fees for other veterinary diagnostic laboratory tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Aflatoxin quantitation	Test	$27.00	$28.00	$29.00	$30.00
Aflatoxin screen	Test	26.00	27.00	28.00	29.00

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Agar gel immunodiffusion spp. identification	Test	11.00	12.00	12.00	13.00
Antibiotic (bioautography) quantitation	Test	59.00	61.00	63.00	65.00
Antibiotic (bioautography) screen	Test	108.00	112.00	115.00	119.00
Antibiotic inhibition	Test	59.00	61.00	63.00	65.00
Arsenic	Test	16.00	16.00	17.00	17.00
Ergot alkaloid screen	Test	59.00	61.00	63.00	65.00
Ergot alkaloid confirmation	Test	77.00	80.00	83.00	86.00
Feed microscopy	Test	59.00	61.00	63.00	65.00
Fumonisin only	Test	33.00	35.00	36.00	37.00
Gossypol	Test	89.00	92.00	95.00	98.00
Mercury	Test	131.00	135.00	140.00	145.00
Metals screen	Test	40.00	41.00	43.00	44.00
Metals single element confirmation	Test	11.00	12.00	12.00	13.00
Mycotoxin: aflatoxin-liver	Test	108.00	112.00	115.00	119.00
Mycotoxin screen	Test	43.00	44.00	46.00	48.00
Nitrate/nitrite	Test	59.00	61.00	63.00	65.00
Organic compound confirmation	Test	79.00	82.00	85.00	88.00
Organic compound screen	Test	137.00	141.00	146.00	151.00
Parasitology	Test	26.00	27.00	28.00	29.00
Pesticide quantitation	Test	119.00	123.00	128.00	132.00
Pesticide screen	Test	54.00	56.00	58.00	60.00
pH	Test	24.00	25.00	26.00	26.00
Plate cylinder	Test	89.00	92.00	95.00	98.00
Selenium	Test	40.00	41.00	43.00	44.00
Silicate/carbonate disinfectant	Test	59.00	61.00	63.00	65.00
Temperature disks	Test	118.00	122.00	126.00	130.00
Toxicant quantitation, other	Test	99.00	103.00	106.00	110.00
Toxicant screen, other	Test	30.00	31.00	32.00	33.00
Vomitoxin only	Test	48.00	49.00	51.00	53.00
Water activity	Test	30.00	31.00	32.00	33.00
Zearaleone quantitation	Test	48.00	49.00	51.00	53.00
Zearaleone screen	Test	26.00	27.00	28.00	29.00

* * * * *

6. In § 130.18, paragraphs (a) and (b), the tables would be revised to read as follows:

§ 130.18 User fees for veterinary diagnostic reagents produced at NVSL or other authorized site (excluding FADDL).

(a) * * *

Reagent	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2004
Anaplasma card test antigen	2 mL	$87.00	$89.00	$92.00	$95.00
Anaplasma card test kit without antigen	Kit	115.00	119.00	123.00	127.00
Anaplasma CF antigen	2 mL	46.00	46.00	46.00	46.00
Anaplasma stabilate	4.5 mL	160.00	165.00	170.00	175.00
Avian origin bacterial antiserums	1 mL	43.00	44.00	46.00	47.00
Bacterial agglutinating antigens other than brucella and salmonella pullorum.	5 mL	49.00	51.00	52.00	54.00
Bacterial conjugates	1 mL	87.00	90.00	93.00	96.00
Bacterial disease CF antigens, all other	1 mL	26.00	27.00	28.00	29.00
Bacterial ELISA antigens	1 mL	27.00	27.00	28.00	29.00
Bacterial or protozoal, antiserums, all other	1 mL	54.00	56.00	58.00	60.00
Bacterial reagent culture[1]	Culture	66.00	68.00	70.00	73.00
Bacterial reference culture[2]	Culture	206.00	213.00	221.00	228.00
Bacteriophage reference culture	Culture	155.00	161.00	166.00	172.00
Bovine serum factor	1 mL	16.00	17.00	17.00	18.00
Brucella abortus CF antigen	60 mL	136.00	141.00	146.00	151.00
Brucella agglutination antigens, all other	60 mL	136.00	141.00	146.00	151.00
Brucella buffered plate antigen	60 mL	155.00	161.00	166.00	172.00
Brucella canis tube antigen	25 mL	102.00	105.00	107.00	109.00
Brucella card test antigen (packaged)	Package	81.00	84.00	87.00	90.00
Brucella card test kit without antigen	Kit	106.00	109.00	111.00	113.00
Brucella cells	Gram	17.00	17.00	18.00	18.00
Brucella cells, dried	Pellet	5.00	5.00	5.00	6.00
Brucella ring test antigen	60 mL	218.00	225.00	233.00	241.00
Brucella rivanol solution	60 mL	27.00	27.00	28.00	29.00
Dourine CF antigen	1 mL	81.00	84.00	86.00	89.00

Reagent	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2004
Dourine stabilate	4.5 mL	102.00	105.00	107.00	109.00
Equine and bovine origin babesia species antiserums.	1 mL	115.00	119.00	123.00	127.00
Equine negative control CF antigen	1 mL	267.00	272.00	276.00	281.00
Flazo-orange	3 mL	11.00	12.00	12.00	13.00
Glanders CF antigen	1 mL	70.00	73.00	75.00	77.00
Hemoparasitic disease CF antigens, all other	1 mL	489.00	505.00	522.00	540.00
Leptospira transport medium	10 mL	4.00	4.00	4.00	4.00
Monoclonal antibody	1 mL	88.00	90.00	93.00	95.00
Mycobacterium spp. old tuberculin	1 mL	21.00	22.00	23.00	24.00
Mycobacterium spp. PPD	1 mL	16.00	17.00	18.00	18.00
Mycoplasma hemagglutination antigens	5 mL	163.00	168.00	174.00	180.00
Negative control serums	1 mL	16.00	17.00	18.00	18.00
Rabbit origin bacterial antiserum	1 mL	47.00	48.00	50.00	52.00
Salmonella pullorum microagglutination antigen	5 mL	14.00	14.00	15.00	15.00
Stabilates, all other	4.5 mL	623.00	640.00	659.00	678.00

[1] A reagent culture is a bacterial culture that has been subcultured one or more times after being tested for purity and identity. It is intended for use as a reagent with a diagnostic test such as the leptospiral microagglutination test.

[2] A reference culture is a bacterial culture that has been thoroughly tested for purity and identity. It should be suitable as a master seed for future cultures.

(b) * * *

Reagent	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Antigen, except avian influenza and chlamydia psittaci antigens, any.	2 mL	$55.00	$57.00	$59.00	$61.00
Avian antiserum except avian influenza antiserum, any.	2 mL	44.00	45.00	47.00	48.00
Avian influenza antigen, any	2 mL	30.00	31.00	32.00	33.00
Avian influenza antiserum, any	6 mL	93.00	96.00	100.00	103.00
Bovine or ovine serum, any	2 mL	115.00	119.00	123.00	127.00
Cell culture	Flask	136.00	141.00	146.00	151.00
Chlamydia psittaci spp. of origin monoclonal antibody panel.	Panel	88.00	90.00	93.00	95.00
Conjugate, any	1 mL	66.00	68.00	71.00	73.00
Diluted positive control serum, any	2 mL	22.00	23.00	24.00	24.00
Equine antiserum, any	2 mL	41.00	42.00	44.00	45.00
Monoclonal antibody	1 mL	94.00	96.00	99.00	102.00
Other spp. antiserum, any	1 mL	51.00	51.00	52.00	52.00
Porcine antiserum, any	2 mL	95.00	99.00	102.00	105.00
Porcine tissue sets	Tissue set	152.00	153.00	155.00	157.00
Positive control tissues, all	2 cm^2 section	55.00	57.00	58.00	60.00
Rabbit origin antiserum	1 mL	47.00	48.00	50.00	52.00
Reference virus, any	0.6 mL	163.00	169.00	174.00	180.00
Viruses (except reference viruses), chlamydia psittaci agent or chlamydia psittaci antigen, any.	0.6 mL	27.00	28.00	29.00	30.00

* * * * *

7. In § 130.19 , paragraph (a), the table would be revised to read as follows:

§ 130.19 User fees for other veterinary diagnostic services or materials provided at NVSL(excluding FADDL).

(a) * * *

Service	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Antimicrobial susceptibility test	Isolate	$95.00	$98.00	$101.00	$105.00
Avian safety test	Test	3,774.00	3,871.00	3,972.00	4,075.00
Check tests, culture	Kit [1]	162.00	167.00	171.00	176.00
Check tests, serology, all other	Kit [1]	326.00	337.00	349.00	361.00
Fetal bovine serum safety test	Verification	1,061.00	1,078.00	1,096.00	1,114.00

Service	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Hourly user fee services:[2]					
Hour	Hour	84.00	84.00	84.00	84.00
Quarter hour	Quarter hour	21.00	21.00	21.00	21.00
Minimum		25.00	25.00	25.00	25.00
Manual, brucellosis culture	1 copy	104.00	107.00	111.00	114.00
Manual, tuberculosis culture (English or Spanish).	1 copy	155.00	161.00	166.00	172.00
Manual, Veterinary mycology	1 copy	155.00	161.00	166.00	172.00
Manuals or standard operating procedure (SOP), all other.	1 copy	31.00	32.00	33.00	34.00
Manuals or SOP, per page	1 page	2.00	2.00	2.00	2.00
Training (school or technical assistance)	Per person per day	300.00	310.00	320.00	331.00

[1] Any reagents required for the check test will be charged separately.
[2] For veterinary diagnostic services for which there is no flat rate user fee, the hourly rate user fee will be calculated for the actual time required to provide the service.

* * * * *

Done in Washington, DC, this 18th day of July, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18849 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[7590–01–P]

RIN 3150–AH00

Emergency Planning and Preparedness for Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its emergency planning regulations governing the domestic licensing of production and utilization facilities. The proposed rule would amend the current regulations as they relate to NRC approval of licensee changes to Emergency Action Levels (EALs) and exercise requirements for co-located licensees.

DATES: Submit comments October 7, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH00) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. *Telephone:* (301) 415–3224. E-mail: *MTJ1@NRC.GOV*.

SUPPLEMENTARY INFORMATION: The Commission is proposing to make two changes to its emergency preparedness regulations contained in 10 CFR part 50, Appendix E. The first proposed amendment relates to the NRC approval of licensee changes to Emergency Action Levels (EALs), paragraph IV.B and the second proposed amendment relates to exercise requirements for co-located licensees, paragraph IV.F.2. A discussion of each of these proposed revisions follows.

NRC approval of licensee changes to EALs, 10 CFR part 50, Appendix E, Paragraph IV.B.

EALs are part of a licensee's emergency plan. There appears to be an inconsistency in the emergency planning regulations regarding the NRC approval of nuclear power plant licensee changes to EALs. Section 50.54(q) states that licensees may make changes to their emergency plans without Commission approval only if the changes ''do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of Appendix E'' to 10 CFR part 50. By contrast, Appendix E states that ''EAL's shall be * * * approved by NRC.'' However, the current industry practice, in general, has been to make

revisions to EALs and to implement them without requesting NRC approval after determining that the changes do not reduce the effectiveness of the emergency plan, in accordance with § 50.54(q). When the determination is made that a proposed change constitutes a decrease in effectiveness, licensees submit the changes to NRC for review and approval. If a change involves a major change to the EAL scheme, for example, changing from an EAL scheme based on NUREG–0654 guidance to an EAL scheme based on NUMARC/NESP–007 guidance, it has been the industry practice to seek NRC approval before implementing the change. The NRC has been aware of the industry practice and has not objected to it. The Commission believes that the current regulations are unclear and can be interpreted to require prior NRC approval for all changes to a licensee's EALs.

The Commission believes that NRC review and approval of every EAL change is not necessary to provide reasonable assurance that EALs will continue to provide an acceptable level of safety. The Commission's regulatory review should be focused on EAL changes that are of sufficient significance that a safety review by the NRC is appropriate before the licensee may implement the change. The Commission believes that EAL changes which have the potential to reduce the effectiveness of the emergency plan are of sufficient regulatory significance that prior NRC review and approval is warranted. This proposed standard is the same standard that the current regulations provide for determining whether changes to emergency plans (except EALs) require NRC review and approval. As such, this regulatory threshold has a long history of successful application, and this standard should also be used for EAL changes. Based upon the NRC's inspections of emergency plans, including EAL changes the Commission believes that licensees have been, in general, making appropriate determinations regarding whether an EAL change may potentially reduce the effectiveness of the emergency plan and have the capability to continue to do so. Limiting the NRC's review and approval to EAL changes which may reduce the effectiveness of emergency plans will ensure adequate NRC oversight of licensee-initiated EAL changes, while both increasing regulatory effectiveness (through use of a single consistent standard for evaluating all emergency plan changes) and reducing unnecessary regulatory burden on licensees (who would not be required to submit for approval EAL changes that do not decrease the effectiveness of the emergency plan).

The Commission believes a licensee proposal to convert from one EAL scheme (*e.g.*, NUREG–0654-based) to another EAL scheme (*e.g.*, NUMARC/NESP–007-based) will always involve a potential reduction in effectiveness. While the new EAL scheme may, upon review, be determined by the NRC to provide an acceptable level of safety and be in compliance with applicable NRC requirements, the potential safety significance of a change from one EAL scheme to another is such that prior NRC review and approval is appropriate to ensure that there is reasonable assurance that the proposed EAL change will provide an acceptable level of safety or otherwise result in non-compliance with applicable Commission requirements on emergency preparedness.

Accordingly, the Commission proposes to revise Appendix E to 10 CFR part 50 to provide that NRC approval of EAL changes would be necessary for all EAL changes that decrease the effectiveness of the emergency plan and for changing from one EAL scheme (*e.g.*, NUREG–0654-based) to another EAL scheme (*e.g.*, NUMARC/NESP–007-based).

(2) Exercise Requirements for Co-Located Licensees, 10 CFR part 50, Appendix E, Paragraph IV.F.

A. Rulemaking addressing exercise requirements for co-located licensees. The emergency planning regulations were significantly upgraded in 1980 after the accident at Three Mile Island (45 FR 55402; August 19, 1980). The 1980 regulations required an annual exercise of the onsite and offsite emergency plans. In 1984, the regulations were amended to change the frequency of participation of State and local governmental authorities in nuclear power plant offsite exercises from annual to biennial (49 FR 27733; July 6, 1984). In 1996, the regulations were amended to change the frequency of exercising the licensees' onsite emergency plan from annual to biennial (61 FR 30129; June 14, 1996). 10 CFR part 50, Appendix E to part 50, Paragraph IV.F.2, currently provides that the ''offsite plans for each site shall be exercised biennially'' with the full (or partial) participation of each offsite authority having a role under the plans, and that ''each licensee at each site'' shall conduct an exercise of its onsite emergency plan every 2 years, an exercise that may be included in the full participation biennial exercise (emphasis added).[1] Thus, Paragraph IV.F.2 is ambiguous about the emergency preparedness exercise requirements where multiple nuclear power plants, each licensed to different licensees, are co-located at the same site: whether each licensee must participate in a full-participation exercise of the off-site plan every two years, or whether the licensees may alternate their participation such that a full-participation exercise is held every two years and each licensee (at a two-licensee site) participates in a full-participation exercise every four years.

Upon consideration of the language of the current regulation and the legislative history of the exercise requirements, the Commission believes that the ambiguity in the current regulation can be interpreted such that each nuclear power plant licensee co-located on the same site must participate in a full-participation offsite exercise every two years (and that each offsite authority is to participate on either a full or partial participation basis in each licensee's biennial offsite exercise). Upon consideration of the matter, the Commission believes that requiring each licensee on a co-located site to participate in a full-participation

[1] 10 CFR part 50, Appendix E, IV.F.2, states:

2. The plan shall describe provisions for the conduct of emergency preparedness exercises as follows: Exercises shall test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communications networks, test the public notification system, and ensure that emergency organization personnel are familiar with their duties.

a. * * *

b. Each licensee at each site shall conduct an exercise of its onsite emergency plan every 2 years. The exercise may be included in the full participation biennial exercise required by paragraph 2.c. of this section.* * *

c. Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the plan. Where the offsite authority has a role under a radiological response plan for more than one site, it shall fully participate in one exercise every two years and shall, at least, partially participate in other offsite plan exercises in this period. ''Full participation'' when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. ''Full participation'' includes testing major observable portions of the onsite and offsite emergency plans and mobilization of state, local and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario. ''Partial participation'' when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; *i.e.*, (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

exercise every two years, and for the offsite authorities to participate in each licensee's full-participation exercise is not necessary to provide reasonable assurance that each licensee and the offsite authorities will be able to fulfill their responsibilities under the emergency plan should the plan be required to be implemented. Furthermore, the Commission believes that such an interpretation could impose an undue regulatory burden on offsite authorities. Currently, there is only one nuclear power plant site with two power plants licensed to two separate licensees: the James A. FitzPatrick and Nine Mile Point site. Although the ambiguity in Paragraph IV.F.2 has limited impact today, the Commission understands that future nuclear power plant licensing concepts currently being considered by the industry include siting multiple nuclear power plants on a single site. These plants may be owned and/or operated by different licensees. Therefore, the Commission believes that this rulemaking is necessary to remove the ambiguity in Paragraph IV.F.2 and clearly specify the emergency preparedness training obligations of co-located licensees.

The Commission proposes that where two nuclear power plants licensed to separate licensees are co-located on the same site, reasonable assurance of emergency preparedness exists where:

(1) The co-located licensees would exercise their onsite plans biennially;

(2) The offsite authorities would exercise their plans biennially;

(3) The interface between offsite plans and each of the onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee.

Thus, each co-located licensee would participate in a full or partial participation exercise quadrennially. In addition, in the year when one of the co-located licensees is participating in a full or partial participation exercise, the proposed rule would require the other co-located licensees to participate in activities and interaction with offsite authorities. For the period between exercises the proposed rule would require the licensees to conduct emergency preparedness activities and interactions (A&I). The purpose of A&I would be to test and maintain interface functions among the affected State and local authorities and the licensees.

The Commission concludes that biennial full or partial participation exercises for each co-located licensee is not warranted and that the proposed regulation would provide a sufficient level of assurance of emergency preparedness for the following reasons. First, the proposed rule is consistent with the current licensees' practice for the James A. Fitizpatrick/Nine Mile Point plants. This practice has been reviewed periodically by the NRC, the Federal Emergency Management Agency (FEMA), and the State of New York. NRC has continued to find that there is reasonable assurance that appropriate measures could be taken to protect the public health and safety in the event of a radiological emergency, based on NRC's assessment of the adequacy of the licensee's onsite Emergency Planning (EP) program, FEMA's assessment of the adequacy of the offsite EP program, and the current level of interaction between the onsite and offsite emergency response organizations in the period between full (or partial) participation exercises.

Second, the central requirement of a ''partial participation'' exercise under the current regulations is to test the ''direction and control functions'' between the licensee and the offsite authorities (*i.e.*, protective action decision making related to emergency action levels, and communications capabilities among affected State and local authorities and the licensee). *See* 10 CFR part 50, Appendix E, Paragraph IV.F, footnote 5 of the current regulations. The proposed rule would contain a requirement that, in each of the three years between a licensee's participation in a full participation exercise, each licensee shall participate in activities and interactions (A&I) with offsite authorities to test and maintain interface functions. By requiring that the licensee's emergency preparedness organization engages in activities with offsite authorities to exercise and test effective communication and coordination, the proposed rule would provide the functional equivalent of a biennial exercise which tests the ''direction and control functions'' between the licensee and the offsite authorities. *Id.*

Third, the burden of requiring each licensee to participate biennially in a full or partial participation exercise with offsite participation falls most heavily on the offsite authorities (*i.e.*, the State and local authorities). The Commission's 1984 and 1996 rulemakings were specifically intended to reduce the schedule for offsite exercises, to remove unnecessary burden on offsite authorities. However, the Commission did not explicitly address the unique circumstance of two plants located on a single site, with each plant owned by different licensees. This proposed rulemaking would address the undue burden placed upon offsite authorities in these circumstances.

The proposed rule would define co-located licensees as licensees that share many of the following emergency planning and siting elements:

a. Plume exposure and ingestion emergency planning zones,

b. Offsite governmental authorities,

c. Offsite emergency response organizations,

d. Notification system, and/or

e. Emergency facilities.

The Commission requests public comments on whether the ''alternating participation'' concept should be extended to the situation where three or more nuclear power plants are co-located at a single site. For example, if there were five nuclear power plants each owned by separate licensees, co-located on a single site, should the final rule include a provision which would require each licensee to participate in a full offsite exercise once every 10 years with co-located licensees required to participate in activities and interactions with offsite authorities between exercises? If this is not considered appropriate, what alternative concept for the conduct of full-participation offsite exercises should the regulation specify?

The Commission also requests public comment on the elements of the definition of ''co-located'' licensees.

B. Proposed Guidance on Acceptable Emergency Planning Activities and Interactions for Co-Located Licensees. Currently, guidance on the conduct of training, including onsite and offsite exercises, is contained in Regulatory Guide (RG) 1.101, ''Emergency Planning and Preparedness for Nuclear Power Reactors.'' The NRC intends to modify RG 1.101 to set forth guidance on the conduct of exercises, and activities and interactions, to reflect the provisions of any final rule addressing co-located licensees, as part of the final rulemaking package. The substance of the proposed guidance to be set forth in the revised version of RG 1.101 is set forth below. The Commission requests public comment on the following guidance for co-located licensees:

1. When one licensee hosts the two year full or partial participation exercise, the other licensee is involved in the following activities:

a. Scenario preparation;

b. Meetings with State, and local governmental personnel to develop extent of play document;

c. Licensee to conduct training at Reception Centers, Congregate Care Centers, and County Emergency Operations Centers; and

d. Provide controllers and observers for the full participation exercise.

2. Provide for the staffing of the State and County Emergency Operations Centers (EOC) with dose assessment and communications personnel as well as the staffing of the Joint News Center (JNC).

3. Hospital drills are conducted twice a year with alternating counties; if applicable.

4. The Notification Process and the Emergency Action Level Scheme shall be exercised.

5. Protective Action Recommendations (PAR) Methodology for the 10 and 50-mile Emergency Planning Zones (EPZs) and the Dose Assessment Methodology shall be exercised.

6. Licensee/Offsite training:

• Annual State County training (Examples: Reactor Systems, Dry Cask Storage, EALs).

• Licensee provided Fire Service Training (County).

• Licensee provided Ambulance Training (County).

• Licensee provided Hospital Training (County).

• Licensee provided Dose Assessment training, including dose assessment software (State and County).

7. Licensee/Offsite Meetings and Conferences:

• Quarterly Nuclear Safety Subcommittee (State and County).

• Ad hoc meetings with County Emergency Management staff.

• County and local government Emergency Planning Committee meetings.

• Licensee security meetings with offsite law enforcement and U.S. Coast Guard.

• Licensee assistance in the development of the County Emergency Planning public information booklet.

8. Licensee/Offsite drills and exercises:

• County and/or State partial participation in licensee quarterly drills and biennial exercises.

• Participation in County/State FEMA evaluated drills.

• Local fire department support during licensee on-site fire drills.

• Licensee participation at Hospital drills.

9. Licensee/Offsite support services:

• Licensee support at local government Reception Center training and practice drills.

• Licensee provides dosimeters and processing services to local government.

• Licensee provide radiological instrument calibration services to local government.

• Licensee support of local government during annual Public Notification System (PNS) system test.

• Licensee provides use of weapons firing range to local and state law enforcement (Sheriff, State Police).

Paragraph-by-Paragraph Discussion of Changes to 10 CFR Part 50, Appendix E

A. Paragraph IV. B—Assessment Actions. This paragraph would be amended by adding new language governing the type and scope of EAL changes that must receive NRC approval prior to implementation. The proposed amendment would clarify that NRC approval of EAL changes would be required for changes that decrease the effectiveness of the emergency plan or for changes to convert from one EAL scheme (*e.g.*, NUREG–0654-based) to another EAL scheme (*e.g.*, NUMARC/NESP–007-based). The proposed language would also clarify the existing requirement that applicants for initial reactor operating licenses and initial combined licenses (COL) must obtain NRC approval of initial proposed EALs.

Language would be added to the last sentence of 10 CFR 50.54(q), to clearly state that EAL changes that are made without NRC review and approval, as well as licensee requests for review and approval of EAL changes under the proposed language, must be submitted in accordance with the requirements of § 50.4. The Commission proposes to follow the current practice of approving EAL changes without the use of a license amendment.

B. Paragraph IV.F.2.—Training. This paragraph would be amended to articulate the emergency planning exercise requirements for co-located licensees. Under the proposed amendment, co-located licensees would be required to exercise their onsite plans biennially. The offsite authorities would exercise their plans biennially. The interface between offsite plans and each of the onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee. Thus, each co-located licensee would participate in a full or partial participation exercise quadrennially. In addition, in the year when one of the co-located licensees is participating in a full or partial participation exercise, the proposed rule requires the other co-located licensee to participate in activities and interactions with offsite authorities. For the period between exercises the proposed rule requires the licensee to conduct emergency preparedness activities and interactions (A&I). The purpose of A&I would be to test and maintain interface functions among the affected State and local authorities and the licensee. Table 1 provides a graphical description of one possible way of meeting the requirements of the proposed rule.

TABLE 1.—EXAMPLE OF EMERGENCY PREPAREDNESS TRAINING FOR TWO (2) CO-LOCATED LICENSEES

Year	1	2	3	4	5	6	7	8	9
Licensee 1	X	A&I	A&I	A&I	X	A&I	A&I	A&I	X
Licensee 2	A&I	A&I	X	A&I	A&I	A&I	X	A&I	A&I

Notes:
X = Full or partial participation exercise.
A&I = Activities and interactions with offsite authorities.

This paragraph would also be amended to provide a definition of co-located licensees as licensees that share many of the following emergency planning and siting elements.

a. Plume exposure and ingestion emergency planning zones,

b. Offsite governmental authorities,

c. Offsite emergency response organizations,

d. Public notification system, and/or

e. Emergency facilities.

Metric Policy

On October 7, 1992, the Commission published its final Policy Statement on Metrication. According to that policy, after January 7, 1993, all new regulations and major amendments to existing regulations were to be presented in dual units. The proposed amendments to the regulations contain no units.

Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was

published on June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule changes specifically with respect to the clarity of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The proposed rulemaking addresses two matters: (1) The circumstances under which a licensee may modify an existing EAL without prior NRC review and approval; and (2) the nature and scheduling of emergency preparedness exercises for two different licensees of nuclear power plants which are co-located on the same site (co-located licensees). These are not matters which are appropriate for addressing in industry consensus standards, and have not been the subject of such standards. Accordingly, this proposed rulemaking is not within the purview of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113.

Environmental Assessment and Finding of No Significant Impact

The Commission is proposing to amend its emergency preparedness regulations contained in 10 CFR part 50, Appendix E. The first proposed revision relates to the NRC approval of changes to the EALs, Appendix E to 10 CFR part 50, paragraph IV.B. The second proposed revision relates to exercise requirements for co-located licensees (Appendix E, paragraph IV.F).

Need for the Action

(1) NRC Approval of Changes to Emergency Action Levels. 10 CFR 50.54(q) states that licensees may make changes to their emergency plans without Commission approval only if the changes ''do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E'' to 10 CFR part 50. By contrast, Appendix E states that ''EAL's shall be * * * approved by NRC.'' The industry practice, in general, has been to revise EALs that do not reduce the effectiveness of the emergency plan and to implement them in accordance with § 50.54(q), without requesting NRC approval. The Commission believes that the current regulations are unclear, and can be interpreted to require prior NRC approval for all licensee EAL changes. The Commission has determined that NRC approval of all EAL changes are not necessary to ensure an adequate level of safety. Thus, the current regulation imposes an unnecessary burden on licensees and the NRC.

2. Exercise Requirements for Co-Located licensees, (paragraph IV.F.2.). 10 CFR part 50, Appendix E, requires that the offsite emergency plans for each site shall be exercised biennially with the full (or partial) participation of each offsite authority having a role under the plans, and that each licensee at each site shall conduct an exercise of its onsite emergency plan every two years, an exercise that may be included in the full participation biennial exercise. Paragraph IV.F.2 is ambiguous about the emergency preparedness exercise requirements where multiple nuclear power plants, each licensed to different licensees, are co-located at the same site: whether each licensee must participate in a full-participation exercise of the off-site plan every two years, or whether the licensees may alternate their participation such that a full-participation exercise is held every two years and each licensee (at a two-licensee site) participates in a full-participation exercise every four years.

Upon consideration of the language of the current regulation and the legislative history of the exercise requirements, the Commission believes that the ambiguity in the current regulations can be interpreted that each nuclear power plant licensee co-located on the same site must participate in a full-participation offsite exercise every two years (and that each offsite authority is to participate on either a full or partial participation basis in licensee's biennial offsite exercise).

The Commission believes that requiring each licensee on a co-located site to participate in a full-participation exercise every two years, and for the offsite authorities to participate in each licensee's full-participation exercise is not necessary to provide reasonable assurance that each licensee and the offsite authorities will be able to fulfill their responsibilities under the emergency plan should the plan be required to be implemented. Furthermore, the Commission believes that this interpretation could impose an undue regulatory burden on offsite authorities. Therefore, the Commission believes that rulemaking is necessary to make clear that each co-located licensee need not participate in a full-participation offsite exercise every two years.

The Commission proposes that where two nuclear power plants licensed to separate licensees are co-located on the same site, reasonable assurance of emergency preparedness exists where; (1) The co-located licensees would exercise their onsite plans biennially; (2) The offsite authorities would exercise their plans biennially; and (3) The interface between offsite plans and each of the onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee.

Thus, each co-located licensee would participate in a full or partial participation exercise quadrennially. In addition, in the year when one of the co-located licensees is participating in a full or partial participation exercise, the proposed rule would require the other co-located licensees to participate in activities and interaction with offsite authorities. For the period between exercises the proposed rule would require the licensees to conduct emergency preparedness activities and interactions. The purpose of A&I would be to test and maintain interface functions among the affected State and local authorities and the licensees.

Environmental Impact of the Proposed Actions

The NRC believes that the environmental impact for the proposed rule is negligible. The proposed rule would not require any changes to the design, or the structures, systems and components of any nuclear power plant. Nor would the proposed rule require any changes to licensee programs and procedures for actual operation of nuclear power plants. Thus, there would be no change in radiation dose to any member of the public which may be attributed to the proposed rule, nor will there be any changes in occupational exposures to workers. Furthermore, the proposed rule will not result in any changes that would increase or change the nature of nonradiological effluents from nuclear power plants.

Alternative to the Proposed Actions

The alternative to the proposed action is to not revise the regulations (*i.e.*, the no action alternative). No environmental impacts are associated with the no action alternative.

Agencies and Persons Consulted

Cognizant personal from the Federal Emergency Management Agency and New York State (for the co-located licensee part of the rule change), were consulted as part of this rulemaking activity.

Finding of No Significant Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that the proposed amendments are not major Federal actions significantly affecting the quality of human environment, and therefore, an environmental impact statement is not required. These amendments would revise the emergency planning regulations to be consistent with current staff and licensee practices. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Paperwork Reduction Act Statement

This proposed rule increases the burden on co-located licensees to log activities and interactions with offsite agencies during the years that full or partial participation emergency preparedness exercises are not conducted and to prepare a one-time change to procedures to reflect the revised exercises requirements. The public burden for this information is estimated to average 30 hours per year. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The NRC has prepared a regulatory analysis for the proposed amendments. This analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis is provided below and is also available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 01-F21, Rockville, Maryland. Single copies of the analysis are available as indicated in the **ADDRESSES** heading.

I. Statement of Problem and Objectives

The Commission is proposing to make two changes to its emergency preparedness regulations contained in 10 CFR part 50, Appendix E. The first proposed amendment relates to the NRC approval of licensee changes to Emergency Action Levels, paragraph IV.B and the second proposed amendment relates to exercise requirements for co-located licensees, paragraph IV.F.2. A discussion of each of these proposed revisions follows.

(1) NRC approval of licensee changes to Emergency Action Levels, 10 CFR part 50, Appendix E, Paragraph IV.B. EALs are part of a licensee's emergency plan. There appears to be an inconsistency in the emergency planning regulations regarding the NRC approval of nuclear power plant licensee changes to emergency action levels. § 50.54(q) states that licensees may make changes to their emergency plans without Commission approval only if the changes ''do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E'' to 10 CFR part 50. By contrast, Appendix E states that ''EAL's shall be * * * approved by NRC.'' However, the current industry practice, in general, has been to make revisions to EALs and to implement them without requesting NRC approval, after determining that the changes do not reduce the effectiveness of the emergency plan in accordance with § 50.54(q). When the determination is made that a proposed change constitutes a decrease in effectiveness, licensees submit the changes to NRC for review and approval. If a change involves a major change to the EAL scheme, for example, changing from an EAL scheme based on NUREG–0654 guidance to an EAL scheme based on NUMARC/NESP–007 guidance, it has been the industry practice to seek NRC approval before implementing the change. The NRC has been aware of the industry practice and has not objected to it. The Commission believes that the current regulations are unclear and can be interpreted to require prior NRC approval for all changes to a licensee's EALs.

(2) Exercise Requirements for Co-Located Licensees, 10 CFR part 50, Appendix E, Paragraph IV.F. The emergency planning regulations were significantly upgraded in 1980 after the accident at Three Mile Island (45 FR 55402; August 19, 1980). The 1980 regulations required an annual exercise of the onsite and offsite emergency plans. In 1984, the regulations were amended to change the frequency of participation of State and local governmental authorities in nuclear power plant offsite exercises from annual to biennial (49 FR 27733; July 6, 1984). In 1996, the regulations were amended to change the frequency of exercising the licensees' onsite emergency plan from annual to biennial (61 FR 30129; June 14, 1996). Appendix E, to 10 CFR part 50, Paragraph IV.F.2, currently provides that the ''offsite plans for each site shall be exercised biennially'' with the full (or partial) participation of each offsite authority having a role under the plans, and that ''each licensee at each site'' shall conduct an exercise of its onsite emergency plan every two years, an exercise that may be included in the full participation biennial exercise (emphasis added). Thus, Paragraph IV.F.2 is ambiguous about the emergency preparedness exercise requirements where multiple nuclear power plants, each licensed to different licensees, are co-located at the same site: whether each licensee must participate in a full-participation exercise of the off-site plan every two years, or whether the licensees may alternate their participation such that a full-participation exercise is held every two years and each licensee (at a two-licensee site) participates in a full-participation exercise every four years.

Upon consideration of the language of the current regulation, and the legislative history of the exercise requirements, the Commission believes that the ambiguity in the current regulations can be interpreted that each nuclear power plant licensee co-located on the same site must participate in a full-participation offsite exercise every two years (and that each offsite authority is to participate on either a full or partial participation basis in each licensee's biennial offsite exercise). Upon consideration of the matter, the Commission believes that requiring each licensee on a co-located site to participate in a full-participation exercise every two years, and for the offsite authorities to participate in each licensee's full-participation exercise is not necessary to provide reasonable assurance that each licensee and the offsite authorities will be able to fulfill their responsibilities under the emergency plan should the plan be required to be implemented. Furthermore, the Commission believes that this interpretation could impose an undue regulatory burden on offsite authorities. Currently, there is only one nuclear power plant site with two

power plants licensed to two separate licensees: The James A. FitzPatrick and Nine Mile Point site. Although the ambiguity in Paragraph IV.F.2 has limited impact today, the Commission understands that future nuclear power plant licensing concepts currently being considered by the industry include siting multiple nuclear power plants on a single site. These plants may be owned and/or operated by different licensees. Therefore, the Commission believes that this rulemaking is necessary to remove the ambiguity in Paragraph IV.F.2 and clearly specify the emergency preparedness training obligations of co-located licensees.

The Commission proposes that where two nuclear power plants licensed to separate licensees are co-located on the same site, reasonable assurance of emergency preparedness exists where: (1) The co-located licensees would exercise their onsite plans biennially; (2) The offsite authorities would exercise their plans biennially; and (3) The interface between offsite plans and each of the onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee.

Thus, each co-located licensee would participate in a full or partial participation exercise quadrennially. In addition, in the year when one of the co-located licensees is participating in a full or partial participation exercise, the proposed rule would require the other co-located licensees to participate in activities and interaction with offsite authorities. For the period between exercises the proposed rule would require the licensees to conduct emergency preparedness activities and interactions. The purpose of A&I would be to test and maintain interface functions among the affected State and local authorities and the licensees.

The proposed rule defines co-located licensees as licensees that share many of the following emergency planning and siting elements.

a. Plume exposure and ingestion emergency planning zones,

b. Offsite governmental authorities,

c. Offsite emergency response organizations,

d. Public notification system, and/or

e. Emergency facilities.

II. Background

(1) Emergency Action Levels (paragraph IV.B). EALs are thresholds of plant parameters (such as containment pressure and radiation levels) used to classify events at nuclear power plants into one of four emergency classes (Notification of Unusual Event, Alert, Site Area Emergency, or General Emergency). EALs are required by Appendix E to 10 CFR part 50 and § 50.47(b)(4), and are contained in licensees' emergency plans and emergency plan implementing procedures.

Section 50.54(q) states that licensees can make changes to their emergency plans without Commission approval only if the changes ''do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of Appendix E'' to 10 CFR part 50. However, Appendix E to 10 CFR part 50 states that ''EALs shall be discussed and agreed on by the applicant and State and local governmental authorities and approved by NRC.'' Because EALs are required to be included in the emergency plan, the issue is whether changes to EALs incorporated into the emergency plan are subject to the change requirements in 10 CFR 50.54(q), or to the more restrictive requirement in Appendix E.

(2) Exercise Requirements for Co-Located Licensees (paragraph IV.F.2). The NRC's current regulations contained in Appendix E, to 10 CFR part 50, require that the offsite emergency plans for each site shall be exercised biennially with the full (or partial) participation of each offsite authority having a role under the plans, and that each licensee at each site shall conduct an exercise of its onsite emergency plan every two years, an exercise that may be included in the full participation biennial exercise. This exercise requirement, though straight forward on its face, has implementation and compliance problems when two licensees occupy the same site thereby requiring the same state to conduct a full participation exercise with each co-located licensee every year.

There is currently only one site with two licensees, Nine Mile Point and James A. FitzPatrick site. However, the current trend in the nuclear industry is to locate new plants on currently approved sites, possibly with different licenses, thus the need for this proposed rule change.

III. Rulemaking Options for Both Amendments

Option 1—revise the regulations to reflect current staff and licensee practices.

Option 2—not to revise the regulations.

IV. Alternatives

Impact(s)

Option 1 for the EAL revisions would amend the existing regulations to eliminate the inconsistency between the requirements of Appendix E and § 50.54(q) relating to approval of changes to EALs and reflect current staff and licensee practice. This would be done by amending Appendix E to 10 CFR part 50, to require NRC to review for approval new EAL schemes or revisions to EALs that diminish the effectiveness of the emergency plans (§ 50.54(q) criteria). The rulemaking would provide a means for licensees to improve their EALs while reducing unnecessary regulatory burden. Once the rule is revised, licensees could make EAL changes that do not decrease the effectiveness of the emergency plan without prior NRC approval. This approach would reduce the unnecessary regulatory burden on licensees.

Option 2 for EAL changes would retain the inconsistency in the regulations, thereby increasing the unnecessary burden on licensees and the NRC staff in addressing questions on a case-by-case basis.

Option 1 for co-located licensees would maintain safety because EP exercises would continue to be required at the frequency which has provided reasonable assurance that the emergency plans can be implemented. The impact of Option 1 on the resources of licensees and offsite authorities would be minimal. Option 1 would reflect what licensees are currently doing and, therefore, there would not be a change in existing acceptable practices. Clarification of the regulatory requirements would modify wording that has resulted in ambiguous understanding of the requirements. This option would require NRC resources to conduct the rulemaking. The activities and interactions that would test and maintain interface functions for co-located licensees and offsite authorities in the period between exercises (outlined in this proposed rule) will provide a consistent expectation and basis for such activities. The level of activities and interactions adequate to maintain an appropriate level of preparedness would be ensured.

The impact of the no rulemaking option (option 2) for the co-located licensee exercise revision on the resources of staff, licensees and offsite authorities would be minimal. However, without clarification of the regulatory requirements, there would be the continued ambiguity in the requirements for future licensee situations. The impact of these continued ambiguities is that potential confusion over requirements would have to be resolved on a case-by-case basis by the staff. This option would not

require NRC resources for conducting a rulemaking.

V. Estimation and Evaluation of Values and Impacts

The proposed amendments would modify current requirements in the NRC's approval of changes to Emergency Action Levels (EALs) and the participation in emergency preparedness exercises for co-located licensees. The change in the requirement for NRC approval of EALs is being made solely for consistency, and that because it reflects current practice, as well as the Commission's original intent it does not impose a burden on licensees. However, the second change does modify the information collection requirements and impacts future co-located licensee burden. Current co-located licensees have implemented an emergency planning training regime consistent with the proposed rule.

The proposed amendment would require that future co-located licensees incorporate in their emergency planning procedures that each co-located licensee would hold a full participation emergency preparedness exercise with the offsite agencies once every four years. In addition, the licensee that does not conduct the full participation exercise with the offsite agencies will conduct a partial participation exercise with the offsite agencies every two years. Likewise each co-located licensee would log the activities and interactions with offsite authorities that are also conducted in the period between exercises. This proposed rule does not increase the burden on current co-located licensees because they have an emergency planning training regime consistent with the proposed rule. Future co-located licensees would keep a log of the activities and interactions with offsite authorities which is estimated to average 30 hour(s) per co-located licensee per year.

VI. Presentation of Results

As noted, the impact on a co-located licensee to implement the proposed rule change is a modest 30 hour(s) per year per co-located licensee. This time would be used to maintain a log of the activities and interactions with offsite authorities. At an assumed average hourly rate of $156/hour, the total industry implementation cost is estimated at $9,360. The cost for an individual co-located licensee is $4,680 per year.

With respect to the EAL rule change, licensees would save staff time by having explicit NRC requirements and guidance that should assist the licensees in the proper submittal of EAL changes. The impact of improved regulations on the NRC is a decrease in the amount of staff time needed to approve license EAL changes. This is estimated to be about a 100 staff-hour reduction or a $8,000 savings to the NRC per year (assuming a $80 hourly rate for NRC staff time). However, it is uncertain as to how many EAL changes might have been received by the NRC for review and approval.

There would be several additional benefits associated with these amendments. The greatest would be the increased assurance that the Commissions regulations are consistent and not ambiguous. Further, by addressing these issues generically, through rulemaking, rather than continuing the current case-by-case approach, it is expected that the burden on the NRC staff would be reduced by several hours for each license EAL change as well as future co-located licensee's exercise requirements that NRC would need to approve. Another beneficial attribute to this proposed action is regulatory efficiency resulting from the expeditious handling of future licensing actions by providing regulatory predictability and stability for the EAL changes as well as the exercise requirements for co-located licensees.

VII. Decision Rationale for Selection of the Proposed Action

As previously discussed, the additional burdens on a licensee and the NRC are expected to be modest. However, a revision of the requirements is desirable to remove ambiguities in the current regulations, while maintaining safety and reducing unnecessary regulatory burden.

VIII. Implementation

The NRC staff proposes that any Federal rulemaking take effect 90 days after publication of the final rule in the **Federal Register**.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the proposed rule if issued, will not have a significant economic impact on a substantial number of small entities. The proposed rule would affect only States and licensees of nuclear power plants. These States and licensees do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

(1) NRC Approval of EAL Changes

The proposed rule, which eliminates the need for NRC review and approval for certain EAL changes, does not constitute a backfit as defined in 50.109(a)(1). Although 10 CFR 50.54(q) permits licensees to make changes to the emergency plan which do not decrease the effectiveness of the plan, 10 CFR part 50, Appendix E currently requires that EALs shall be approved by NRC. The proposed rulemaking would clarify the Appendix E requirement to clearly permit licensee changes to EALs without NRC review and approval if the changes do not decrease the effectiveness of the emergency plan. The proposed rule requires NRC review and approval for those EAL changes which decrease the effectiveness of the emergency plan, or constitute a change from one EAL scheme to another. The proposed rulemaking clarifies the requirements and represents the current practice of making changes under 50.54 (q) requirements and is therefore not a backfit.

In addition, the proposed change applies prospectively to changes initiated by licensees. The Commission has indicated in various rulemakings that the Backfit Rule does not protect the prospects of a potential applicant nor does the Backfit Rule apply when a licensee seeks a change in the terms and conditions of its license. A licensee-initiated change in an EAL does not fall within the scope of actions protected by the Backfit Rule, and therefore the Backfit Rule does not apply to this proposed rulemaking.

(2) Co-Located Licensee

The proposed rulemaking, which addresses the regulatory ambiguity regarding exercise participation requirements for co-located licensees, applies only to the existing co-located licensees for the Nine Mile Point and James A. Fitzpatrick site, and prospectively to future co-located licensees.

With respect to the Nine Mile Point and James A. FitzPatrick licensees, the proposed rule would arguably constitute a backfit, inasmuch as there is some correspondence between the licensees and the NRC which may be interpreted as constituting NRC approval of ''alternating participation'' by each licensee in a full-or partial-participation

exercise every two years. The backfit may not fall within the scope of the compliance exception,10 CFR 50.109(a)(4)(i), in view of the lack of new information showing that the prior NRC approval of ''alternating participation'' was based upon a factual error or new information not known to the NRC at the time that the NRC approved ''alternating participation.'' However, these licensees have informally been implementing an emergency planning training regime since year 2000 that is consistent with the proposed rule. Accordingly, the NRC does not propose to prepare a backfit analysis addressing the Nine Mile Point and James A. FitzPatrick licensees.

With respect to future holders of operating licenses (including combined licenses under part 52) for nuclear power plants which are co-located at the same site, the Commission has indicated in various rulemakings that the Backfit Rule does not protect the prospects of a potential applicant.

List of Subjects in 10 CFR Part 50

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act for 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATIONS FACILITIES

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

Authority: Secs. 102,103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 12422, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 168 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.43(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In Appendix E to Part 50, Paragraphs IV. B and F.2.c. are revised to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

IV. Content of Emergency Plans

* * * * *

B. Assessment Actions

The means to be used for determining the magnitude of, and for continually assessing the impact of the release of radioactive materials shall be described, including emergency action levels that are to be used as criteria for determining the need for notification and participation of local and State agencies, the Commission, and other Federal agencies, and the emergency action levels that are to be used for determining when and what type of protective measures should be considered within and outside the site boundary to protect health and safety. The emergency action levels shall be based on in-plant conditions and instrumentation in addition to onsite and offsite monitoring. These EALs shall be discussed and agreed on by the applicant or licensee and State and local governmental authorities, and approved by the NRC. Thereafter, EALs shall be reviewed with the State and local governmental authorities on an annual basis. A revision to an EAL must be approved by the NRC prior to implementation if: (1) Licensee is changing from one EAL scheme to another EAL scheme (*e.g.* a change from an EAL scheme based on NUREG–0654 to a scheme based upon NUMARC/NESP–007); or (2) the EAL revision decreases the effectiveness of the emergency plan. A licensee shall submit each request for NRC approval of the proposed EAL change as specified in § 50.4. If a licensee makes a change to an EAL that does not require NRC approval, the licensee shall submit, as specified in § 50.4, a report of each change made within 30 days after the change is made.

* * * * *

F. Training

2. * * *

c. Offsite plans for each licensee shall be exercised biennially with full participation by each offsite authority having a role under the plan. Where the offsite authority has a role under a radiological response plan for more than one licensee it shall fully participate in one exercise every two years and shall, at minimum, partially participate[5] in other offsite plan exercises in this period.

If two licensees are located on any one site (co-located licensees)[6] each licensee shall:

(1) Conduct an exercise biennially of its onsite emergency plan;

(2) Participate quadrennially in an offsite biennial full or partial participation exercise; and

(3) Conduct emergency planning activities and interactions in the three years between its participation in the offsite full or partial participation exercise with offsite authorities, in order to test and maintain interface functions among the affected State and local authorities and the licensee.

[5]''Partial participation'' when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; *i.e.*, (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

[6]Co-located licensees are licensees that share many of the following emergency planning and siting elements.

a. Plume exposure and ingestion emergency planning zones,

b. Offsite governmental authorities,

c. Offsite emergency response organizations,

d. Public notification system, and/or

e. Emergency facilities.

Dated at Rockville, Maryland, this 18th day of July, 2003.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 03–18845 Filed 7–23–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes. This proposal would require replacement of the wire assembly connectors of the bag rack lighting with new, moisture-resistant connectors and reidentification of the bag racks. This action is necessary to

prevent arcing of the wire assembly connectors of the overhead storage bin, and service module and bin extension assemblies, and consequent smoke/fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–167–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–167–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents of arcing and smoke from the electrical connectors of the ceiling lights on McDonnell Douglas Model MD–11 and –11F airplanes. It was determined that the cause of the connector failure was due to moisture intrusion into the mated connectors through the backshell. This condition, if not corrected, could result in arcing of the wire assembly connectors of the overhead storage bin, and service module and bin extension assemblies, and consequent smoke/fire in the cabin.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 and –11F airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin MD11–33A064, dated March 6, 2002, which describes procedures for replacement of the wire assembly connectors of the bag rack lighting with new, moisture-resistant connectors and reidentification of the bag racks. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

There are approximately 111 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry would be affected by this proposed AD.

For Group 1 airplanes identified in the referenced service bulletin, it would take approximately 11 work hours per airplane to accomplish the proposed actions, at an average labor rate of $65 per work hour. Required parts would cost between $1,140 and $1,406 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,855 and $2,121 per airplane.

For Group 2 airplanes identified in the referenced service bulletin, it would

take approximately 13 work hours per airplane to accomplish the proposed actions, at an average labor rate of $65 per work hour. Required parts would cost between $1,140 and $1,406 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,985, and $2,251 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–167–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–33A064, dated March 6, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of the wire assembly connectors of the overhead storage bin, and service module and bin extension assemblies, and consequent smoke/fire in the cabin, accomplish the following:

Replacement and Reidentification

(a) Within 12 months after the effective date of this AD, replace the wire assembly connectors of the bag rack lighting with new, moisture-resistant connectors and reidentify the bag racks, per Boeing Alert Service Bulletin MD11–33A064, dated March 6, 2002.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18792 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–52–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that would have required an inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment; and repair or replacement of any damaged part with a new part. The proposed AD also would have required modification of the applicable terminal strip installation in the cargo compartment, and replacement of the applicable terminal strips in the cargo compartment with new strips. This new action revises the proposed rule by adding new procedures for certain airplanes; clarifying the applicability; and referencing the latest revision of the service bulletin. The actions specified by this new proposed AD are intended to prevent arcing and consequent damage to the terminal strips and adjacent structure and smoke/fire in the forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–52–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–52–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 5, 2001 (66 FR 50897). That NPRM would have required an inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment; and repair or replacement of any damaged part with a new part. That NPRM also would have required modification of the applicable terminal strip installation in the cargo compartment, and replacement of the applicable terminal strips in the cargo compartment with new strips. That NPRM was prompted by an incident in which arcing occurred between the power feeder cables and terminal strip support brackets. That condition, if not corrected, could result in arcing and consequent damage to the terminal strips and adjacent structure and smoke/fire in the forward cargo compartment.

Comments

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

Request To Reference Latest Service Bulletin

Two commenters request that the proposed AD be revised to reference Revision 01 of Boeing Alert Service Bulletin MD11–24A174, dated April 24, 2001 (the original issue of the service bulletin was referenced in the NPRM as the appropriate source of service information for accomplishment of the proposed actions). One commenter states that this revision corrects an incorrect part number and part quantity.

The FAA does not agree. Since issuance of the NPRM, the FAA has reviewed and approved Revision 03 of Boeing Alert Service Bulletin MD11–24A174, including Evaluation Form, dated July 25, 2002. This revision constitutes a complete reissue. More work is necessary for Group 2 airplanes changed per prior issues of this service bulletin.

Revision 03 of the service bulletin describes procedures for a general visual inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment; and repair or replacement of the damaged part with a new part. The service bulletin also describes procedures for modification of the applicable terminal strip installation in the cargo compartment (including inspection for damaged cables and repair of any damaged cable) if necessary, and replacement of the applicable terminal strips in the cargo compartment with new strips (including inspection for damaged cables and repair of any damaged cable).

Therefore, we have revised this supplemental NPRM to reference Revision 03 of the service bulletin as the appropriate source of service information for accomplishing the proposed actions. However, although the service bulletin recommends completion and submission of an inspection report and an Evaluation Form that provides input on the quality of the service bulletin to the airplane manufacturer, this proposed AD does not include such requirements.

Request to Revise Cost Impact

One commenter notes that the original NPRM states, ''The manufacturer has committed previously to its customers that it will bear the cost of replacement parts.'' The commenter states that this is not quite accurate, and that ''operators of affected airplanes within the warranty period of April 1, 1995, as specified by their purchase agreement, must submit a no change purchase order.''

From this comment, we infer that the commenter is requesting that the Cost Impact section of the original NPRM be revised. We concur and have revised this supplemental NPRM accordingly.

In addition, we have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Explanation of Change to Applicability

We find that Model MD–11F airplanes were not specifically identified by model name in the applicability of the original NPRM. However, those airplanes are identified by manufacturer's fuselage numbers in the effectivity listing of McDonnell Douglas Alert Service Bulletin MD11–24A174, dated January 31, 2001; and Boeing Alert Service Bulletin MD11–24A174, Revision 03, dated July 25, 2002. Therefore, we have revised this supplemental NPRM to specifically reference Model MD–11 and –11F

airplanes where appropriate, and have revised the applicability to reference the Revision 03 of the service bulletin. In addition, we have specified model designations in the applicability of this supplemental NPRM as published in the most recent type certificate data sheet for the affected models.

Explanation of Change to Inspection Definition

For clarification purposes, the FAA has revised the definition of a ''general visual inspection'' in Note 2 of this supplemental NPRM.

Conclusion

Since certain of these changes expand the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued 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 (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. Therefore, in this supplemental NPRM, Note 1 and paragraph (c) of the original NPRM have been removed, and paragraph (b) of the original NPRM has been revised.

Cost Impact

There are approximately 154 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD, that it will take approximately between 1 and 6 work hours per airplane depending on the airplane configuration to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts would cost between $133 and $474 depending on the airplane configuration. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $198 and $864 per airplane depending on the airplane configuration.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–52–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A174, Revision 03, dated July 25, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and consequent damage to the terminal strips and adjacent structure and smoke/fire in the forward cargo compartment, accomplish the following:

Inspection, Modification, Replacement, and Corrective Actions, if Necessary

(a) For airplanes on which Boeing Alert Service Bulletin MD11–24A174, original issue, January 31, 2001; Revision 01, dated April 24, 2001; or Revision 02, dated December 17, 2001, have not been done: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–24A174, excluding the Evaluation Form; both Revision 03, dated July 25, 2002. Although the service bulletin recommends the completion and submission of an Evaluation Form and a reporting requirement (Appendix), such reporting is not required by this AD.

(1) Do a general visual inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment. If any damage is detected, before further flight, repair or replace the damaged part with a new part, per the service bulletin; except if the type of structural material that has been affected is not covered in the Structural Repair Manual (SRM), repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

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

(2) Modify the applicable terminal strip installation in the cargo compartment (including inspection for damaged cables and repair of any damaged cable).

(3) Replace the applicable terminal strips in the cargo compartment with new strips (including inspection for damaged cables and repair of any damaged cable).

(b) For Group 2 airplanes listed in Boeing Alert Service Bulletin MD11–24A174, Revision 03, dated July 25, 2002, on which prior revisions of that service bulletin have been done: Within 18 months after the effective date of this AD, do the actions

specified in paragraphs (b)(1) and (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–24A174, excluding the Evaluation Form; both Revision 03, dated July 25, 2002. Although the service bulletin recommends the completion and submission of an Evaluation Form and a reporting requirement (Appendix), such reporting is not required by this AD.

(1) Do a general visual inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment. If any damage is detected, before further flight, repair or replace the damaged part with a new part, per the service bulletin; except if the type of structural material that has been affected is not covered in the SRM, repair per a method approved by the Manager, Los Angeles ACO, FAA.

(2) Replace the applicable terminal strip in the cargo compartment with a new strip (including inspection for damaged cables and repair of any damaged cable).

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18791 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–57–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, that would have required a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires; and corrective action, if necessary. That earlier proposed AD also would have required an inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires; repair if necessary; installation of a grommet around the lower edge of the feed-through; replacement of the support bracket with a new bracket; and relocation of the support clamp of the wire bundle; as applicable. That proposal was prompted by the FAA's determination that the existing support bracket and the location of the support clamp of the wire bundle may not adequately preclude the wire bundle contained in the feed-through behind the first observer's station from contacting the bottom portion of the feed-through. This new action revises the proposed rule by specifying new corrective actions. The actions specified by this new proposed AD are intended to prevent such contact, which could cause cable chafing, electrical arcing, smoke, or fire in the cockpit.

DATES: Comments must be received by August 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–57–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–57–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, was published as a notice of proposed rulemaking (NPRM) (hereafter referred to as ''the original NPRM'') in the **Federal Register** on October 5, 2001

(66 FR 50917). The original NPRM would have superseded AD 2000–03–13, amendment 39–11572 (65 FR 8028, February 17, 2000) to require a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires, and repair, if necessary. The original NPRM also would have required installing a grommet around the lower edge of the feed-through; replacing the support bracket with a new bracket; and relocating the support clamp of the wire bundle; as applicable. The original NPRM also expanded the applicability of the existing AD to include additional airplanes. The original NPRM was prompted by the FAA's determination that the existing support bracket and the location of the support clamp of the wire bundle may not adequately preclude the wire bundle contained in the feed-through behind the first observer's station from contacting the bottom portion of the feed-through. That condition, if not corrected, could cause cable chafing, electrical arcing, smoke, or fire in the cockpit.

Actions Since Issuance of the Original NPRM

Since the issuance of the original NPRM, the FAA has reviewed and approved Revision 03 of Boeing Alert Service Bulletin MD11–24A041, dated September 11, 2002. This revision incorporate engineering procedures released subsequent to the issuance of Revision 02 of the service bulletin, which was referenced in the original NPRM as the appropriate source of service information for accomplishing the proposed actions. The revised procedures involve installing and relocating a new bracket due to interference of existing potted inserts when installing the bracket per Revision 02 of the service bulletin. We have revised this supplemental NPRM to specify these new procedures and to include reference to Revision 03 of the service bulletin as the appropriate source of service information.

Comments

Due consideration has been given to the single comment received in response to the original NPRM:

One commenter notes that the original NPRM states, ''The manufacturer has committed previously to its customers that it will bear the cost of replacement parts.'' The commenter states that this is not quite accurate, and that Boeing warranty remedies are available for MD–11 airplanes in warranty as of September 1, 1992.

From this comment, we infer that the commenter is requesting that the Cost Impact section of the original NPRM be revised. We concur and have revised the supplemental NPRM accordingly.

Explanation of Change to Applicability

We have revised the applicability of the original NRPM to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

Since the change to include the revised procedures expands the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued 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 (AMOCs). However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 193 Model MD–11 airplanes of the affected design in the worldwide fleet. We estimate that 62 airplanes of U.S. registry would be affected by this supplemental NPRM.

The new actions that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would cost $407. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $33,294, or $537 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–57–AD.

Applicability: Model MD–11 airplanes, as listed in Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the wire bundle contained in the feed-through from contacting the bottom of the feed-through, which could cause cable chafing, electrical arcing, and smoke or fire in the cockpit, accomplish the following:

Inspection

(a) Within 1 year after the effective date of this AD, do a one-time detailed inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires per Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002.

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

Condition 1: No Damaged or Chafed Wire

(b) If no damaged or chafed wire is detected during the detailed inspection required by paragraph (a) of this AD, before further flight, revise the wire bundle support clamp installation per Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002.

Condition 2: Any Damaged or Chafed Wire

(c) If any damaged or chafed wire is detected during the detailed inspection required by paragraph (a) of this AD, before further flight, repair wiring, and revise the wire bundle support clamp installation, per Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002.

Alternative Methods of Compliance

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

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

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–03–13, amendment 39–11572, are approved as alternative methods of compliance with this AD.

Special Flight Permits

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

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18789 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–278–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200C and –200F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–200C and –200F series airplanes. This proposal would require repetitive inspections to find fatigue cracking in the upper chord of the upper deck floor beams, and repair if necessary. For certain airplanes, this proposal would also provide for an optional repair/modification, which would extend certain repetitive inspection intervals. This action is necessary to find and fix cracking in certain upper deck floor beams. Such cracking could extend and sever floor beams adjacent to the body frame and could result in rapid decompression and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–278–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a

request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–278–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of fatigue cracking of the station (STA) 340 upper deck floor beam on a Boeing Model 747–200F series airplane. The upper chord and web were completely severed by a crack which originated at a floor panel attachment fastener hole. A previous blend-out repair for corrosion was found at the crack location, and corrosion pitting was found in the fastener hole. Additionally, a 0.3-inch-long crack was found at an adjacent fastener hole. On certain Boeing Model 747–200C and –200F series airplanes, the upper chords of the floor beams at body station (BS) 340 through BS 440, and BS 500 through BS 520, are made from 7075 aluminum, which is more susceptible to fatigue cracking. BS 460 and BS 480 upper deck floor beams on these models are made from 2024 aluminum, which is known to be more durable than 7075 aluminum against fatigue. Cracking of the upper deck floor beam, if not corrected, could extend and sever floor beams adjacent to the body frame, which could result in rapid decompression and consequent loss of controllability of the airplane.

Other Relevant Rulemaking

On February 22, 2000, we issued AD 2000–04–17, amendment 39–11600 (65 FR 10695, February 29, 2000). That AD applies to certain Boeing Model 747–100, –200, and –300 series airplanes, and requires repetitive inspections to detect fatigue cracking in the upper deck floor beams located at certain body stations, and repair if necessary.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, which describes procedures for repetitive inspections to find fatigue cracking in the upper chord of the upper deck floor beams, and repair if necessary, as follows:

• If access is gained from above, the procedures specify an open-hole high frequency eddy current (HFEC) inspection of the attachment fastener holes of the floor panel for cracks in the upper chord.

• If access is gained from below, the procedures specify modification of the clip nuts of the attachment fastener holes of the floor panel, and surface HFEC inspections of the forward and aft horizontal flanges of the floor beam upper chord for cracks.

• If any crack is found, the procedures specify accomplishment of the repair in the service bulletin or contacting Boeing for repair instruction, and repetitive inspections of the repaired area. If no crack is found, repeat the applicable inspection.

The service bulletin also describes procedures for an optional repair/modification, which would extend certain repetitive inspection intervals.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between the Alert Service Bulletin and This Proposed AD

Although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; however, this AD identifies the office authorized to approve alternative methods of compliance.

Cost Impact

There are approximately 78 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $37,800, or $1,800 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–278–AD.

Applicability: Model 747–200C and –200F series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking in certain upper deck floor beams, which could extend and sever floor beams adjacent to the body frame and could result in rapid decompression and consequent loss of controllability of the airplane, accomplish the following:

Inspections and Repair

(a) Before the accumulation of 22,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later: Do the applicable inspection to find fatigue cracking in the upper chord of the upper deck floor beams as specified in Part 1 (Open-Hole High Frequency Eddy Current (HFEC) Inspection Method) or Part 2 (Surface HFEC Inspection Method) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. Do the inspections per the service bulletin.

(1) If any crack is found, before further flight, repair per Part 3 (Repair) of the Work Instructions of the service bulletin; except where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Do the applicable inspection of the repaired area per Part 1 of the service bulletin at the applicable time per Part 3 of the service bulletin. Repeat the applicable inspection at the applicable interval per Figure 1 of the service bulletin.

(2) If no crack is found, repeat the applicable inspection per paragraph (a) of this AD within the applicable interval per Figure 1 of the service bulletin. As an option, accomplishment of paragraph (b)(1) or (b)(2) of this AD, before further flight, extends the threshold for the initiation of the repetitive inspections required by this paragraph.

Optional Repair/Modification

(b) For airplanes on which the inspection required by paragraph (a) of this AD is done per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; and on which no cracking is found: Accomplishment of the actions specified in either paragraph (b)(1) or (b)(2) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (a)(2) of this AD.

(1) Do the repair per Part 3 of the service bulletin. At the applicable time specified in Table 1 of Part 3 of the service bulletin, do the inspection of the repaired area per Part 1 of the service bulletin. Repeat the inspection thereafter within the applicable interval per Figure 1 of the service bulletin.

(2) Do the modification of the attachment hole of the floor panel per Figure 5 of the service bulletin. Within 10,000 flight cycles after accomplishment of the modification, do the inspection of the modified area per Part 1 of the service bulletin. Repeat the inspection thereafter within the applicable interval per Figure 1 of the service bulletin.

Adjustments to Compliance Time: Cabin Differential Pressure

(c) For the purposes of calculating the compliance threshold and repetitive interval for the actions required by paragraph (a) of this AD: The number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less need not be counted when determining the number of flight cycles that have occurred on the airplane, provided that flight cycles with momentary spikes in cabin differential pressure above 2.0 psi are included as full pressure cycles. For this provision to apply, all cabin pressure records must be maintained for each airplane. No fleet-averaging of cabin pressure is allowed.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Issued in Renton, Washington, on July 18, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18788 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, that would have required one-time inspections to detect discrepancies of electrical wiring installations in various areas of the airplane, and corrective action if necessary. This new action expands the area to be inspected. The actions specified by this new proposed AD are intended to prevent smoke and fire in various areas of the airplane due to heat damage and/or electrical arcing of improperly installed wiring. The actions specified in this action are intended to address the identified unsafe condition.

DATES: Comments must be received by August 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal

holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–150–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–150–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on September 5, 2002 (67 FR 56768). That NPRM would have required one-time inspections to detect discrepancies of electrical wiring installations in various areas of the airplane, and corrective action if necessary. That NPRM was prompted by reports of damaged wiring insulation and chafed wiring in various areas on the affected airplanes. Investigation revealed that the damage and chafing might be attributed to improper wire installations and/or maintenance practices. This condition, if not corrected, could lead to heat damage and/or electrical arcing of the wiring, which could result in fire and smoke in various areas of the airplane.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Support for the Original NPRM

The Air Transport Association of America reports that its members generally support the intent of the original NPRM.

Request To Expand Areas To Be Inspected

Boeing asserts that the list of service bulletins cited in the original NPRM is incomplete and requests that the original NPRM be revised to expand the area of inspection to include the flight compartment and forward drop ceiling and the electrical/electronic (E/E) compartment, which may also be subject to the identified unsafe condition.

The FAA agrees. Boeing Service Bulletins MD80–24–176 and MD80–24–177, both Revision 02, both dated January 21, 2003, describe procedures for one-time nonintrusive inspections to detect discrepancies of exposed wiring in the flight compartment and forward drop ceiling and the E/E compartment, and, if necessary, corrective action (including replacing too-large clamps with smaller clamps, repositioning wires and clamps, replacing torn or broken clamps with new clamps, tightening loose wire terminations, and installing protective sleeving over wiring, as applicable). Those actions are intended to address the identified unsafe condition. This supplemental NPRM has been revised to add wiring inspections in those areas.

Request To Cite Most Recent Service Information

One commenter asserts that the serviceability of the wiring grommets (proposed to be inspected per the original NPRM) is subject to interpretation. The commenter states that Boeing has recognized that it would be impossible to nonintrusively verify the integrity of the grommets. Boeing plans to revise the service bulletins to remove the grommet inspection. Therefore, the commenter requests that we delay issuance of the AD until the service bulletins have been revised.

We agree. Boeing Service Bulletins MD80–24–178, MD80–24–179, MD80–24–180, MD80–24–181, and MD80–24–182, all Revision 01, including Appendix, dated June 12, 2001, were cited in the original NPRM as the appropriate sources of service information for the inspections. Those service bulletins were revised (Revision 02 was issued January 21, 2003) to remove the electrical component grommet inspection procedures. The remaining procedures were essentially unchanged. Therefore, this supplemental NPRM has been revised to cite Revision 02 of the service bulletins, but would provide credit for applicable inspections already done per the original issue or Revision 01 of the service bulletins.

Request To Extend Compliance Time

One commenter recommends that the compliance time be extended from 5 years to 6 years to accommodate

accomplishment of the inspections at heavy maintenance visits, since extensive access is necessary to reach the inspection areas.

We agree with the request. We find that extending the compliance time to 6 years for the inspections will better accommodate operators' schedules and still maintain an adequate level of safety. This supplemental NPRM has been revised accordingly.

Request To Revise Cost Estimate

One commenter claims that the original NPRM understates the labor hours necessary to accomplish the detail of inspection specified in the service bulletins. Based on experience, the commenter suggests that the work hours for the proposed inspections is 66 work hours per airplane, not 33 work hours as stated in the original NPRM. The commenter states that the inspections alone on its fleet would take 23,892 work hours. The commenter asserts that material and labor costs to restore any condition that does not conform to the service bulletin requirements cannot be estimated due to the extent of possible deviations/differences from airplane to airplane.

We infer that the commenter is requesting that the Cost Impact section of the original NPRM be revised. We partially agree with the commenter's rationale. We agree that the specified work hours may not always accurately reflect the amount of time necessary to complete the required work for every airplane or for every operator. We also recognize that material and labor costs to fix any discrepancy cannot be accurately estimated for each airplane. However, as explained in the Cost Impact section of the original NPRM, the economic analysis of the AD is limited to the cost of actions that would actually be required by the AD. The economic analysis does not consider the costs of conditional actions, such as repairing discrepancies found during a required inspection. Such conditional actions would be required to be accomplished—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. No change to this supplemental NPRM is necessary regarding this issue.

Conclusion

Since certain changes expand the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on This Supplemental NPRM

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Therefore, in this supplemental NPRM, Note 1 and paragraph (c) of the original NPRM have been removed, paragraph (b) of the original NPRM has been revised to identify the office authorized to approve AMOCs, and the remaining notes and paragraphs have been reidentified accordingly.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 1,191 airplanes of the affected design in the worldwide fleet. Estimates of the costs of the proposed actions are provided in the following table:

Service bulletin	Work hours per airplane	Labor rate/ hour	Cost per airplane	U.S. airplanes	U.S. fleet cost
MD80–24–176	8	$65	$521	732	$380,640
MD80–24–177	5	65	325	732	237,900
MD80–24–178	8	65	520	732	380,640
MD80–24–179	8	65	520	732	380,640
MD80–24–180	8	65	520	732	380,640
MD80–24–181	6	65	390	732	285,640
MD80–24–182	3	65	195	732	142,740

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this supplemental NPRM. As a result, the costs attributable to the supplemental NPRM may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2000–NM–150–AD.

Applicability: All Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: The FAA recommends that the actions required by this AD be accomplished after replacing the metallized polyethyleneteraphthalate (MPET) insulation blankets, as required by AD 2000–11–02, amendment 39–11750.

To prevent smoke and fire in various areas of the airplane due to heat damage and/or electrical arcing of improperly installed wiring, accomplish the following:

Inspection

(a) Within 6 years after the effective date of this AD: Perform a detailed inspection to detect discrepancies of exposed electrical wiring installations as specified in Table 1 of this AD. Specific discrepancies are listed in paragraph 3.B.3. of each service bulletin. Prior to further flight thereafter, perform corrective actions in accordance with the service bulletin, as applicable. Table 1 follows:

TABLE 1.—INSPECTION REQUIREMENTS

Inspect the electrical wiring installations in the—	In accordance with the following McDonnell Douglas Service Bulletin:
(1) Flight compartment and forward drop ceiling	MD80–24–176, Revision 02, dated January 21, 2003.
(2) Electrical/electronic compartment	MD80–24–177, Revision 02, dated January 21, 2003.
(3) Forward passenger compartment from stations Y=218.000 to Y=846.000.	MD80–24–178, Revision 02, dated January 21, 2003.
(4) Aft passenger compartment from stations Y=846.000 to Y=1338.000.	MD80–24–179, Revision 02, dated January 21, 2003.
(5) Forward and mid cargo compartments from stations Y=218.000 to Y=811.000.	MD80–24–180, Revision 02, dated January 21, 2003.
(6) Aft cargo compartment from stations Y=1033.000 to Y=1338.000	MD80–24–181, Revision 02, dated January 21, 2003.
(7) Forward accessory compartment from stations Y=41.000 to Y=70.000.	MD80–24–182, Revision 02, dated January 21, 2003.

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

(b) Although the service bulletins identified in Table 1 of this AD specify that operators provide a report of inspection findings, this AD does not require such information.

(c) An inspection done before the effective date of this AD is acceptable for compliance with the inspection requirements of this AD, if accomplished in accordance with the corresponding service bulletin identified in Table 1 of this AD, original version, dated July 14, 2000; or Revision 01, dated June 12, 2001.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 18, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18786 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–161–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes. This proposal would require revising the wire connection stackups for the terminal strip of the generator feeder tail compartment of the auxiliary power unit (APU), and removing a nameplate, as applicable. For certain airplanes, this proposal also would require replacing the terminal strips and revising the terminal hardware stackup for the feeder of the center cargo loading system. This action is necessary to prevent arcing damage to the terminal strips and damage to the adjacent structure, which could result in smoke and/or fire in the center and/or aft cargo compartments. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–161–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the

Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–161–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which arcing occurred between the power feeder cables and support bracket of the terminal strips on a McDonnell Douglas Model MD–11 airplane. Investigation revealed that inadequate clearance exists between the terminal strips and associated support brackets in the center and aft cargo compartments. This condition, if not corrected, could result in arcing damage to the terminal strips and damage to the adjacent structure, which could result in smoke and/or fire in the center and/or aft cargo compartments.

The terminal strips and associated support brackets in the center and aft cargo compartments on certain McDonnell Douglas Model MD–11F airplanes are identical to those on the affected Model MD–11 airplanes. Therefore, both of these models may be subject to the same unsafe condition.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 and –11F airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

We have reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A173, Revision 02, dated May 2, 2002, including Evaluation Form. The service bulletin describes procedures for revising the wire connection stackups for the terminal strip of the generator feeder tail compartment of the auxiliary power unit (APU), and removing a nameplate, as applicable. For certain airplanes, the service bulletin also describes procedures for replacing the terminal strips and revising the terminal hardware stackup for the feeder of the center cargo loading system. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the applicable actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Operators should note that the service bulletin specifies to repair damaged structure per the Structural Repair Manual (SRM). However, the SRM does not provide procedures for repair of certain structural material. Therefore, this proposed AD would require the repair of damaged structure that is not covered in the SRM to be accomplished per a method approved by us.

Although the referenced service bulletin describes procedures for completion and submission of an inspection report and service bulletin evaluation, this proposed AD would not require those actions.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

There are approximately 154 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. We estimate that 67 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 1 and 2 work hours per airplane (depending on the

airplane configuration) to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $102 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to between $11,189 and $15,544, or between $167 and $232 per airplane (depending on the airplane configuration).

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. However, for affected airplanes within the period under the warranty agreement, we have been advised that the manufacturer has committed previously to its customers that it will bear the cost of replacement parts. We also have been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this AD may be less than the cost impact figure indicated above.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–161–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A173, Revision 02, dated May 2, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing damage to the terminal strips and damage to the adjacent structure, which could result in smoke and/or fire in the center and/or aft cargo compartments, accomplish the following:

For Group 1 and Group 2 Airplanes: Revise Wire Connection Stackups, Remove Nameplate, and Inspect for Damage

(a) For Group 1 and Group 2 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A173, Revision 02, dated May 2, 2002, excluding Evaluation Form: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the service bulletin. Although the service bulletin references a reporting requirement in paragraph 4, ''Appendix,'' such reporting is not required by this AD.

(1) Revise the wire connection stackups for the terminal strip of the generator feeder tail compartment of the auxiliary power unit (APU), and remove the namplate, as applicable.

(2) Do a general visual inspection to detect arcing damage of the surrounding structure, adjacent system components, and electrical cables in the center cargo and aft cargo compartments.

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

For Group 2 Airplanes: Replace Terminal Strips, Revise Terminal Hardware Stackup, Remove Nameplate, and Inspect for Damage

(b) For Group 2 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A173, Revision 02, dated May 2, 2002, excluding Evaluation Form: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD per the service bulletin. Although the service bulletin references a reporting requirement in paragraph 4, ''Appendix,'' such reporting is not required by this AD.

(1) Replace the terminal strips and revise the terminal hardware stackup for the feeder of the center cargo loading system, and remove the nameplate, as applicable.

(2) Do a general visual inspection to detect arcing damage of the surrounding structure, adjacent system components, and electrical cables in the center cargo and aft cargo compartments.

Corrective Action if Necessary

(c) If any damage is detected during the inspection required by paragraph (a) or (b) of this AD, before further flight, repair damage or replace the damaged part with a new part, per McDonnell Douglas Alert Service Bulletin MD11–24A173, Revision 02, dated May 2, 2002, excluding Evaluation Form. If the type of structural material that has been damaged is not covered in the Structural Repair Manual, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Although the service bulletin references a reporting requirement in paragraph 4, ''Appendix,'' such reporting is not required by this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18796 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires an inspection to detect chafing or damage of the electrical wires leading to the terminal strips in the center accessory compartment (CAC) area, and corrective actions if necessary. That AD also currently requires revising the wire connection stack up of certain cable terminals at the electrical power center bays in the CAC, and replacing certain terminal strips with new strips and removing applicable nameplates at electrical power center bays. This action would require additional actions for improving the terminal strips and would revise the applicability of the existing AD to include additional airplanes. This proposal is prompted by issuance of revised service information. The actions specified by the proposed AD are intended to prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the CAC.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–163–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–163–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 22, 2000, the FAA issued airworthiness directive (AD) 2000–24–12, amendment 39–12019 (65 FR 75615, December 4, 2000), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require an inspection to detect chafing or damage of the electrical wires leading to the terminal strips in the center accessory compartment (CAC) area, and corrective actions if necessary. That AD also requires revising the wire connection stack up of certain cable terminals at the electrical power center bays in the CAC, and replacing certain terminal strips with new strips and removing applicable nameplates at electrical power center bays. That action was prompted by an incident of arcing between a power feeder cable and terminal strip support bracket. The requirements of that AD are intended to prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the CAC.

Other Related Rulemaking

We, in conjunction with Boeing and operators of Model MD–11 and –11F airplanes, have reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–24–12, we have reviewed and approved Revision 02 of Boeing Alert Service Bulletin MD11–24A097, including Evaluation Form, dated December 4, 2002 (the original issue of the service bulletin was referenced in AD 2000–24–12 as the appropriate source of service information for accomplishing the required actions). Revision 02 provides additional terminal strip information; adds airplanes to the effectivity; and corrects part numbers for the terminal stud stack up washers, which were inadvertently called out incorrectly in the original issue of this service bulletin. More work is necessary on all airplanes changed per the original issue and Revision 01 of the service bulletin.

For certain airplanes, Revision 02 of the service bulletin describes procedures for:

- Revising the wire connection stack up of the cable terminals at the

electrical power center bays in the CAC, as applicable, and doing a one-time general visual inspection of the surrounding structure and electrical cables for chafing or damage;

• Replacing terminal strips, removing the applicable nameplate at the electrical power center bays 1, 2, and 3 in the CAC, and doing a general visual inspection of the surrounding structure and electrical cables for arcing damage.

For certain other airplanes, Revision 02 of the service bulletin also describes procedures for relocating the terminal strip, and doing a general visual inspection of the surrounding structure and electrical cables for arcing damage.

If any chafing or damage is detected during any general visual inspection, Revision 02 of the service bulletin describes procedures for repairing or replacing the damaged or chafed component with new or serviceable components.

Accomplishment of the actions specified in Revision 02 of the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Change to Applicability

The applicability of this notice of proposed rulemaking (NRPM) differs from AD 2000–24–12 in that it identifies model designations as published in the most recent type certificate data sheet for the affected models, and references Revision 02 of the service bulletin, which includes additional airplanes that are subject to the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–24–12 to require accomplishment of the applicable actions specified in Revision 02 of the service bulletin described previously; except as discussed below.

Differences Between Proposed AD and Service Bulletin

Operators should note that Revision 02 of the service bulletin specifies to repair damage or chafed structure per the Structural Repair Manual (SRM). However, the SRM does not provide adequate procedures for repair of certain structural material. Therefore, this proposed AD would require the repair of damaged or chafed structure that is not covered in the SRM to be accomplished per a method approved by the FAA.

In addition, Revision 02 of the service bulletin specifies to use the form located in the Appendix for reporting inspection findings to the airplane manufacturer. Although the service bulletin references a reporting requirement, such reporting is not required by this AD. The airplane manufacturer has also informed us that it inadvertently published the service bulletin without the Appendix.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

There are approximately 163 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 73 airplanes of U.S. registry would be affected by this proposed AD.

The new actions that are proposed in this AD action would take approximately between 1 and 7 work hours per airplane (depending on the airplane configuration) to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately between $721 and $2,035 per airplane (depending on the airplane configuration). Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be between $786 and $2,490 per airplane (depending on the airplane configuration).

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12019 (65 FR 75615, December 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001–NM–163–AD. Supersedes AD 2000–24–12, Amendment 39–12019.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the center accessory compartment (CAC), accomplish the following:

Revising Wire Connection Stack Up, Inspecting, Replacing Terminal Strips, Removing the Nameplate, and Relocating Terminal Strips; as Applicable

(a) For Groups 1 through 6 airplanes as listed in Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002: Within 12 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the service bulletin. Although the service bulletin references a reporting requirement, such reporting is not required by this AD.

(1) Revise the wire connection stack up of the cable terminals at the electrical power center bays 1, 2, and 3 in the CAC, as applicable, and do a one-time general visual inspection of the surrounding structure and electrical cables for chafing or damage.

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

(2) Replace the terminal strips and remove the applicable nameplate at the electrical power center bays 1, 2, and 3 in the CAC, and do a general visual inspection of the surrounding structure and electrical cables for arcing damage.

(b) For Group 7 airplanes as listed in Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002: Within 12 months after the effective date of this AD, relocate the terminal strip, and do a general visual inspection of the surrounding structure and electrical cables for arcing damage, per the service bulletin. Although the service bulletin references a reporting requirement, such reporting is not required by this AD.

Corrective Action

(c) If any chafing or damage is detected during any general visual inspection required by this AD, before further flight, repair or replace the damaged or chafed component with new or serviceable components, per Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002; except if the type of structural material that has been affected is not covered in the Structural Repair Manual (SRM), repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. In addition, although the service bulletin references a reporting requirement, such reporting is not required by this AD.

Credit for Earlier Service Bulletins

(d) Applicable actions specified in this AD accomplished before the effective date of this AD per McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000; or Revision 01, dated July 12, 2001, are acceptable for compliance with the applicable requirements of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18795 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–165–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes. This proposal would require revising the vent fan wiring in the right forward cabin drop ceiling, right mid cabin drop ceiling, and right forward cargo compartment, as applicable. This action is necessary to prevent fire and/or smoke in the right forward cabin drop ceiling, right mid cabin drop ceiling, or right forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–165–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130–L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–165–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of several instances of burned/overheated mod blocks in the terminal strips located above the right forward cabin drop ceiling and right mid cabin drop ceiling on McDonnell Douglas Model MD–11 and –11F airplanes. Investigation revealed that the mod blocks developed high heat due to the high current transmitted through the vent fan wiring of the forward cargo compartment. This condition, if not corrected, could result in fire and/or smoke in the right forward cabin drop ceiling, right mid cabin drop ceiling, or right forward cargo compartment.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 and –11F airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin MD11–24A196, including Evaluation Form, Revision 01, dated November 20, 2002, which describes procedures for revising the vent fan wiring in the right forward cabin drop ceiling, right mid cabin drop ceiling, and right forward cargo compartment, as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Clarification of Quality of Service Information

Operators should note that, although the referenced service bulletin describes procedures for the completion and submission of an Evaluation Form that provides input on the quality of the service bulletin to the airplane manufacturer, this AD does not include such a requirement.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

There are approximately 195 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. We estimate that 67 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost between $14 and $113 (depending on the airplane configuration). Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $79 and $180 per airplane (depending on the airplane configuration).

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–165–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A196, Revision 01, dated

November 20, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire and/or smoke in the right forward cabin drop ceiling, right mid cabin drop ceiling, or right forward cargo compartment, accomplish the following:

Revise Vent Fan Wiring

(a) Within 6 months after the effective date of this AD, revise the vent fan wiring in the right forward cabin drop ceiling, right mid cabin drop ceiling, and right forward cargo compartment, as applicable, per Boeing Alert Service Bulletin MD11–24A196, excluding Evaluation Form, Revision 01, dated November 20, 2002.

(b) Revisions of the vent fan wiring accomplished before the effective date of this AD per Boeing Alert Service Bulletin MD11–24A196, dated December 17, 2001, are acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18794 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 03–006]

RIN 1625–AA00

Safety Zone; Offshore Gran Prix, Ventura, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the navigable waters of Pierpont Bay near Ventura, California, for the Ventura Offshore Gran Prix powerboat race on September 28, 2003. This proposed temporary safety zone is necessary to provide for public safety in order to protect life and prevent property damage near the racecourse. Persons and vessels will be prohibited from entering into or transiting through this proposed safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before August 27, 2003.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, Waterways Management Division, 1001 South Seaside Avenue, Building 20, San Pedro, California. The Waterways Management maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Los Angeles-Long Beach 03–006), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. If as we anticipate, we make the final rule effective less than 30 days after publication in the **Federal Register,** we will explain our good cause for doing so, as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Waterways Management Division at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

Pacific Offshore Powerboat Racing Association is sponsoring its annual Ventura Offshore Gran Prix in the navigable waters of Pierpont Bay near Ventura, California, from 12 a.m. (noon) to 3 p.m. (PDT) on September 28, 2003. Course description and coordinates are provided in the regulatory text section below.

This proposed safety zone is needed to provide for the safety of both the 25 participants and the estimated 125 spectators expected to attend this event. During this event, offshore powerboats designed for open ocean rough water racing may reach speeds of 125 miles per hour. Due to the high-speed nature of this event as well as the potential for loss of life and damage to property, the Coast Guard is proposing to close the waterway to all vessels and persons 30 minutes prior to the start of the race and will reopen the waterway approximately 30 minutes after the conclusion of the race if the Patrol Commander determines that it is safe to do so. A broadcast notice to mariners will be issued for this event.

Discussion of Proposed Rule

The description and coordinates for the racecourse are provided in the regulatory text section below.

Persons and vessels will be prohibited from entering into or transiting through this proposed safety zone unless authorized by the Captain of the Port. By prohibiting persons and vessels from entering this temporary safety zone the risk of loss of life and damage to property will be significantly reduced. Without this safety zone the Offshore Gran Prix would be cancelled.

U.S. Coast Guard personnel will enforce this proposed safety zone. The Coast Guard may be assisted by other Federal, State, or local agencies, which during this event may include the Coast Guard Auxiliary, Ventura Harbor Patrol, and Ventura Police Department.

Section 165.3 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a Safety Zone. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the proposed safety zone described herein, will be punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and *in rem*

liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Regulatory Evaluation

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

Due to the limited scope of the proposed safety zone, the fact that vessel traffic can pass safely around the zone, and the short duration of the zone, the Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

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

This rule will possibly affect the following entities, some of which may be small entities: the owners and operators of private and commercial vessels intending to transit or anchor in the affected area. The impact to these entities would not, however, be significant since this zone will encompass only a small portion of the waterway for a limited period of time and vessels can safely navigate around the safety zone.

For these reasons and the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732–2020.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the

final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new § 165.T11–074 to read as follows:

§ 165.T11–074 Safety Zone; Offshore Gran Prix, Ventura, CA.

(a) *Location.* The following described area constitutes a temporary safety zone: All waters of Pierpont Bay near Ventura, California, from surface to bottom, encompassed by lines connecting points beginning at latitude 34°15′42″ N, longitude 119°16′40″ W; then to 34°16′17″ N, 119°17′32″ W; then to 34°16′17″ N, 119°19′25″ W; then to 34°14′31″ N, 119°19′25″ W; then to 34°14′31″ N, 119°16′40″ W; and then returning to the point of origin. (Datum: NAD 1983).

(b) *Effective period.* This section is effective from 12 a.m. (noon) to 3 p.m. (PDT) on September 28, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number (800) 221–8724 or the Patrol Commander on VHF-FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: July 14, 2003.

John M. Holmes,

Captain, Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 03–18761 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2283, MM Docket No. 00–104, RM–9812]

Digital Television Broadcast Service; Oklahoma City, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a request filed by Paramount Stations Group of Oklahoma City LLC to substitute DTV channel 40 for station KAUT–TV's assigned DTV channel 42 with an increase in ERP to 1000 kW. DTV Channel 40 can be allotted to Oklahoma City at coordinates 35–35–22 N. and 97–29–03 W. with a height above average terrain HAAT of 475 meters. This *Further Notice of Proposed Rule Making* does not afford an additional opportunity to file counterproposals in response to Paramount's initial proposal to substitute DTV channel 40 for DTV channel 42, but only seeks comments on Paramount's proposal to increase its power.

DATES: Comments must be filed on or before September 8, 2003, and reply comments on or before September 23, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners.Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Raymond A. White, Esquire, c/o Paramount Stations Group, Inc., 5202 River Road, Bethesda, Maryland 20816 (Counsel for Paramount Stations Group of Oklahoma City LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 00–104, adopted July 11, 2003, and released July 18, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Oklahoma, is amended by removing DTV channel 42 and adding DTV channel 40 at Oklahoma City.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–18833 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2261; MB Docket No. 03–161; RM–10708]

Radio Broadcasting Services; Tallapoosa, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by SSR Communications, Inc. requesting the allotment of Channel 255A at Tallapoosa, Georgia. The coordinates for Channel 255A at Tallapoosa are 33–39–20 and 85–15–27. There is a site restriction 10.3 kilometers (6.4 miles) south of the community. Channel 255A at this site conflicts with Channel 253C, Atlanta, Georgia. However, Station WSB has consented to the reclassification of its license from Class C to Class C0 in MB Docket 03–77 (68 FR 17592, April 10, 2003) which will remove the conflict with Channel 255A. The issuance of a *Report and Order* in this proceeding may be withheld pending final action in Docket 03–77 and the filing of an application by Station WSB, Atlanta, to operate on Channel 253C0 in lieu of Channel 253C.

DATES: Comments must be filed on or before September 5, 2003, and reply comments on or before September 22, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Cary S. Tepper, Booth, Freret, Imlay & Tepper, P.C., 7900 Wisconsin Avenue, Suite 304, Bethesda, Maryland 20814–3628.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–161, adopted July 9, 2003, and released July 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com.k*

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Tallapoosa, Channel 255A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18830 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2260; MB Docket No. 03–162, RM–10723]

Radio Broadcasting Services; Linden and Marion, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comments on a petition filed by Beckham Palmer, III, as Receiver, proposing the reallotment of Channel 275C2 from Linden to Marion, Alabama. Channel 275C2 can be reallotted to Marion in compliance with the Commission's minimum distance separation requirements with a site restriction of 9 kilometers (5.6 miles) northwest at petitioner's requested site. The coordinates for Channel 275C2 at Marion are 32–41–00 North Latitude and 87–23–39 West Longitude. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 275C2 at Marion, Alabama.

DATES: Comments must be filed on or before September 5, 2003, reply comments on or before September 22, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mr. Beckham Palmer III, 2728 6th Street, Tuscaloosa, Alabama 35401 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–162, adopted July 9, 2003, and released July 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex, International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 275C2 at Linden; and by adding Marion, Channel 275C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18831 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2262; MB Docket No. 03–164; RM–10737]

Radio Broadcasting Services; Marmet and Montgomery, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Educational Media Foundation, licensee of Station WKVW(FM), Channel 227A, Montgomery, West Virginia. The petition proposes to change Station WKVW(FM)'s community of license from Montgomery to Marmet, West Virginia, and provide Marmet with its first local aural transmission service. The coordinates for requested Channel 227A at Marmet, West Virginia, are 38–13–09 NL and 81–25–05 WL, with a site restriction of 13.4 kilometers (8.3 miles) east of Marmet.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 227A at Marmet, West Virginia, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before September 5, 2003, and reply comments on or before September 22, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: David D. Oxenford, Esq., Veronica D. McLaughlin, Esq., and Amy L. Van de Kerckhove, Esq., SHAW PITTMAN LLP; 2300 N Street, NW., Washington, DC 20037–1128.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–164, adopted July 9, 2003, and released July 14, 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 at Portals II, 445 12th Street, SW., CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Marmet, Channel 227A, and removing Montgomery, Channel 227A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18807 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2263; MB Docket No. 03–160; RM–10706]

Radio Broadcasting Services; Camp Verde and Payson, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Sierra H. Broadcasting, Inc. requesting the reallotment of Channel 282C from Payson, Arizona to Camp Verde, Arizona, as the community's first local aural transmission service, and modification of the license for Station KAJM to reflect the changes. Channel 282C can be allotted to Camp Verde at coordinates 34–25–48 and 111–30–16. Mexican concurrence will be requested for the allotment of Channel 282C at Camp Verde. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of channel 282C at Camp Verde.

DATES: Comments must be filed on or before September 5, 2003, and reply comments on or before September 22, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows:

Barry A. Friedman, Thompson Hine LLP, 1920 N Street, NW., Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–160, adopted July 9, 2003, and released July 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 282C at Payson, and by adding Camp Verde, Channel 282C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18808 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2259, MB Docket No. 03–163, RM–10734]

Radio Broadcasting Services; Fortuna Foothills and Wellton, Arizona

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Dana J. Puopolo proposing the allotment of Channel 240A to Fortuna Foothills, Arizona, as the community's first local aural transmission service. In order to accommodate this allotment, the Petitioner also proposes the substitution of Channel 248A for vacant Channel 240A at Wellton, Arizona. Channel 240A can be allotted to Fortuna Foothills, Arizona, consistent with the minimum distance separation requirement of the Commission's Rules, provided there is a site restriction of 6.5 kilometers (4.0 miles) southeast to avoid a short-spacing to the license site of Station KSIQ, Channel 241B, Brawley, California. The reference coordinates for Channel 240A at Fortuna Foothills are 32–36–58 North Latitude and 114–21–47 West Longitude. Since Fortuna Foothills is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested. Channel 248A can also be allotted to Wellton, Arizona, consistent with minimum distance separation requirements of the Commission's Rules at city reference coordinates. The reference coordinates for Channel 248A at Wellton are 32–40–18 North Latitude and 114–08–18 West Longitude. Since Wellton is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

DATES: Comments must be filed on or before September 5, 2003, and reply comments on or before September 22, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, CA 90405.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–163, adopted July 9, 2003, and released July 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Fortuna Foothills, Channel 240A, by removing Channel 240A and by adding Channel 248A at Wellton.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18809 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI82

Endangered and Threatened Wildlife and Plants; Endangered Status for Scimitar-Horned Oryx, Addax, and Dama Gazelle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period on the proposed listing of three species of antelope: scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*), as endangered under the Endangered Species Act (ESA) of 1973, as amended. We are re-opening the comment period to request additional information and comments from the public regarding the proposed rule. The original proposed rule was published on November 5, 1991 (56 FR 56491). Comments previously submitted need not be resubmitted because they will be incorporated into the public record as part of this comment period and will be fully considered in the final determination.

DATES: We will accept public comments until October 22, 2003.

ADDRESSES: Submit any comments, information, and questions by mail to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203; or by fax to 703–358–2276; or by e-mail to *ScientificAuthority@fws.gov*. Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address. You may also obtain copies of the November 5, 1991, proposed rule from the above address.

FOR FURTHER INFORMATION CONTACT: Eleanora Babij at the above address, or by phone, 703–358–1708; fax, 703–358–2276; or e-mail, *ScientificAuthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) originally occupied the same general region of North Africa. The reasons for the decline of all three antelope species are similar. Desertification, coupled with severe droughts, has dramatically reduced available habitat. The growth of permanent farming has brought additional pressures, such as human habitat disturbance and competition from domestic livestock, which have restricted these antelopes to marginal habitat. Additional pressures from the civil wars in Chad and the Sudan have resulted in increased military activity, construction, and uncontrolled hunting.

The range of the scimitar-horned oryx in North Africa once covered semi-deserts and steppes north of the Sahara, from Morocco to Egypt. Over-hunting and habitat loss have been the main reasons for the decline of the wild population of this antelope according to the World Conservation Union (IUCN 2002). Competition with domestic livestock has also contributed to the species' decline. During the 1970s and 1980s, the scimitar-horned oryx was first classified as vulnerable and then as endangered by the IUCN. In 1975, the scimitar-horned oryx was listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The addax once occurred throughout the deserts and sub-deserts of North Africa, from the Atlantic Ocean to the Nile River. Motorized illegal hunting following World War II has been noted as the primary reason for decline of the addax (Antelope Taxon Advisory Group 2002), and hunting continues to threaten this species (IUCN 2002). Habitat degradation as a result of overgrazing by domestic livestock has also played an important role in the decline of the addax. Similar to the scimitar-horned oryx, during the 1970s and 1980s, the addax was first classified as vulnerable and then as endangered by the IUCN. In 1975, the addax was also listed in Appendix II of CITES.

The dama gazelle, the largest of the gazelles, was once common and widespread in arid and semi-arid regions of the Sahara. It has suffered greatly from uncontrolled hunting and overgrazing by domestic livestock (Mallon and Kingwood 2001). Habitat destruction and hunting are still the most serious threats facing dama gazelles today (Antelope Taxon Advisory Group 2002; IUCN 2002). Two subspecies of the dama gazelle, *Gazella dama lozanoi* and *Gazella dama mhorr*, were designated as endangered, and then the entire species of *G. dama* was designated by the IUCN as vulnerable and then endangered. In 1983, these two subspecies and *G. dama* were listed in CITES Appendix I. Two subspecies of dama gazelle, *G. d. lozanoi* and *G. d. mhorr*, have been listed as endangered under the ESA since 1970. A third subspecies, *G. d. ruficollis* was not included in this original listing. However, there is currently a taxonomic debate over the validity of *G. d. lozanoi* as a subspecies.

Of the three antelope species, the scimitar-horned oryx was the most susceptible to the threats it faced. By the mid-1980s, it was estimated that only a few hundred were left in the wild, with the only viable populations known to be in Chad. There have been no reported sightings of this species in the wild since the late 1980s, and the 2002 Red List status of the scimitar-horned oryx is ''extinct in the wild'' (IUCN 2002). However, this antelope has been reintroduced into Tunisia, and once the reintroduced population breeds, especially to the second generation, it is anticipated that the status of ''extinct in the wild'' will change.

The addax is better able to utilize waterless areas in the heart of the Sahara Desert and is less susceptible to human disturbance and livestock competition. It is believed that the addax was extirpated from Tunisia during the 1930s, and the last animals were killed in Libya and Algeria in 1966 and 1970, respectively. Remnant populations may still exist in the remote desert areas of Chad, Niger, and Mali, and occasionally move north into Libya and Algeria during times of good rainfall. In the Antelope Specialist Group's *Global Survey of Antelopes*, the addax is considered to be ''regionally extinct'' (Mallon and Kingwood 2001). Addax are listed as critically endangered in the 2002 Red List and probably number fewer than 250 in the wild.

The dama gazelle is able to utilize both semi-desert and desert habitats, and is smaller than either the oryx or addax. Although the dama gazelle is the least susceptible of these three antelopes to pressures from humans and domestic livestock, it is estimated that only small numbers survive in most of the eight countries within its historical range. It was previously extinct in Senegal, but has since been reintroduced, and in 1997, at least 25 animals existed there as part of a semi-captive breeding program (IUCN 2002). The IUCN lists all forms of dama gazelles as endangered. The dama gazelle has declined rapidly over the last 20 years, and recent estimates show numbers fewer than 2,500 and declining (Mallon and Kingwood 2001). *G. d. mhorr* may be extinct in the wild and only found in captive collections or reintroduced

populations (Antelope Taxon Advisory Group 2002; IUCN 2002).

Public Comments Solicited

We will accept written comments and information during this re-opened comment period from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party. Comments particularly are sought concerning;

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the scimitar-horned oryx, addax, and dama gazelle;

(2) Additional information concerning the range, distribution, and population size of the scimitar-horned oryx, addax, and dama gazelle;

(3) Current planned activities in the species' range and their possible impacts on the scimitar-horned oryx, addax, and dama gazelle;

(4) Information on the validity of *G. d. lozanoi* as a subspecies;

(5) Alternatives to the treatment of captive populations of scimitar-horned oryx, addax, and dama gazelle; and

(6) Information on the genetic integrity of captive populations of scimitar-horned oryx, addax, and dama gazelle, and particularly whether any captive populations are likely to have been hybridized.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Any person commenting may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the Division of Scientific Authority (*see* **ADDRESSES** section).

References Cited

Antelope Taxon Advisory Group. 2002. Addax Fact Sheet. American Zoo and Aquarium Association. Downloaded from *http://www.csew.com/antelopetag*.

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International Union for Conservation of Nature and Natural Resources. 2002. 2002 IUCN Red List of Threatened Species. Downloaded from *http://www.iucn.org*.

Mallon, D.P., and S.C. Kingwood (Compilers). 2001. *Antelopes. Part 4*: *North Africa*, *the Middle East*, *and Asia. Global Survey and Regional Action Plans*. SSC Antelope Specialist Group. IUCN, Gland, Switzerland and Cambridge, UK. Viii + 260 pp.

Metzler, S. 2000. *Addra Gazelle North American Regional Studbook 1999 Update*. Disney's Animal Kingdom.

Author

The primary author of this notice is Eleanora Babij, Division of Scientific Authority, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

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.

Dated: July 16, 2003.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–18841 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–03–302]

Request for an Extension of and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection for ''Regulations Governing Inspection, Certification and Standards for Fresh Fruits and Vegetables, and Other Products.''

DATES: Comments on this notice must be received on or before September 22, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Contact Kathleen A. Staley, Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2058—South Building, Stop 0240, Washington, DC 20250–0240, Phone (202) 720–2482, Fax (202) 720–0393; E-mail *kathleen.staley@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Inspection, Certification and Standards For Fresh Fruits, Vegetables, and Other Products: 7 CFR Part 51.

OMB Number: 0581–0125.

Expiration Date of Approval: February 29, 2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Fresh Products Branch provides a nationwide inspection and grading service for fresh fruits, vegetables, and other products to shippers, importers, processors, sellers, buyers, and other financially interested parties on a ''user fee'' basis. The use of this service is voluntary and is made available only upon request or when specified by some special program or contract. Information is needed to carry out the inspection and grading services. Such information includes: The name and location of the person or company requesting the inspection, the type and location of the product to be inspected, the type of inspection being requested and any information that will identify the product.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .03 hours per response.

Respondents: Shippers, importers, processors, sellers, buyers, and others with a financial interest in lots of fresh fruits, vegetables, and other products.

Estimated Number of Respondents: 56,980.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 8,942.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Kathleen A. Staley, Head, Field Operations Section, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0240, Room 2058—South Building, Washington, DC 20250–0240; Fax (202) 720–0393. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 17, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–18777 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–071–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of animal disease surveillance programs.

DATES: We will consider all comments that we receive on or before September 22, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–071–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–071–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–071–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue

SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding the use of Veterinary Services (VS) Form 10–4, contact Ms. Connie J. Osmundson, Financial Analyst, National Veterinary Services Laboratories, VS, APHIS, USDA, 1800 Dayton Road, Ames, IA 50010; (515) 663–7571. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Specimen Submission.

OMB Number: 0579–0090.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for, among other things, preventing the interstate spread of animal diseases and for eradicating such diseases from the United States when feasible.

Disease prevention is the most effective method for maintaining a healthy animal population and enhancing international trade of animals and animal products. The Veterinary Services (VS) program of USDA's Animal and Plant Health Inspection Service is responsible for carrying out this disease prevention mission.

Disease prevention is accomplished with an effective disease surveillance program, which is conducted by VS. The VS Form 10–4 and its supplemental sheet (VS Form 10–4A) are critical components of our disease surveillance mission. They are routinely used whenever specimens (such as blood, milk, tissue, or urine) from any animal (including cattle, swine, sheep, goats, horses, and poultry) are submitted to our National Veterinary Services Laboratories for disease testing.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: State veterinary officials, accredited veterinarians, animal health technicians and other personnel who are qualified to collect and submit specimens for laboratory analysis, and herd owners.

Estimated annual number of respondents: 12,000.

Estimated annual number of responses per respondent: 3.

Estimated annual number of responses: 36,000.

Estimated total annual burden on respondents: 9,000 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of July 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18780 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

West Troy EIS; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal for urban interface fuels treatments, vegetation management, watershed rehabilitation activities, and access management changes, including road decommissioning. The project is located on the Three Rivers Ranger District, Kootenai National Forest, Lincoln County, Montana, west of Troy, Montana.

Scoping Comment Date

Comments concerning the scope of the analysis should be received by August 31, 2003.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Michael L. Balboni, District Ranger, Three Rivers Ranger District, 1437 Hwy 2, Troy, MT 59935.

FOR FURTHER INFORMATION CONTACT: Contact Jim Benedict or Steve Straley, Team Leaders, Three Rivers Ranger District, 1437 Hwy 2, Troy, MT 59935. Phone: (406) 295–4693.

SUPPLEMENTARY INFORMATION: The project area is immediately west of Troy, Montana, within T31N, R34W; T32N, R34W; T32N, R35W; PMM, Lincoln County, Montana; T58N, R3E; T59N, R2E; T59N, R3E; PMM, Bonner County, Idaho, and T60N, R3E, PMM, Boundary County, Idaho. The project area runs from the Kootenai River west to the boundary between the Kootenai and Idaho Panhandle National Forests. The project area is 90,770 acres, of which 49,270 acres are in Montana and 41,500 acres are in Idaho. Callahan Creek, Brush Creek, Ruby Creek, and Star Creek are the major drainages in the project area.

The purpose and need for this project is to: (1) Reduce fuels in the urban interface and adjacent to private timberlands in accordance with the National Fire Plan; (2) Manage for vegetative conditions that are more suitable to a fire-dependent ecosystem and, in the long term, encourage more resilient and sustainable forest conditions; (3) Contribute forest products to the economy and provide employment opportunities; (4) Improve conditions in old growth habitat; (5) Improve growing conditions and long-term management options for overstocked sampling/pole stands; and (6) Reduce adverse effects of roads on fish and water quality in the Callahan Creek drainage by treating unneeded roads.

To meet this purpose and need this project proposes:

(1) Intermediate tree harvest and fuels reduction treatments on approximately 1,036 acres to reduce fuels, create a more open forest structure, promote fire-adapted species, retain large overstory structure, and reduce vulnerability to insects, and disease. Stand replacement harvest and supplemental conifer planting would occur in areas with high insect and disease levels or where it is desirable to promote a more diverse species mix (approximately 216 acres). Approximately 1,087 acres of the total 1,242 acres of intermediate and regeneration harvest and associated fuels treatments would occur in the urban interface area west of Troy. Approximately 165 acres of the proposed harvest and fuels treatments would result in fuels reduction adjacent to private timberlands outside of the area of urban interface.

No new permanent roads will be built. It is estimated that 4 temporary roads ranging from 0.2 to 0.6 miles would be constructed to accomplish this harvest and would be decommissioned following activities. Best Management Practice work and road maintenance work would be implemented on identified roads.

Proposed harvest will contribute approximately 8 million board feet (MMBF) or 19,500 hundred cubic feet (CCF) of timber products to the economy. This project would also result in employment associated with timber sales and service contracts.

(2) Mechanical fuels reduction treatments on approximately 43 acres in Forest Plan designated old growth located within the urban interface.

(3) Maintenance burning within the next 10 years on approximately 757 acres, including some of the harvest and mechanical fuels treatment units.

A maintenance burn is proposed on National Forest and State of Montana lands to reduce fuels, thin encroaching conifers, use fire as an ecological agent of disturbance, and to rejuvenate browse (30 acres). Implementation of this burn would be dependent on the State receiving direct funding or funding from a private agency.

(4) Pre-commercial thinning on approximately 230 acres to improve growing conditions.

(5) Decommissioning portions of five roads (approximately 6 miles) which were determined through an interdisciplinary process to be unneeded and at high risk of contributing sediment to Callahan Creek. The decommissioning work would include outsloping portions of the road prism, installing waterbars, and reestablishing stream crossings.

(6) Design features and mitigations to maintain and protect resource values.

Range of Alternatives

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Public Involvement and Scoping

The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, Tribal governments, and other individuals or organizations that may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

1. Identifying potential issues.

2. Identifying major issues to be analyzed in depth.

3. Identifying alternatives to the proposed action.

4. Exploring additional alternatives that will be derived from issues recognized during scoping activities.

5. Identifying potential environmental effects of this proposal (i.e. direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in December 2003. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed in April 2004. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and to applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

The District Ranger of the Three Rivers Ranger District, Michael L. Balboni, is the Responsible Official. As Responsible Official, he will decide if the proposed project will be implemented and will document the decision and reasons for the decision in the Record of Decision.

Dated: July 15, 2003.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 03–18834 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative reviews.

SUMMARY: On April 10, 2003, the United States Court of Appeals for the Federal Circuit affirmed the United States Court of International Trade's affirmation of the Department of Commerce's final remand results affecting final assessment rates for the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan with respect to NTN Corporation and Koyo Seiko Co. Ltd. and the period May 1, 1997, through April 30, 1998. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. As there is now a final and conclusive court decision in these actions, we are amending our final results of reviews and we will instruct the Bureau of Customs and Border Protection (BCBP) to liquidate entries subject to these reviews.

EFFECTIVE DATE: July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–5047 or 202–482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1999, the Department of Commerce (the Department) published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590, and on September 1, 1999, it published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy and Japan; Notice of Amended Final Results of Antidumping Duty Administrative Reviews*, 64 FR 47764 (collectively, *AFBs 9*), which covered the period May 1, 1997, through April 30, 1998. The Japanese companies covered by the reviews are NTN Corporation (NTN), NSK Ltd. (NSK), Koyo Seiko Co., Ltd. (Koyo), Nippon Pillow Block Manufacturing Company (NPBS), and Nachi Fujikoshi (Nachi). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Torrington, NSK, NTN, and Koyo appealed our determination in *AFBs 9*.

On May 10, 2001, the Court of International Trade (CIT) issued an order in *The Torrington Company* v.*United States*, Consol. Court No. 99–08–00462, Slip Op. 01–56 (May 10, 2001) (*Torrington*), remanding *AFBs 9* to the Department (First Remand). In *Torrington*, the CIT remanded *AFBs 9* to the Department to make the following changes: (1) Annul all findings and conclusions made pursuant to the duty-absorption inquiry conducted for these reviews; (2) clarify what action it took with respect to inputs that NTN obtained from affiliated parties, to articulate the reasoning for this action, and to open the record for additional information, if found necessary; and (3) articulate what methodology it used in conducting the arm's-length test and to apply the test in accordance with 19 CFR 351.403(c) (1998). The First Remand affected the Department's calculations for NTN and Koyo with respect to the antidumping duty orders on BBs, CRBs, and SPBs from Japan for the period May 1, 1997, through April 30, 1998.

The Department submitted its First Remand Results to the CIT on August 8, 2001. On November 26, 2001, the CIT remanded our results a second time (Second Remand). On May 20, 2002, the CIT affirmed the Second Remand Results in their entirety. See *The Torrington Company* v.*United States*, 206 F.Supp 2d 1296, Sup Op. 0246 (*Torrington II*). NTN appealed the CIT's ruling in *Torrington II*. On April 10, 2003, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the judgment of *Torrington II*. See *The Torrington Company* v.*United States*, Fed. Circ. 02–1520.

Amendment to Final Results

The time period for appealing the CAFC's Final Decision has expired and no party has appealed this decision. Pursuant to section 516A(e) of the Tariff Act of 1930, as amended, as there is now a final and conclusive court decision with respect to litigation for NTN and Koyo, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan for the period May 1, 1997, through April 30, 1998, to reflect the findings of the Second Remand Results. The rates for NTN for this period are as follows: 4.18 for BBs, 3.63 for CRBs, and 1.44 for SPBs. There are no rate changes for Koyo.

Assessment Rates

The Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer/customer-specific assessment rate for merchandise subject to this review. Where the importer/customer-specific assessment rate is above *de minimis*, we will instruct the BCBP to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these amended final results of review. We will direct the BCBP to assess the resulting assessment rates for the subject merchandise on each of the importer/customer's entries during the review period.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published pursuant to section 751(a) of the Act.

Dated: July 18, 2003.

Jeffrey May,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–18863 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801 and A–588–804]

Ball Bearings and Parts Thereof From France and Japan; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews.

SUMMARY: On June 16, 2003, the Department of Commerce published in the **Federal Register** the final results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. The period of review is May 1, 2001, through April 30, 2002. Based on the correction of certain ministerial errors, we have changed the margins for two companies (i.e., Nippon Pillow Block Sales Company for the administrative review of ball bearings and parts thereof from Japan, and SKF for the administrative review of ball bearings and parts thereof from France).

FOR FURTHER INFORMATION CONTACT: Please Contact Susan Lehman at (202) 482–0180 or David Dirstine at (202) 482–3047; AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2003, the Department of Commerce (the Department) published in the **Federal Register** the final results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof (ball bearings) from France, Germany, Italy, Japan, and the United Kingdom (68 FR 35623) (Final Results).

We received timely allegations of ministerial errors from Timken U.S. Corporation (Timken) and the SKF Group Companies in the United States and France (SKF France). In its comments dated June 18, 2003, Timken alleged that the Department erred when it made a correction to Nippon Pillow Block Sales Company's (NPBS's) preliminary results margin calculation. Specifically, Timken asserts that the Department erred when it deleted indirect advertising expenses from NPBS's U.S. indirect selling expense total. We agree with the alleged error and, therefore, we have amended the final results to correct the problem.

In its comments dated June 16, 2003, SKF France alleged that the Department made a clerical error in assigning the level of trade (LOT) for U.S. sales. We agree with SKF France that we incorrectly assigned the LOT for U.S. sales. We corrected this error.

Amended Final Results of Review

As a result of the correction of clerical errors, the following weighted-average margins exist for exports of ball bearings by NPBS and SKF France for the period May 1, 2001, through April 30, 2002:

Company	Margin (percent)
Nippon Pillow Block Sales Company (NPBS)	4.82
SKF France	6.70

The Department will determine, and the U.S. Bureau of Customs and Border Protection (BCBP), formerly known as the U.S. Customs Service, shall assess antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to BCBP within 15 days of publication of these amended final results of review.

We will also direct BCBP to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the Final Results and at the rates as amended by this notice. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date these amended final results are published in the **Federal Register**.

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: July 18, 2003.

Jeffrey May,

Acting Assistant Secretary, for Grant Aldonas, Under Secretary.

[FR Doc. 03–18862 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–862]

Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China; Correction.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice; Correction.

SUMMARY: The Department of Commerce published a notice in the Federal Register on May 28, 2003, concerning the extension of time limit of the preliminary results for foundry coke from the People's Republic of China. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China*, 68 FR 31680 (May 28, 2003). The document contained incorrect information on page 31681, at paragraph 2.

EFFECTIVE DATE: July 24, 2003

FOR FURTHER INFORMATION CONTACT: Michael Holton, AD/CVD Enforcement, Group III, Office IX, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–1324.

Extension of Time Limit for Preliminary Results

In the **Federal Register** of May 28, 2003, in 68 FR 31681 in the first column, correct the first sentence of the second paragraph to read:

''Therefore, we are extending the due date for the preliminary results by 120 days, until no later than September 30, 2003.''

Dated: July 16, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–18861 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552–801]

Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: July 24. 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3208, or (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Scope Of The Investigation

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps.

The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the Harmonized Tariff Schedule of the United States (''HTSUS''). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Background

On June 23, 2003, An Giang Fisheries Import and Export Joint Stock Company (''Agifish''), Can Tho Agricultural and Animal Products Import Export Company (''CATACO''), Nam Viet Company Limited (''Nam Viet''), and Vinh Hoan Company Limited (''Vinh Hoan''), hereinafter collectively referred to as ''Mandatory Respondents,'' timely filed allegations that the Department made ministerial errors in the final determination.

Similarly, on June 23, 2003, Catfish Farmers of America (''CFA'') and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as ''Petitioners,'' timely filed allegations that the Department made ministerial errors in the final determination.

Amendment Of Final Determination

On June 16, 2003, the Department of Commerce (''the Department'') determined that certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735(a) of the Tariff Act. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* (''*Final Determination*'') 68 FR 37116 (June 23, 2003).

The Department is amending the *Final Determination* in the antidumping investigation of certain frozen fish fillets from the Socialist Republic of Vietnam.

Ministerial Error

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. *See* 19 C.F.R. 351.224(f).

Ministerial Error Allegations From The Mandatory Respondents

Comment 1: By-Product Offset

The Mandatory Respondents argue that the Department has repeated the ministerial error regarding the by-product credit offset that was contained in the *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* (''*Preliminary Determination*'') 68 FR 4986 (January 31, 2003). According to the Mandatory Respondents, in the *Final Determination*, as in the *Preliminary Determination*, the Department deducted the by-product credit from normal value after applying surrogate financial ratios, rather than deducting it from the cost of manufacturing before applying the surrogate financial ratios. The Mandatory Respondents assert that it is the Department's normal practice to deduct the by-product credit from the cost of manufacturing because the costs associated with the production of by-products are reflected in the costs for producing the primary finished products.

The Mandatory Respondents note that the Department previously corrected this error, explaining that the correction represented the Department's ''normal practice,'' and that the method used in the *Preliminary Determination* ''represents an error.'' *See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* (''*Amended Preliminary Determination*''), 68 FR 10440 (March 5, 2003). Finally, the Mandatory Respondents argue that the *Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Sectretary for Import Administration, Group III, Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, (June 16, 2003), (''*Issues and Decision Memorandum*'') accompanying the *Final Determination* does not clearly explain why the Department reversed the correction in the *Amended Preliminary Determination* for purposes of the *Final Determination*. As a result, the Mandatory Respondents argue that the Department should again correct itself by deducting the by-product credit from the cost of manufacturing, as in the Amended Preliminary Determination.

The Petitioners rebut the Mandatory Respondents' allegation by citing the Department's description of its calculation methodology contained in the *Issues and Decision Memorandum* at 6. Furthermore, the Petitioners note that the Department defines ministerial errors as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' Consequently, the Petitioners do not agree with the Mandatory Respondents' ministerial error allegation because the Department explained the rationale for this intended change and because the allegation does not meet the definition of a ministerial error.

Department's Position:

We disagree with the Mandatory Respondents that the Department incorrectly deducted the by-product credit from normal value. As we noted in the *Amended Preliminary Determination*, the Department would ''carefully revisit all aspects of this issue in the final determination.'' As explained in the *Issues and Decision Memorandum*, the Department reviewed the surrogate company financial statements, and noted that Apex and Bionic do not reduce their cost of manufacturing amount for the by-product revenues. Instead, they recognize the by-product revenues as ''miscellaneous income'' which is shown as a separate line item in their financial statements. We used the cost of manufacturing amounts from the surrogate company's financial statements to calculate the selling, general and administrative (''SG&A'') and profit rates. Accordingly, the Department has determined that, because the surrogate financial ratios were calculated excluding any by-product revenues, to deduct the by-product credit from the cost of manufacturing would misstate the results.

Therefore, the Department has not made the requested change.

Comment 2: Agifish's Electricity Consumption

Agifish argues that the Department incorrectly calculated Agifish's factor input for electricity in the production of the subject merchandise. Agifish asserts that the Department inadvertently transposed two numbers when it recorded electricity usage for the month of January 2002.

Department's Position:

We agree with Agifish that the Department incorrectly calculated Agifish's factor input for electricity in the production of the subject merchandise. Accordingly, the error regarding the correction of the electricity alleged by Agifish is a ministerial error within the meaning of 19 C.F.R. 351.224(f).

Therefore, we are amending our *Final Determination* with regard to Agifish's electricity consumption. For a more detailed analysis, please *see* the *Memorandum to the File from John D. A. LaRose, International Trade Analyst, to the File through James C. Doyle, Program Manager regarding the Amended Final Determination for Agifish* (''*Agifish Amended Final Memo*''), dated July 18 at 2.

Comment 3: Water Consumption

The Mandatory Respondents argue that the Department incorrectly estimated their water consumption ratios in the *Final Determination*. According to the Mandatory Respondents, the Department included the labor and electricity used to pump water into their processing facilities in the consumption figures for labor and electricity, respectively. The Mandatory Respondents argue that for this reason and because the companies do not pay for the water that they pump, the Department double-counted their water consumption at the processing facility in the *Final Determination*. The Mandatory Respondents argue that the Department should not value the water pumped into their processing facilities.

The Petitioners rebut the allegation regarding Agifish and CATACO by noting that the Department stated in the *Issues and Decision Memorandum* at 23 and 25 that Agifish and CATACO failed to provide data on water consumption at their by-products facilities. Accordingly, the Department applied the highest water consumption figures from the processing stage as adverse facts available. Petitioners assert that this was a methodological decision made by the Department.

The Petitioners also rebut all four Mandatory Respondents' argument that water costs are irrelevant because the companies did not pay for the water. Petitioners assert that the Department has specifically determined in past non-market economy cases that it is appropriate to value water in these specific instances, and that the actual price paid by the respondent for water is irrelevant.

Department's Position:

The Department disagrees with the Mandatory Respondents. The issue of ''double-counting'' water consumption by the inclusion in the margin calculations of both the water input and the factors (labor and electricity) used to pump the water is not a ministerial error within the meaning of 19 C.F.R. 351.224(f) because the Department intended to value the Mandatory Respondents' water consumption factors in the manner in which we did. At the time of the *Final Determination*, the Department was unaware of the possibility that the factors to pump water may have been included in the labor and electricity consumption factors. We note that no interested parties raised the issue regarding the ''double-counting'' of water during the investigation. Furthermore, even if any parties had raised the issue, no information or evidence was provided on the record which would have enabled the Department to address the issue otherwise. Finally, we note that the Mandatory Respondents did not cite any record evidence of ''double-counting'' in their ministerial error allegation.

Because the Department intended to value the Mandatory Respondents' water consumption factors in the manner in which we did at the time of the *Final Determination*, we do not consider this allegation as a ministerial error within the meaning of 19 C.F.R. 351.224(f). Consequently, the Department has not made the requested change.

Ministerial Error Allegations From The Petitioners

Comment 4: Agifish's, CATACO's and Nam Viet's Cold Storage and Warehousing Expenses

The Petitioners argue that the Department erred in applying the surrogate value for cold storage warehousing in the net U.S. price calculation for the Agifish, CATACO, and Nam Viet. The Petitioners assert that the Department only included a single day of cold storage costs, and failed to multiply the rate for a single day by the number of days of storage reported by each company. The Petitioners argue that the Department should remedy this error by multiplying the cold storage surrogate value of $0.0025 kg/day by the number of days the subject merchandise is kept in storage as reported by each company.

None of the Mandatory Respondents replied to this allegation.

Department's Position:

We agree with the Petitioners that the Department erred in calculating Agifish's, CATACO's, and Nam Viet's cold storage warehousing costs. In their December 30, 2002 supplemental response, Agifish, CATACO and Vinh Hoan reported their respective number of days that the subject merchandise is kept in cold storage at its warehouses. However, we inadvertently did not multiply the cold storage cost by the number of days each company stores the subject merchandise in cold storage in the *Final Determination*. Accordingly, the error regarding the cold storage costs is an error within the meaning of 19 C.F.R. 351.224(f) with regard to Agifish, CATACO and Nam Viet. Therefore, we have multiplied each companies' number of storage days by the single-day cold storage rate of $0.0025 to calculate the company-specific cold storage warehousing costs. For a more detailed explanation, please *see* the company specific analysis memoranda.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (''Customs'') to continue to suspend liquidation of all entries of subject merchandise from Vietnam, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* for Agifish, CATACO, Vinh Hoan, Mekonimex, and Viet Hai. With respect to Nam Viet, QVD, Da Nang, Afiex, Cafatex, Vinh Long and all other Vietnam exporters, the Department will continue to direct Customs to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, on or after 90 days before the date of publication of the *Preliminary Determination*. Customs shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. This suspension of liquidation instructions will remain in effect until further notice.

Amended Final Determination

We determine that the following weighted-average dumping margins exist for the period October 1, 2001 through March 30, 2002:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Producer/Manufacturer/Exporter	Final Margin	Amended Final Margin
Agifish	44.76	47.05
Vinh Hoan	36.84	36.84
Nam Viet	52.90	53.68
CATACO	45.55	45.81
Afiex	44.66	45.55
CAFATEX	44.66	45.55
Da Nang	44.66	45.55
Mekonimex	44.66	45.55
QVD	44.66	45.55
Viet Hai	44.66	45.55
Vinh Long	44.66	45.55
Vietnam-Wide Rate	63.88	63.88

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our amended final determination. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d), 735(e) and 777(i)(1) of the Act.

Dated: July 17, 2003.

Jeffrey May,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–18860 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071703C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Oversight Committee in August, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Thursday, August 7, 2003 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Habitat Committee will consider alternatives for minimizing adverse effects of monkfishing on Essential Fish Habitat (EFH) within Amendment 2 to the Monkfish Fishery Management Plan (FMP). The Committee will also consider public comments received on habit issues related to Scallop Amendment 10.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens

Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 17, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18895 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Technology Administration

National Medal of Technology Nomination Evaluation Committee; Notice of Determination for Closure of Meeting

The National Medal of Technology Nomination Evaluation Committee has scheduled a meeting for August 25, 2003.

The Committee was established to assist the Department in executing its responsibilities under 15 U.S.C. 3711. Under this provision, the Secretary is responsible for recommending to the President prospective recipients of the National Medal of Technology. The committee's recommendations are made after reviewing all nominations received in response to a public solicitation. The Committee is chartered to have twelve members.

Time and Place: The meeting will begin at 10 a.m. and end at 4 p.m. on August 25, 2003. The meeting will be held in Room 4813 at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. For further information contact: Mildred S. Porter, Director National Medal of Technology, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Herbert C. Hoover Building, Room 4226, Washington, DC 20230, Phone: 202–482–5572.

If a member of the public would like to submit written comments concerning the committee's affairs at any time before and after the meeting, written comments should be addressed to the Director of the National Medal of Technology as indicated above.

SUPPLEMENTARY INFORMATION: The meeting will be closed to discuss the relative merits of persons and companies nominated for the Medal. Public disclosure of this information would be likely to significantly frustrate implementation of the National Medal of Technology program because premature publicity about candidates under consideration for the Medal, who may or may not ultimately receive the award, would be likely to discourage nominations for the Medal.

Accordingly, I find and determine, pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended, that the August 25, 2003, meeting may be closed to the public in accordance with section 552b(c)(9)(B) of Title 5, United States Code because revealing information about Medal candidates would be likely to significantly frustrate implementation of a proposed agency Action.

Due to closure of the meeting, copies of the minutes of the meeting will not be available, however a copy of the Notice of determination will be available for public inspection and copying in the office of Mildred Porter, Director, National Medal of Technology, 1401 Constitution Avenue, NW., Herbert Hoover Building, Room 4226, Washington, DC 20230, Phone: 202–482–1424.

Dated: July 17, 2003.

Phillip J. Bond,

Under Secretary of Commerce for Technology.

[FR Doc. 03–18803 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–18–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 August 25, 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: July 21, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants Under the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, and Alaska Native and Native Hawaiian-Serving Institutions Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 415.

Burden Hours: 19,250.

Abstract: The information is required of institutions of higher education that apply for grants under the Strengthening Institutions Program, the American Indian Tribally Controlled College and Universities Program, and the Alaska Native and Native Hawaiian-Serving Institutions Program, authorized under Title III, part A of the Higher Education Act of 1965, as amended. This information will be used in the peer review and in making funding recommendations.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001).

Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 2289. 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 Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–18852 Filed 7–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.299A]

Office of Elementary and Secondary Education, Office of Indian Education Demonstration Grants for Indian Children, Notice Inviting Applications for New Discretionary Program Awards for Fiscal Year (FY) 2003

Purpose of Program: The purpose of the Demonstration Grants program is to provide financial assistance to projects to develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary students. For FY 2003 the competition for new awards focuses on projects designed to meet the priorities we describe in the Priorities section of this application notice.

Eligible Applicants: Eligible applicants for this program are: State educational agencies (SEAs); local educational agencies (LEAs); Indian tribes; Indian organizations; federally supported elementary or secondary schools for Indian students; Indian institutions, including Indian institutions of higher education; or a consortium of such institutions that meet the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application.

Note: Letters of support do not meet the consortium requirements. The Secretary rejects any application that does not meet these requirements.

Applications Available: July 24, 2003.

Deadline for Transmittal of Applications: August 25, 2003.

Deadline for Intergovernmental Review: September 9, 2003.

Estimated Available Funds: $2,484,000.

Estimated Range of Awards: $150,000 to $400,000.

Estimated Average Size of Awards: $310,500.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Requirement: Projects funded under this competition must budget for a one and one-half day Project Directors' meeting in Washington, DC during each year of the project.

Maximum Annual Award Amount: In no case does the Secretary make an award greater than $400,000 during any single budget period in the award period. The Secretary rejects any application that proposes a budget exceeding this maximum amount.

Page Limit: The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit the narrative to the equivalent of no more than 50 double-spaced pages, using the following standards:

(1) A ''page'' is 8½″ x 11″ (one side only) with one-inch margins (top, bottom and sides).

(2) 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, must be double-spaced (no more than three lines per vertical inch).

(3) For all text (including charts, tables, 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 the cover sheet; the assurances and certifications; or the one-page abstract, appendices, resumes, bibliography, and letters of support. However, all of the application narrative addressing the selection criteria must be included in the narrative section.

Reviewers will not read any pages of applications that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) 34 CFR part 263.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the priority selected. The program regulations at 34 CFR 263.21(c) identify the absolute priorities for the Demonstration Grants for Indian Children program that may be selected by the Secretary. For the FY 2003 grant competition, the Secretary reserves all of the funds available for new awards under the Demonstration Grants for Indian Children program to fund only those applications that meet one or more of the following absolute priorities found at 34 CFR 263.21(c)(1) and (3):

(1) School readiness projects that provide age appropriate educational programs and language skills to three- and four-year old Indian students to prepare them for successful entry into school at the kindergarten school level.

(3) College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including math and science, to enable Indian students to successfully transition to postsecondary education.

Competitive Preference

(1) In making multiyear grants under this program, the Secretary will award five (5) additional points to an application that presents a plan for combining two or more of the activities described in section 7121(c) of the Elementary and Secondary Education Act, as amended, over a period of more than one year.

(Authority: 20 U.S.C. 7441(d)(1)(B).)

(2) In making grants under this program, the Secretary will award five (5) additional points to an application submitted by an Indian tribe, Indian

organization, or Indian institution of higher education, including a consortium of any of these entities with other eligible entities. An application from a consortium of eligible entities that meet the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five (5) additional priority points. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered a consortium application.

Note: Letters of support do *not* meet the consortium requirements. The Secretary rejects any application that does not meet these requirements.

These competitive preference points are in addition to the five competitive preference points that may be given under Competitive Preference 1.

(Authority: 20 U.S.C. 7473.)

Selection Criteria

The selection criteria are included in full in the application package for this competition. These selection criteria were established based on the regulations for evaluating discretionary grants found in 34 CFR 75.200 through 75.209. Under the selection criteria ''Quality of project services'' and ''Quality of the project evaluation,'' the Secretary considers the extent to which the applicant demonstrates a strong capacity to provide reliable data on these indicators.

Performance Measures: The Secretary has established the following key performance measures for assessing the effectiveness of the Demonstration Grants for Indian Children program: (1) Increasing percentages of pre-school American Indian and Alaska Native students who will possess school readiness skills gained through a scientifically based research based curriculum that prepares them for kindergarten; and (2) The percentage of American Indian and Alaska Native high school graduates who increase their competency and skills in challenging subject matter, including math and science, to enable successful transition to postsecondary education will increase.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in 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.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Demonstration Grants for Indian Children program, CFDA 84.299A, is one of the programs included in the pilot project. If you are an applicant under the Demonstration Grants for Indian Children program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). 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. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-APPLICATION, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- 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 Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print the ED 424 form from the e-Application system.

(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 all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:*

If you elect to participate in the e-Application pilot for the Demonstration Grants for Indian Children program and you are prevented from submitting your application on the closing 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 and 3:30 p.m., Washington, DC time, on the 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 deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request an extension you must 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 the Demonstration Grants for Indian Children program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

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 telecommunication device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (*http://www.ed.gov/edpubs.html*) or 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 84.299A.

Individuals with disabilities may obtain this document 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) 205–8351. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Services (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: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–1683. Internet address: *Cathie.Martin@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Program Authority: 20 U.S.C. 7441.

Dated: July 21, 2003.

Eugene Hickok,

Under Secretary of Education.

[FR Doc. 03–18871 Filed 7–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.299B]

Office of Elementary and Secondary Education, Office of Indian Education; Professional Development Program, Notice Inviting Applications for New Discretionary Grant Program Awards for Fiscal Year (FY) 2003

Purpose of Program: The purposes of the Professional Development program are to (1) increase the number of qualified Indian individuals in professions that serve Indian people; (2) provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and (3) improve the skills of qualified Indian individuals who serve in the capacities described in (2). Activities may include, but are not limited to, continuing programs, symposia, workshops, conferences, and direct financial support. For FY 2003 the competition for new awards focuses on projects designed to meet the priority described in the Priority section of this application notice.

Eligible Applicants: Eligible applicants for this program are institutions of higher education, including Indian institutions of higher education; State or local educational agencies, in consortium with institutions of higher education; Indian tribes or organizations, in consortium with institutions of higher education; and Bureau-funded schools. An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application.

Note: Letters of support do *not* meet the consortium requirements. The Secretary rejects any application that does not meet these requirements.

Note: In order to be considered an eligible entity, applicants, including institutions of higher education, must be eligible to provide the level and type of degree proposed in the application or must apply in consortium with an institution of higher education that is eligible to grant the target degree. The Secretary rejects any application that fails to meet the consortium requirements described in this notice.

Applications Available: July 24, 2003.

Deadline for Transmittal of Applications: August 25, 2003.

Deadline for Intergovernmental Review: September 9, 2003.

Estimated Available Funds: $2,484,000.

Estimated Range of Awards: $300,000 to $500,000.

Estimated Average Size of Awards: $310,500.

Estimated Number of Awards: 8.

Project Period: 36 months.

Note: The Department is not bound by any estimates in this notice.

Budget Requirement: Projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

Maximum Annual Award Amount: in no case does the Secretary make an award greater than $500,000 for a single budget period of 12 months for the first 24 months of the award period. The last 12-month budget period of a 36-month award will be limited to induction services only at a cost not to exceed $75,000. The Secretary rejects any application that proposes a budget exceeding these maximum amounts.

Page Limit: The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit the narrative to the equivalent of no more than 50 double-spaced pages, using the following standards:

(1) A ''page'' is 8½″ x 11″ (one side only) with one-inch margins (top, bottom and sides).

(2) 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, must be double-spaced (no more than three lines per vertical inch).

(3) For all text (including charts, tables, 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 the cover sheet; the assurances and certifications; or the one-page abstract, appendices, resumes, bibliography, and letters of support. However, all of the application narrative addressing the selection criteria must be included in the narrative section.

Reviewers will not read any pages of applications that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99; and (b) 34 CFR part 263.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Absolute Priority

Under Section 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the priority selected. The program regulations at 34 CFR 263.5(c) identify the absolute priorities for the Professional Development program that may be selected by the Secretary. For the FY 2003 grant competition, the Secretary reserves all of the funds available for new awards under the Professional Development program to fund only those applications that meet the following absolute priority found at 34 CFR 263.5(c)(1):

Pre-Service Training for Teachers—

Provides support and training to Indian individuals to complete a pre-service education program that enables these individuals to meet the requirements for full State certification or licensure as a teacher through:

(i) Training that leads to a bachelor's degree in education before the end of the award period; or

(ii) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area as long as the training meets the requirements for full State teacher certification or licensure; or

(iii) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists; and

(iv) One-year induction services after graduation, certification, or licensure provided during the award period to graduates of the pre-service program while they are completing their first year of work in schools with significant Indian student populations.

Note: In working with various institutions of higher education and State certification/licensure requirements, we found that States requiring a degree in a specific subject area (*e.g.*, specialty areas or teaching at the secondary level) generally require a Master's degree or fifth-year requirement before an individual can be certified or licensed as a teacher. These students would be eligible to participate so long as their training meets the requirements for full State certification or licensure as a teacher.

Competitive Preference

(1) The Secretary will award five (5) additional points to an application submitted by an Indian tribe, organization, or institution of higher education. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, organization or institution of higher education will be considered eligible to receive the five (5) additional priority points. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered a consortium application.

(Authority: 20 U.S.C. 7473.)

(2) The Secretary will award a total of five additional points to an application submitted by a consortium of eligible applicants that includes a tribal college or university and that designates that tribal college or university as the fiscal agent for the application. The consortium application of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR to be considered eligible to receive the five priority points. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered a consortium application.

Note: Letters of support do *not* meet the consortium requirements. The Secretary rejects any application that does not meet these requirements.

These competitive preference points are in addition to the five competitive preference points that may be given under Competitive Preference 1.

Tribal colleges and universities are those institutions cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, Title II (25 U.S.C. 640a note).

Selection Criteria

The selection criteria are included in full in the application package for this competition. These selection criteria are established in 34 CFR 263.6. Under the selection criteria ''Quality of project services'' and ''Quality of the project evaluation,'' the Secretary considers the extent to which the applicant demonstrates a strong capacity to provide reliable data on these indicators and to help achieve the program target.

Performance Measure: The Secretary has established the following key performance measure for assessing the effectiveness of the Professional Development program: To increase the percentages of the teacher and principal workforces serving American Indian and Alaska Native students who are themselves American Indian and Alaska Native. The program target is to increase the percentage of American Indian and Alaska Native principals and teachers in public schools with 25 percent or more American Indian and Alaska Native students.

Fiscal Information: Stipends may be paid only to full-time students. For the payment of stipends to project participants being trained, the Secretary expects to set the stipend maximum at $1,775 per month for full-time students and $275 allowance per month per dependent during an academic term. The terms ''stipend,'' ''full-time student,'' and ''dependent allowance'' are defined in 34 CFR 263.3.

Application Procedures:

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.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Professional Development program, CFDA 84.299B, is one of the programs included in the pilot project. If you are an applicant under the Professional Development program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). 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. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-APPLICATION, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

When you enter the e-Application system, you will find information about its hours of operation.

• You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• 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 Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print the ED 424 form from the e-Application system.

(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 all other forms at a later date.

• *Closing Date Extension in Case of System Unavailability:*

If you elect to participate in the e-Application pilot for the Professional Development program and you are prevented from submitting your application on the closing 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 and 3:30 p.m., Washington, DC time, on the 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 deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request an extension you must 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 the Professional Development program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

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 via its Web site (*http://www.ed.gov/pubs/edpubs.html*) or 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 84.299B.

Individuals with disabilities may obtain this document 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) 205–8351. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–3774. Internet address: *Cathie.Martin@ed.gov.*

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Program Authority: 20 U.S.C. 7442.

Dated: July 21, 2003.

Eugene Hickok,

Under Secretary of Education.

[FR Doc. 03–18872 Filed 7–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Los Alamos Site Office, National Nuclear Security Administration; Notice of Floodplain/Wetlands Involvement for the Security Perimeter Project at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: National Nuclear Security Administration, Los Alamos Site Office, DOE.

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: The National Nuclear Security Administration (NNSA), Los Alamos Site Office of the Department of Energy (DOE) plans to construct a single bypass road at the north end of Technical Area (TA) 3 at Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico, as part of the Security Perimeter Project. This project combines the installation of access control stations at key locations around TA–3 and modification of road intersections with the construction of a bypass road to control unauthorized access to the core technical and administrative area at LANL. The proposed North Bypass Road will connect East Jemez Road, Diamond Drive, and State Road 501 by detouring behind the Los Alamos Research Park and along the south rim of Los Alamos Canyon (Figure 1). A bridge would be used to span a small tributary canyon. There is a small wetland within the Research Park that is primarily fed by stormwater runoff from adjacent buildings and parking lots. The wetland is less than 1,000 square feet in area and would be filled during construction of the bypass road. The 100-year floodplain of Los Alamos Canyon is located on the canyon floor below the Research Park and would not be directly impacted by the project; however,

erosion and siltation controls would be emplaced at the construction site to protect the floodplain.

In accordance with 10 CFR Part 1022, NNSA had prepared a floodplain/wetlands assessment that evaluates the positive and negative, direct and indirect, and long- and short-term effects on floodplains and wetlands in and near the project area.

DATES: Comments are due to the address below no later than August 8, 2003.

ADDRESSES: Written comments should be addressed to: Elizabeth Withers, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544, or submit them to the Mail Room at the above address between the hours of 8 am and 4:30 p.m., Monday through Friday. Written comments may also be sent electronically to: *ewithers@doeal.gov* or by facsimile to (505) 667–9998.

FOR FURTHER INFORMATION CONTACT: Lloyd Smith, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544. Telephone (505) 667–4235, facsimile (505) 667–9998.

For further information on general DOE floodplain/wetlands environmental review requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585–0119. Telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: As a result of the events of September 11, 2001, the nature and extent of the terrorist threat has changed significantly in terms of the potential magnitude of the attack as well as the terrorists' motivations, targets, and methods. In recognition of this increased threat, LANL management and security officials have determined that there is a critical need to upgrade the physical protection around the core LANL technical and administrative area in TA–3, which houses vital national assets, government property, and key scientific and support staff. LANL is one of the few sites in the DOE complex where the general public has access to the core technical area and where public roads pass in close proximity to critical research facilities. Temporary measures have been recently implemented to help protect particular LANL assets, but long-term measures are required to provide an additional level of protection to the core of LANL. Unauthorized (unscreened) access in the future must be restricted and controlled to minimize the possibility of a terrorist threat being introduced into the core area.

The selected approach combines the installation of three access control stations at key locations and modification of road intersections with the development of a single bypass road at the north end of TA–3 to accomplish the mission need described. The proposed North Bypass Road would connect East Jemez Road, Diamond Drive and State Road 501 by detouring around the north of the Los Alamos Research Park. A small wetland would be directly affected and indirect impacts to the 100-year floodplain would be avoided by the use of best management practices for erosion and siltation control.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), NNSA has prepared a floodplain/wetlands assessment for this action, which is available by contacting Elizabeth Withers at the previously identified addresses, phone and facsimile numbers. The floodplain/wetlands assessment is available for review at the DOE Reading Room at the Los Alamos Outreach Center, 1619 Central Avenue, Los Alamos, NM 87854; and the DOE Reading Room at the Zimmerman Library, University of New Mexico, Albuquerque, NM 87131. The NNSA will publish a floodplain statement of findings for this project in the **Federal Register** no sooner than August 8, 2003.

Issued in Los Alamos, NM on July 7, 2003.

E. Dennis Martinez,

Acting Manager, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office.

BILLING CODE 6450–01–P

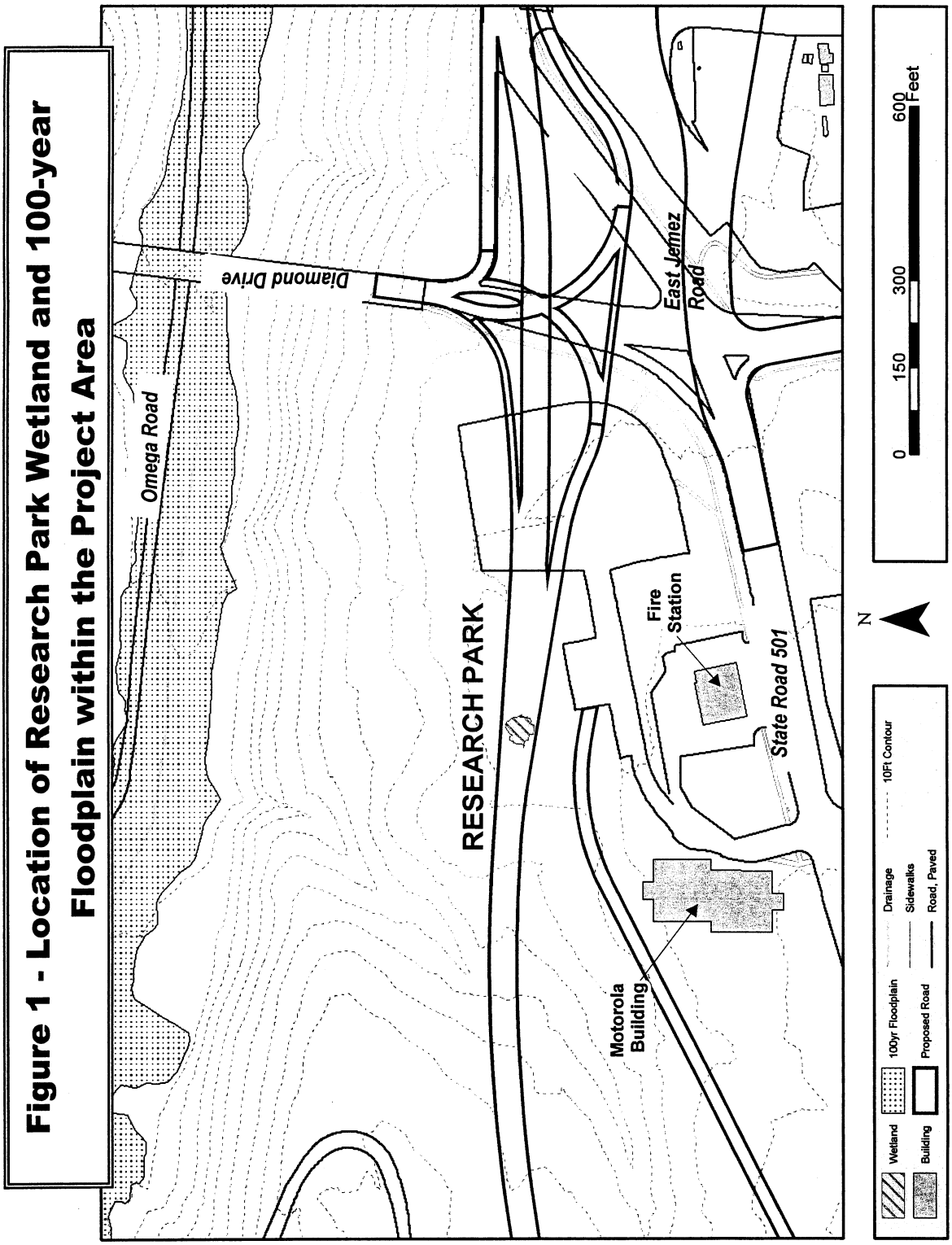

Figure 1 - Location of Research Park Wetland and 100-year Floodplain within the Project Area

RRES-OEIM May 29, 2003 Winters Map # 03-0047

New Mexico State Plane Coordinates, Central Zone, North American Datum 1983.

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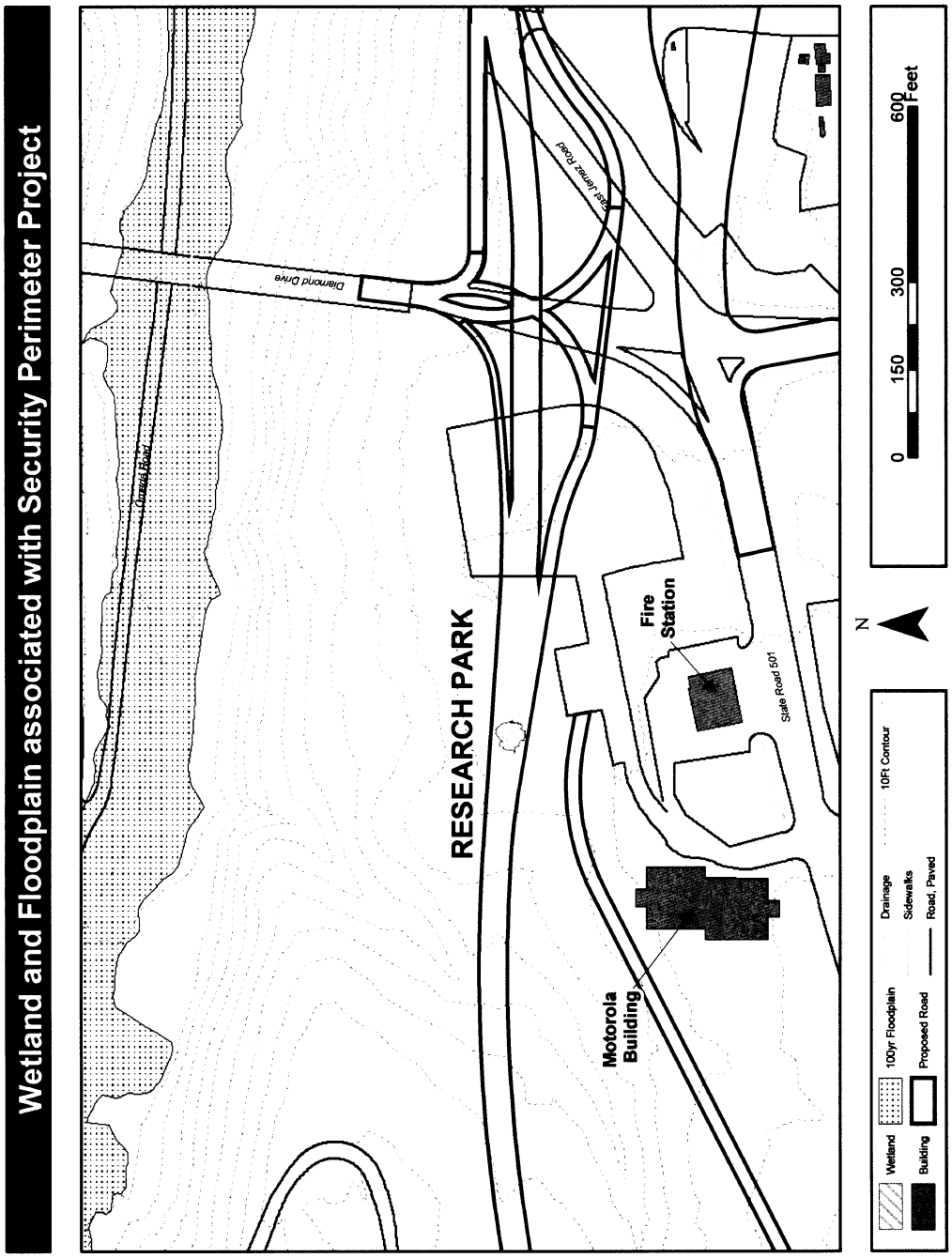

Figure 1. Location of Research Park wetland and 100-year floodplain within the project area.

[FR Doc. 03–18098 Filed 7–23–03; 8:45 am]

BILLING CODE 6450–01–C

ENVIRONMENTAL PROTECTION AGENCY

[CA 097–NOA; FRL–7535–3]

Adequacy Status of the San Joaquin Valley Unified Air Pollution Control District, California Submitted Ozone Rate of Progress Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets contained in the submitted Amended 2002 and 2005 Ozone Rate of Progress Plan for the San Joaquin Valley Unified Air Pollution Control District are adequate for transportation conformity purposes.

As a result of our finding, the various transportation planning agencies in the San Joaquin Valley and the Federal Highway Administration must use the VOC and NO_X motor vehicle emissions budgets from the Amended Rate of

Progress plan for future conformity determinations.

DATES: This determination is effective August 8, 2003.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity Web site: *http://www.epa.gov/oms/transp/traqconf.htm* (once there, click on the ''Transportation Conformity'' link, then look for ''Adequacy Web Pages'').

You may also contact David Wampler, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 972–3975 or *wampler.david@epa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces our finding that the emissions budgets contained in the *Amended 2002 and 2005 Ozone Rate of Progress Plan* submitted by the State of California on behalf of the San Joaquin Valley Unified Air Pollution Control District on April 10, 2003, are adequate for transportation conformity purposes. EPA Region IX made this finding in a letter to the State of California, Air Resources Board on July 10, 2003. We are also announcing this finding on our conformity Web site: *http://www.epa.gov/oms/transp/traqconf.htm* (once there, click on the ''Transportation Conformity'' link, then look for ''Adequacy Web Pages'').

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). One of these criteria is that the motor vehicle emissions budgets, when considered together with all other emission sources, is consistent with applicable requirements for the reasonable further progress plan. We have preliminarily determined that the San Joaquin Valley Amended 2002 and 2005 Ozone Rate of Progress plan meets the necessary emissions reductions and, therefore, the motor vehicle emissions budgets can be found adequate. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the submitted plan itself. Even if we find a budget adequate, the submitted plan could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination on the emissions budgets contained in the Amended 2002 and 2005 Ozone ROP Plan for San Joaquin Valley.

Authority: 42 U.S.C. 7401–7671 q.

Dated: July 14, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 03–18854 Filed 7–23–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

RIN 3046–AA58

Agency Information Collection Activities: Submission for OMB Review; Final Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of information collection under review; ADEA waivers.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (Commission or EEOC) gives notice that it has submitted to the Office of Management and Budget (OMB) a request for an extension of the existing collection requirements under 29 CFR 1625.22, Waivers of rights and claims under the Age Discrimination in Employment Act (ADEA). No public comments were received in response to the EEOC's May 12, 2003 60-Day notice solicitating comments on the proposed collection.

DATES: Written comments on this notice must be submitted on or before August 25, 2003.

ADDRESSES: The Request for Clearance (OMB 83–I), supporting statement, and other documents submitted to OMB for review may be obtained from: Carol R. Miaskoff, Assistant Legal Counsel, 1801 L Street, NW., Washington, DC 20507. Comments on this final notice must be submitted to Karen Lee, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, or e-mail at *KFLEE@OMB.EOP.GOV.* Comments should also be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. The Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number for the FAX receiver is (202) 663–4114. (This is not a toll-free-number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free-telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel, Office of Legal Counsel, at (202) 663–4638 or TTY (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The EEOC enforces the ADEA of 1967, as amended, 29 U.S.C. 621 *et seq.,* which prohibits discrimination against employees and applicants for employment who are age 40 or older. Congress amended the ADEA by enacting the Older Workers Benefit Protection Act of 1990 (OWBPA), Pub. L. No. 101–433, 104 Stat. 983 (1990), to clarify the prohititions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f), 29 U.S.C. 626 (f). The provisions of Title II of OWBPA require employers to provide certain information to employees (but not to EEOC) in writing. The regulation at 29 CFR 1625.22 reiterates those requirements.

The EEOC seeks extension without change of the information collection requirements contained in this recordkeeping regulation. On May 12, 2003, the Commission published a 60-Day Notice informing the public of its intent to request an extension of the information collection requirements from the Office of Management and

Budget. 68 FR 25372, May 12, 2003. No comments were received.

Collection Title: Informational requirements under Title II of the Older Workers Benefit Protection Act of 1990 (OWBPA), 29 CFR part 1625.

Form Number: None.

Frequency of Report: None required.

OMB Control No.: 3046–0042.

Type of Respondent: Business, Federal government, state or local governments, not for profit institutions.

Description of the Affected Public: Any employer with 20 or more employees that seeks waiver agreements in connection with exit incentive or other employment termination programs (hereinafter, ''Programs'').

Responses: 13,700.

Reporting Hours: 41,000.

Number of Forms: None.

Federal Cost: None.

Abstract: This requirement involves providing adequate information in waiver agreements offered to a group or class of persons in connection with a Program, to satisfy the requirements of the OWBPA.

Burden Statement: The paperwork burden involved is the inclusion of the relevant data in waiver agreements under the OWBPA. The rule applies to those employers who have 20 or more employees and who offer waivers to a group or class of employees in connection with a Program.

For the Commission.

Dated: July 17, 2003.

Cari M. Dominguez,

Chair.

[FR Doc. 03–18865 Filed 7–23–03; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 7, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 25, 2003. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0168.

Title: Section 43.43, Reports of Proposed Changes in Depreciation Rates.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time Per Response: 6,000 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 60,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 43.43 of the Commission's rules requires that certain carriers file specified information before making any change in the depreciation rates applicable to their operating plants. Carriers are required to file four summary exhibits along with the underlying data used to generate them, and must provide the depreciation factors, *i.e.*, life, salvage, curve shape, and depreciation reserve. This is the minimum amount of data needed to maintain oversight of carriers' depreciation expenses and rates. Mid-sized carriers are no longer required to file theoretical reserve studies.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–18767 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: *Tuesday, July 29, 2003 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: *Thursday, July 31, 2003 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2003–11: Michigan Democratic State Central Committee by counsel, Andrew Nickelhoff.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–19043 Filed 7–22–03; 3:47 pm]

BILLING CODE 6715–01–M

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 August 7, 2003.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. James Wang and Ellen Ruth Kao Wang; Tony Yi Ping Wang and Michelle Yichun Yang; Ellot Hong Wai Wong and Michelle Wichun Yang; Aubrey Hui–Ju Wang, all of Gladwyne, Pennsylvania, and Janet Wang Calilung, Irvine, California; to acquire voting shares of Asian Financial Corporation, Philadelphia, Pennsylvania, and thereby indirectly acquire shares of Asian Bank, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Frederick Bernard Gariepy and the Peter Gariepy Estate Trust, Frederick Gariepy, as trustee, both of St. Ignatius, Montana; to retain control of Lake County Bank, St. Ignatius, Montana.

Board of Governors of the Federal Reserve System, July 18, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–18782 Filed 7–23–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. First Fontanelle Bancorporation, Fontanelle, Iowa; to acquire 100 percent of the voting shares of Corn Belt Bancorporation, Inc., Anita, Iowa, and thereby indirectly acquire Union National Bank, Anita, Iowa.

In connection with this application, Applicant also has applied to acquire Corn Belt Insurance Agency, Massena, Iowa, and thereby engage in insurance agency activities in a town of less than 5,000 persons, pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

2. New City Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of New City Bank, Chicago, Illinois (in organization).

Board of Governors of the Federal Reserve System, July 18, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–18781 Filed 7–23–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–99]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Youth Tobacco Survey—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). The proposed project is the 2004 national school-based National Youth Tobacco Survey. The purpose of this request is to obtain OMB approval to continue a biennial survey among junior and senior high school students attending regular public, private, and Catholic schools in grades 6–12. This survey was previously funded by the American Legacy Foundation in 1999, 2000, and 2002. The survey covers the following tobacco-related topics: Prevalence of use (cigarettes, smokeless tobacco, cigars, pipe, bidis, and kreteks), knowledge and attitudes, media and advertising, minors' access and enforcement, school curriculum, environmental tobacco smoke exposure, and cessation. Tobacco use, a major preventable cause of morbidity and mortality in the U.S., is one of the 28 focus areas in Healthy People 2010. Within the Healthy People 2010 focus area of tobacco use, the National Youth Tobacco Survey provides data relevant to six health objectives. The survey also provides data to monitor one of the 10 Leading Health Indicators for Healthy People 2010 that addresses tobacco use. In addition, the National Youth Tobacco Survey can identify racial and ethnic disparities in tobacco-related topics listed above. The National Youth Tobacco Survey is the most comprehensive source of nationally

representative data regarding high school students and tobacco. Moreover, the National Youth Tobacco Survey is the only source of such national data for middle school students (grades 6–8). The data have significant implications for policy and program development for school health programs nationwide.

To provide contextual data, in each participating school, the principal or another designated administrator will be asked to complete a questionnaire on the school's tobacco-related policies. The lead health teacher identified by the principal will be asked to complete a questionnaire on the school's tobacco-related programs and curricula.

The only cost to respondents is their time to complete the survey.

Respondents	Number of respondents	Number of responses per respondent	Average burden per responses (in hrs.)	Total burden (in hrs.)
Students	24,500	1	45/60	18,375
School Administrator Arrangements	236	1	30/60	118
School Administrator Policy Survey	236	1	20/60	79
School Teacher Program Survey	236	1	20/60	79
Total				18,651

Dated: July 17, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–18800 Filed 7–23–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–100]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Workplace Exacerbation of Asthma (0920–0495)—EXTENSION—National Institute of Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Work-related asthma is the most common lung disease seen in occupational health clinics in the United States based on data from the Association of Occupational and Environmental Clinics for 1991–1996. Work-related asthma includes both new onset asthma initiated by workplace exposures and pre-existing asthma exacerbated by workplace environments, because in both types of cases repeated exposure to asthmatic agents can lead to chronic pulmonary impairment. Also, the 1985 American Thoracic Society statement ''What Constitutes an Adverse Health Effect of Air Pollution'' identified exacerbation of asthma as one of the serious effects of environmental air pollution. While anecdotal evidence suggests that as many as one-half of work-related asthma patients treated in occupational medicine clinics had pre-existing asthma that was exacerbated by workplace conditions, there are few data from studies in the United States to support this claim.

This study is investigating the frequency, causes, and consequences of workplace exacerbation of asthma (WEA). Given the diversity of workplace agents and processes associated with asthma, a population-based, rather than industry-based, study is needed to ascertain the full extent of the problem. This will be achieved by surveying adults with asthma. The Specific Aims of the study are: (1) To determine the frequency of WEA. (2) To determine the work circumstances associated with exacerbation of asthma. (3) To determine the social and economic costs associated with WEA. (4) To determine the sensitivity and specificity of self-reported WEA. (5) To determine whether WEA contributes to progression of disease. The design is a prospective cohort study with a nested validation study. The study consists of three parts: a Baseline Study addressing Specific Aims 1–3, a Validation Study addressing Specific Aim 4, and a Follow-up Study addressing Specific Aim 5.

To date, the Baseline Study telephone interviews have been completed with a total of 615 participants. Also, patient care records have been obtained in order to ascertain cost of care for asthma for each participant (Specific Aim 3). Currently, a subset of employed subjects with and without WEA are being enrolled in the Validation Study. All subjects from the Baseline Study will be asked to participate in the Follow-up study.

The data collected in this study will be used to further current understanding of the frequency of workplace-exacerbated asthma, the social and economic impacts of this problem, and the implication of self-reporting WEA for subsequent asthma severity. This information can be used to prioritize resources for addressing this problem. The data collected in this study will also identify which jobs and exposures are likely to exacerbate existing asthma, thus providing guidance on where to focus preventive efforts. Collected data on the validity of self-reporting WEA will be useful to both clinicians and researchers who attempt to treat or study individuals with this problem.

There will be no costs to respondents.

Respondents (adults with asthma)	Number of respondents	Number of responses/ respondent	Average burden per response (in hours)	Total burden (in hours)
Validation Study	200	1	7.51	500
Follow-up Study	465	1	30/60	233
Total	665			1733

Dated: July 17, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–18801 Filed 7–23–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0319]

Draft Guidance for Industry and FDA Staff; Premarket Assessment of Pediatric Medical Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Premarket Assessment of Pediatric Medical Devices.'' This draft guidance presents FDA's current thinking on the type of safety and effectiveness information needed to support marketing of pediatric devices and on measures to be used to help protect this vulnerable patient population during the course of clinical trials involving such products. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this guidance by October 22, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Premarket Assessment of Pediatric Medical Devices'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance 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*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For device issues contact: Joy Samuels-Reid, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287 ext. 177.

For biologics issues contact: Edward Tabor, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3518.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2002, the Medical Device User Fee and Modernization Act of 2002 (MDUFMA), Public Law 107–250, was signed into law. Among other things, MDUFMA amends the Federal, Food, Drug, and Cosmetic Act (the act) by adding several new provisions concerning devices intended for pediatric use. MDUFMA requires FDA, within 270 days of enactment, to issue guidance on the safety and effectiveness information needed to support marketing of pediatric devices and on measures to be used to help protect this vulnerable patient population during the course of clinical trials involving such products. This guidance, as well as a collateral guidance on procedures for ensuring appropriate pediatric expertise on FDA Advisory Panels, ''Pediatric Expertise for Advisory Panels'' (*http://www.fda.gov/cdrh/ode/guidance/1208.html*), will help the agency achieve the intent of the pediatric provisions of MDUFMA.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on ''Premarket Assessment of Pediatric Medical Devices.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Premarket Assessment of Pediatric Medical Devices'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1220) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) . The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket

notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120) and premarket approval applications (21 CFR part 814, OMB control number 0910–0231). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB No. 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments, 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. Comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–18909 Filed 7–21–03; 4:25 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Faculty Loan Repayment Program (FLRP) Application (OMB No. 0915–0150)—Extension

Under the Health Resources and Services Administration Faculty Loan Repayment Program, disadvantaged graduates from certain health professions may enter into a contract under which HRSA will make payments on eligible educational loans in exchange for a minimum of two years of service as a full-time or part-time faculty member of an accredited health professions school. Applicants must complete an application and provide current loan balances on all eligible educational loans.

The estimated burden hours for the form is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Applicants	94	1	94	1	94

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number 202–395–6974.

Dated: July 18, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–18764 Filed 7–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of Grant Awards

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Announcement of grant awards.

SUMMARY: The Office of Rural Health Policy (ORHP), HRSA is awarding the following grants to the State Offices of Rural Health (SORH), as authorized by Section 338J of the Public Health Service Act 42 U.S.C. 254r. The purpose of this notice is to announce the grant awards. The grant year began on July 1, 2003.

State Office of Rural Health Awards (CFDA# 93.913). These grants allow each State to designate a focal point of contact for rural health. They also play a vital role in helping coordinate rural health activities statewide such as collecting and disseminating health-related information within the State, improving the recruitment and retention of health professionals into rural areas, providing technical assistance to attract more Federal, State, and foundation funding, and coordinating rural health interests and activities across each State.

The following grantees have received awards for the first year of a 5-year project period.

- Alabama Department of Public Health; $150,000;
- Alaska Department of Health and Social Services; $150,000;
- Arizona Prevention Center, Office of Rural Health; $150,000;
- Arkansas Department of Health; $150,000;
- California Department of Health Services; $150,000;
- Colorado Rural Health Center; $150,000;
- Connecticut Community College Northwestern; $150,000;
- Delaware Department of Health and Social Services; $108,000;
- Florida Department of Health; $150,000;
- Georgia Department of Community Health, $150,000;
- Hawaii State Department of Health; $150,000;
- Idaho Department of Health and Welfare; $147,418;
- Illinois Department of Public Health; $150,000;
- Indiana State Department of Health; $150,000;
- Iowa Department of Public Health; $150,000;
- Kansas Department of Health and Environment; $150,000;
- Kentucky Research Foundation, University of Kentucky; $150,000;
- Louisiana Department of Health and Hospitals; $150,000;
- Maine Department of Human Services; $136,968;
- Maryland Office of Primary Care and Rural Health; $150,000;
- Massachusetts Department of Public Health; $150,000;
- Michigan Department of Community Health; $58,916;
- Minnesota Department of Health; $150,000;

- Mississippi State Department of Health; $150,000;
- Missouri Department of Health and Senior Services; $150,000;
- Montana State University-Bozeman; $150,000;
- Nebraska Health and Human Services System; $150,000;
- Nevada Office of Sponsored Projects Administration; $150,000;
- New Hampshire Department of Health and Human Services; $150,000;
- New Jersey Department of Health and Senior Services; $150,000;
- New Mexico Department of Health, Public Health Division; $150,000;
- New York Department of Health, Research Inc.; $150,000;
- North Carolina Department of Health and Human Services; $150,000;
- North Dakota Medicine and Health Sciences; $150,000;
- Ohio, State of Department of Health; $140,831;
- Oklahoma Center for Health Sciences; $200,000;
- Oregon Health and Science University; $150,000;
- Pennsylvania State University; $150,000;
- Rhode Island Department of Health, Office of Rural Health; $85,000;
- South Carolina State Office of Rural Health; $150,000;
- South Dakota Department of Health; $150,000;
- Tennessee State Department of Health; $150,000;
- Texas, Office of Rural Community Affairs; $150,000;
- Utah Department of Health; $150,000;
- Vermont State Department of Health; $150,000;
- Virginia Department of Health; $150,000;
- Washington State Office of Rural Health; $150,000;
- West Virginia Department of Health and Human Resources; $150,000;
- Wisconsin, Office of Rural Health-Board of Regents, University Wisconsin System; $150,000;
- Wyoming Department of Health; $62,028;

FOR FURTHER INFORMATION CONTACT: Jennifer Riggle, Director, State Office of Rural Health, Office of Rural Health Policy, HRSA, 5600 Fishers Lane, Room 9A–55, Rockville, MD 20857, (301)–443–0835.

Dated: July 17, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–18763 Filed 7–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Health, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contact proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: September 4, 2003.

Open: 8 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Deborah P Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0260.

Information is also available on the Institute's/Center's Home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18878 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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: National Human Genome Research Institute Special Emphasis Panel ELSI Hap-Map Sample Collection Review.

Date: July 31, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

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. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18886 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, National Cooperative Drug Discovery Groups for Tuberculosis and Biodefense and Emerging Infectious Diseases Research.

Date: August 13–14, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerald L. McLaughlin, PhD., Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2212, Bethesda, MD 20892–7616, 301–436–7465, *gm145a@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18875 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; 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 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Comprehensive International Program of Research on AIDS (CIPRA)—Peru.

Date: August 11, 2003.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Room 3112, Bethesda, MD 20892–7616, (301) 435–3564, *ec17w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 83.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18876 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: August 8, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH, 6700B Rockledge Drive, Rm 2155, Bethesda, MD 20892–7616, 301–496–2550, *rb169n@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18877 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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: National Institute of Child Health and Human Development Special Emphasis Panel, Research on the Scope and Causes of Stillbirth in the United States.

Date: August 11–12, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human

Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18879 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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: National Institute of Child Health and Human Development Special Emphasis Panel, Novel Approaches to Male Fertility Regulations.

Date: August 13–14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Jon. M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18880 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Bright Light Treatment for Depression.

Date: July 23, 2003.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sara K. Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608.

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. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18881 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, July 31, 2003, 1 p.m. to July 31, 2003, 2:30 p.m. National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on June 6, 2003, 68 FR 33958.

The meeting will be held on August 8, 2003 and is going to be held at the same time and at the same place. The meeting is closed to the public.

Dated: July 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18882 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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)(∧), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Loan Repayment Program.

Date: August 12, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754,

6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799, *Is38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18883 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of RO1 Application.

Date: July 25, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Small Business Innovation Research.

Date: July 28, 2003.

Time: 9:30 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Room 409, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of Collaborative Initiative on FASD U24 & U01 Applications.

Date: August 14, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Karen P. Peterson, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 21, 2003.

Time: 2 p.m. to 4 p.m.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene G. Hayunga, PhD, Chief, Extramural Project Review Branch, OSA, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Wilco Building, Suite 409, 6000 Executive Boulevard, MSC 7003, Bethesda, MD 20892–7003, 301–443–2860, *ehayunga@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18884 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel SBIR Phase I, Topic 306.

Date: July 28, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mark Czarnolewski, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mczarnol@mail.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: National Institute of Mental Health Special Emphasis Panel SBIR—Topic #302.

Date: August 7, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

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: National Institute of Mental Health Special Emphasis Panel SBIR Phase I, Topics 301 and 305.

Date: August 15, 2003.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18885 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Fogarty Pediatric Applications.
Date: August 5–6, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Ritz-Carlton, 150 22nd Street, NW., Washington, DC 20037.
Contact Person: Phillip F. Wiethorn, MS, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center, Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Fogarty Adult Applications.
Date: August 12–13, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Ritz-Carlton, 150 22nd Street, NW., Washington, DC 20037.
Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5390, *willarda@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18887 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Huntington's Disease.
Date: July 28–29, 2003.
Time: 7:30 p.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: W. Ernest Lyons, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

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: National Institute of Neurological Disorders Stroke Special Emphasis Panel Post-Stroke Intervention Trial.
Date: August 7, 2003.
Time: 10 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Katherine Woodbury, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5980, *kw47o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18888 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Contract Proposal NIH ES–03–03.
Date: September 4, 2003.
Time: 9:30 a.m. to 1 p.m.
Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, EC 3162, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18889 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS,

Date: August 24–26, 2003.

Closed: August 24, 2003, 8 p.m. to 9:30 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713,

Open: August 25, 2003, 8:30 a.m. to 5 p.m.

Agenda: An overview of the organization and conduct of research in the Laboratory of Pulmonary Pathobiology.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: August 26, 2003, 8:30 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Steven K Akiyama, PhD, Division of Intramural Research, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, Research Triangle Park, NC 27709, 919/541–3467, *akiyama@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18890 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 552(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 constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immunology Program Project Application Review.

Date: September 12, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alec Ritchie, PhD, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 2217, 6700 B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18891 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 14, 2003, 12 p.m. to July 14, 2003 2 p.m. National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892, which was published in the **Federal Register** on July 15, 2003, 68 FR 41832–41833.

The meeting will be held on July 24, 2003. The time and location remain the same. The meeting is closed to the public.

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18874 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications,, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Addictive Neural Mechanisms.
Date: July 22, 2003.
Time: 12 p.m. to 3 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: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.
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 Rehabilitative Medicine.
Date: July 23, 2003.
Time: 1:20 p.m. to 3:30 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: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.
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 Oral Biology.
Date: July 24, 2003.
Time: 2 p.m. to 4 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: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.
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 Olfaction.
Date: July 25, 2003.
Time: 12 p.m. to 1 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: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.
This notice if 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 Dermatology/Rheumatology.
Date: July 29, 2003.
Time: 2 p.m. to 4 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: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.
This notice if 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 Use of Administrative Date to Evaluate an Intervention.
Date: August, 1, 2003.
Time: 12 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, 3168, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ellen K. Schwartz, EdD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3l168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*
This notice if 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 PTHA 91S: Blood Brain Barrier Pharmaceutics.
Date: August 4, 2003.
Time: 2:30 p.m. to 3:30 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: 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 if 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 Genetics and Epidemiology Member Conflict.
Date: August 4, 2003.
Time: 12 p.m. to 2 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: Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, 301–435–3562, *raffertc@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 Bioengineering Research Partnership.
Date: August 6, 2003.
Time: 11 a.m. to 12 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: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, 301–435–1767.

Name of Committee: Center for Scientific Review Special Emphasis Panel Special Review in Mammalian Genetics.
Date: August 6, 2003.
Time: 1 p.m. to 5 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: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, 301–435–1037, *dayc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BIO (05) Polysaccharides Regulating Cell Function.
Date: August 6, 2003.
Time: 1 p.m. to 2 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: Michael M. Sveda, PhD, Scientific Review Administrator, Biochemistry Study Section, Biochemical Sciences, IRG, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS–H (10).

Date: August 6, 2003.

Time: 1 p.m. to 3:30 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: 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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Biophysics Special Emphasis Panel.

Date: August 8, 2003.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1723, *nelsonja@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel SSS–M (55) R01 Advanced Biomaterials RFA.

Date: August 11–12, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndam City Center, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *wagnerp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Chronic Fatigue Syndrome—Fibromyalgia Syndrome Special Emphasis Panel.

Date: August 11, 2003.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: J Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Tooth Development and Biomineralization.

Date: August 11, 2003.

Time: 3 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: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

Name of Committee: Center for Scientific Review Special Emphasis Panel Neuroscience—SBIR/STTR.

Date: August 12, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20037.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel Health Services Research.

Date: August 12, 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: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

Name of Committee: Center for Scientific Review Special Emphasis Panel Viral & Bacterial Synergy in Pathogenesis.

Date: August 14, 2003.

Time: 2:30 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: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyper@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Oral Biology and Medicine SBIR/STTR Special Emphasis Panel.

Date: August 15, 2003.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, N.W., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18892 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–46]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Ending Chronic Homelessness Through Employment and Housing Application

AGENCY: Office of Special Needs Assistance Programs, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection supports the Collaborative Initiative to Help End Chronic Homelessness. Information is needed to assist in the selection of proposals submitted to HUD for the awarded funds.

DATES: *Comments Due Date:* August 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Lauren_Wittenberg@omb.eop.gov*; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: *Wayne_Eddins@HUD.gov*;

telephone: (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing of a new information collection for selecting applicants for the joint HUD/DOL Notice of Funding Availability for Ending Chronic Homelessness through Employment and Housing initiative.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ending Chronic Homelessness through Employment and Housing Initiative.

Description of Information Collection: Prospective grant recipients may apply for the Collaborative Initiative to Help End Chronic Homelessness program, which was a joint initiative with HHS and VA earlier this year (January 2003) Notice of Funding Availability (NOFA). With this partnership with DOL, HUD's permanent housing grants will supplement each cooperative agreement effort with an additional award, to support permanent housing for individuals who are ''chronically homeless'' served through the DOL cooperative agreement.

OMB Control Number: Pending.

Agency Form Numbers: HUD 40076.1.

Members of Affected Public: Non-profit or public entities such as municipality, Public Housing Agencies, or nonprofit organization that meet HUD's requirements.

Estimation of the Total Numbers of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Responses, and Hours of Response: An estimation of the total number of hours needed to prepare the information collection is—400, number of respondents is 100, frequency of response is 1 per annum, and the total hours per respondent is 44 hours.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 16, 2003.

Donna Eden,

Director, Investments, Strategies, Policy and Management, Office of the Chief Information Officer.

[FR Doc. 03–18754 Filed 7–23–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–47]

Notice of Submission of Proposed Information Collection to OMB: Application for Multifamily Housing Project

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This collection is completed by sponsors and general contractors of proposed multifamily projects and submitted by a HUD-approved mortgagee for application of FHA mortgage insurance. The information is used to determine project feasibility, principal's acceptability, and credit worthiness.

DATES: *Comments Due Date:* August 25, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0029) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of proposal: Application for Multifamily Housing Project.

OMB approval number: 2502–0029.

Form numbers: HUD–92013, HUD–92013–SUPP, HUD–92013–NHICF, and HUD–92013–E.

Description of the need for the information and its proposed use:

This collection is completed by sponsors and general contractors of proposed multifamily projects and submitted by a HUD-approved mortgagee for application of FHA mortgage insurance. The information is used to determine project feasibility, principal's acceptability, and credit worthiness.

Respondents: Business or other for-profit.

Frequency of submission: On occasion, required with each project application.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	6,350	6,350		26.5		168,680

Total estimated burden hours: 168,680.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 18, 2003.

Donna Eden,

Director, Investment, Strategies, Policy and Management Office of the Chief Information Officer.

[FR Doc. 03–18755 Filed 7–23–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–48]

Notice of Submission of Proposed Information Collection to OMB: Mortgagee's Certificate

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Mortgagees submit information to assure that fees are within acceptable limits and the required escrows will be collected. HUD determines the reasonableness of the fees and uses the information in calculating the financial requirement for closing. Allowable fees are collected from multi-family mortgagors at closing.

DATES: *Comments Due Date:* August 25, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0468) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) The office of the agency to collect the information; (3) The OMB approval number, if applicable; (4) The description of the need for the information and its proposed use; (5) The agency form number, if applicable; (6) What members of the public will be affected by the proposal; (7) How frequently information submissions will be required; (8) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) Whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) The name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of proposal: Mortgagee's Certificate.

OMB approval number: 2502–0468.

Form numbers: HUD–2434.

Description of the need for the information and its proposed use: Mortgagees submit information to assure that fees are within acceptable limits and the required escrows will be collected. HUD determines the reasonableness of the fees and uses the information in calculating the financial requirement for closing. Allowable fees are collected from multi-family mortgagors at closing.

Respondents: Business or other for-profit.

Frequency of submission: On occasion, Required for each insured project.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	1,100	1,100		0.75		825

Total estimated burden hours: 825

Status: Reinstatement, without change, of previously approved.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 18, 2003.

Donna Eden,

Director, Investment, Strategies, Policy and Management Office of the Chief Information Officer.

[FR Doc. 03–18756 Filed 7–23–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4821–N–02]

Notice of Proposed Information Collection: Comment Request; Commitment To Guarantee Mortgage-Backed Securities

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* September 22, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

Control Number and should be sent to: Sonya Suarez, Office of Program Operations, Department of Housing & Urban Development, 451—7th Street, SW., Room 6206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Commitment to Guarantee Mortgage-Backed Securities.

OMB Control Number, if applicable: 2503–0001.

Description of the need for the information and proposed use: This form is used by Mortgage-Backed Securities issuers to apply for Ginnie Mae commitment authority to guarantee mortgage-backed securities.

Agency form numbers, if applicable: HUD Form 11704.

Members of affected public: For-profit business (mortgage companies, thrifts, savings & loans, etc.).

Estimation of the total number of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response:

Number of respondents—300
Frequency of responses—4 (per year)
Total annual response—1,200
Hours per response—.25 (15 minutes)
Total burden hours—300

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

George S. Anderson.

Executive Vice President, Ginnie Mae.

[FR Doc. 03–18757 Filed 7–23–03; 8:45 am]

BILLING CODE 4210–66–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Joint Restoration Plan and Environmental Assessment for the Lower Fox River and Green Bay Area and Finding of No Significant Impact (FONSI)

AGENCIES: Fish and Wildlife Service, Interior, lead; Bureau of Indian Affairs, Interior, cooperating agency; National Oceanic and Atmospheric Administration, Commerce, cooperating agency.

ACTION: Notice of Release of Finding of No Significant Impact (FONSI) and Final Restoration Plan and EA.

SUMMARY: This notice advises the public and other agencies of the availability of the Finding of No Significant Impact (FONSI) and the document titled ''Joint Restoration Plan and Environmental Assessment for the Lower Fox River and Green Bay Area'' (''The Plan'') upon which it is based. The Fish and Wildlife Service formally selected Alternative C of The Plan through signing of the FONSI. Alternative C provides for natural resource-based restoration within and beyond the Assessment Area.

ADDRESSES: Persons may obtain copies of the final document by writing, telephoning, faxing, or e-mailing: Colette S. Charbonneau, 2661 Scott Tower Drive, New Franken, Wisconsin 54229, Telephone: (920) 866–1726, Fax: (920) 866–1710, e-mail: *colette_charbonneau@fws.gov.* The document is also available at the following Internet address: *http://midwest.fws.gov/nepa/.*

Copies of the document will be available for onsite review at the Appleton Public Library, 225 N. Oneida St., Appleton, Wisconsin; Brown County Library, 515 Pine St., Green Bay, Wisconsin; Door County Library, 104 S. Fourth Ave., Sturgeon Bay, Wisconsin; Oneida Community Library, 201 Elm St., Oneida, Wisconsin; Oshkosh Public Library, 106 Washington Ave., Oshkosh, Wisconsin and the Escanaba Public Library, 400 Ludington Street, Escanaba, Michigan.

SUPPLEMENTARY INFORMATION: The objective of the Natural Resource Damage Assessment and Restoration process in the Lower Fox River and Green Bay area is to compensate the public, through environmental restoration, for losses to natural resources that have been caused by historic releases of polychlorinated biphenyls (PCBs) into the environment. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, more commonly known as the federal ''Superfund'' law) [42 U.S.C. 9601, *et seq.*] and the Federal Water Pollution Control Act (CWA, commonly known as the Clean Water Act) [33 U.S.C. 1251, *et seq.*] authorize States, federally recognized Tribes, and certain federal agencies that have authority to manage or control natural resources, to act as ''trustees'' on behalf of the public, to restore, rehabilitate, replace, and/or acquire natural resources equivalent to those harmed by hazardous substance releases.

The U.S. Department of the Interior (represented by the U.S. Fish and Wildlife Service and the Bureau of Indian Affairs), U.S. Department of Commerce (represented by the National Oceanic and Atmospheric Administration), Oneida Tribe of Indians of Wisconsin, Menominee Indian Tribe of Wisconsin, Wisconsin Department of Natural Resources, Michigan Attorney General, and Michigan Department of Environmental Quality (''Trustees'') are trustees for natural resources considered in this Natural Resource Damage Assessment and Restoration (NRDAR) project, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300.600 and 300.610) and Executive Order 12580.

The Trustees have a Memorandum of Agreement which establishes a Trustee Council to develop and implement a restoration plan for ecological restorations in the Fox River valley and Green Bay watershed. The Trustees followed the NRDAR regulations found at 43 CFR part 11 for the development of The Plan. The Plan addresses the Trustees' overall approach to restore, rehabilitate, replace or acquire the equivalent of natural resources injured by the release of PCBs into the Lower Fox River and Green Bay environment. Signing of the FONSI completed the National Environmental Policy Act (NEPA) process and allows the Plan to be implemented, as described in Alternative C.

The Trustees have worked together, in a cooperative process, to determine appropriate restoration activities to address natural resource injuries caused by historic releases of PCBs into the Lower Fox River and Green Bay

environment. The results of this administrative process are contained in a series of planning and decision documents that have been published for public review under CERCLA and the CWA. Natural resource damages received, either through negotiated settlements or adjudicated awards, must be used to restore, rehabilitate, replace and/or acquire the equivalent of those natural resources that have been injured. The Plan addresses the Trustees' overall approach to restore, rehabilitate, replace or acquire the equivalent of natural resources injured by the release of PCBs into the Lower Fox River and Green Bay environment.

On September 19, 2002, the Service published in the **Federal Register** (67 FR 59073) a Notice of Availability commencing a 30-day public comment period on the draft document entitled, ''Joint Restoration Plan and Environmental Assessment for the Lower Fox River and Green Bay Area''. Comments received during the above public comment period were incorporated into a final document (The Plan). This current Notice of Availability informs the public that the Service has formally selected Alternative C of the The Plan through the signing of a Finding of No Significant Impact (FONSI).

Authority: 42 U.S.C. 4321–4347.

Dated: June 24, 2003.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, MN.

[FR Doc. 03–18798 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A; OMB Control Number 1004–0074]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current approved information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On August 5, 2002, the BLM published a notice in the **Federal Register** (67 FR 50690) requesting comment on this information collection. The comment period ended on October 4, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0074), at OMB–OIRA via facsimile to (202) 395–5806 or e-mail to *Ruth Solomon@omb.eop.gov.*

Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information collection; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Oil and Gas and Geothermal Resources Leasing (43 CFR 3120, 3209, and 3220).

OMB Control Number: 1004–0074.

Bureau Form Numbers: 3000–2 and 3200–9.

Abstract: We use the information from Form 3000–2 to determine whether a bidder is qualified to hold a lease under the Mineral Leasing Act of 1920. Also, we use the information from Form 3200–9 to conduct geothermal resource operations under the Geothermal Steam Act of 1969.

Frequency: Occasionally.

Description of Respondents: Individuals, small businesses, and large corporations.

Estimated Completion Time: 2 hours for Form 3200–9 and 10 minutes for Form 3000–2.

Annual Responses: 1,030.

Application Fee Per Response: $0.

Annual Burden Hours: 227.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: July 11, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–18847 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A; OMB Control Number 1004–0025]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current approved collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On July 26, 2002, the BLM published a notice in the **Federal Register** (67 FR 48938) requesting comment on this information collection. The comment period ended on September 24, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed to the Office of Management and Budget, Interior Department Desk Officer (1004–0025), at OMB–OIRA via facsimile to (202) 395–5806 or e-mail to *Ruth Solomon@omb.eop.gov.* Please provide a copy of our comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity on the information collected; and

4. Ways to minimize the information collection burden on those who are to

respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Mineral Patent Applications (43 CFR part 3860) and Adverse Claims, Protests, and Conflicts (43 CFR part 3870).

OMB Control Number: 1004–0025.

Bureau Form Numbers: 3860–2 and 3860–5.

Abstract: We use the information to determine the right to a mineral patent and to disputes concerning the rights to the property in order to issue the patent to the rightful claimant.

Frequency: One.

Description of Respondents: Holders of unpatented mining claims and mill sites located on public lands, reserved mineral lands of the United States, National Forests, and National Parks.

Estimated Completion Time: 2 hours (contests and protests each).

Annual Responses: 31.

Application Fee Per Response: $10.

Annual Burden Hours: 62.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: July 8, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–18848 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–022–01–1060–JJ: G 03–0233]

Oregon: Meeting Notice—Use of Helicopters To Gather Wild Horses

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Burns District Office: Public meeting to discuss the use of helicopters to gather wild horses in Oregon.

SUMMARY: In accordance with Public Law 92–195 and 43 CFR 4740.1(b), this notice sets forth the public meeting date to discuss the use of helicopters for gathering wild horses in Oregon from August 1, 2003 through February 28, 2004.

DATES: August 7, 2003—2 p.m. to 3 p.m.

ADDRESSES: The meeting will take place at the BLM Burns District Office, 28910 Hwy 20 West, Hines, Oregon.

FOR FURTHER INFORMATION CONTACT: Connie Dellera, Bureau of Land Management, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, telephone (541) 573–4456.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Public comments will be accepted concerning the use of helicopters to gather wild horses in eastern Oregon. The proposed gathering schedule and approximate dates of gathering for the period of August 1, 2003 through February 28, 2004, will be presented at the meeting. Approximately 700 to 900 animals are proposed for gather and adoption in Oregon depending on availability of funds.

Persons interested in making an oral statement at this meeting regarding the use of helicopters for gathering horses are asked to notify the District Manager, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738 by August 1, 2003. Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

The Burns District is also accepting written comments regarding the use of helicopters to gather wild horses. Written statements must be received by August 6, 2003 and should be sent to the address listed above.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review. 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.

Dated: July 15, 2003.

Thomas H. Dyer,

Burns District Manager.

[FR Doc. 03–18802 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0139).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 216, Production Accounting, subparts A and B; and part 210, Forms and Reports. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled ''30 CFR Part 216, Production Accounting, Subparts A and B; and Part 210, Forms and Reports.''

DATES: Submit written comments on or before August 25, 2003.

ADDRESSES: Submit written comments by either fax (202) 395–5806 or email *(Ruth_Solomon@omb.eop.gov)* directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0139). Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, email *Sharron.Gebhardt@mms.gov.* You may also contact Sharron Gebhardt to obtain a copy at no cost of the forms and regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 216, Production Accounting, Subparts A and B; Part 210, Forms and Reports.

OMB Control Number: 1010–0139.

Bureau Form Number: Forms MMS–4054 and MMS–4058.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) under the Mineral Leasing Act (30 U.S.C. 1923) and the OCS Lands Act (43 U.S.C. 1353) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws.

The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The financial accounting system is an integrated computer system that includes production reports submitted by lease/agreement operators and is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. The financial accounting system also includes payment and sales volumes and values as reported by payors. The production and royalty volumes are compared to verify that proper royalties are received for the minerals produced.

The production reports provide MMS with ongoing information on lease, unit, or communitization agreement (lease/agreement) and facility production, sales volumes, and inventories. The reports summarize all operations on a lease/agreement or facility during a reporting period. They identify production by the American Petroleum Institute well number and sales by product. Data collected are used as a method of cross-checking reported production with reported sales. Failure to collect this information will prevent MMS from ensuring that all royalties owed on lease production are paid. Additionally, the data is shared electronically with the Bureau of Land Management, MMS's Offshore Minerals Management, Bureau of Indian Affairs, and tribal and state governments so they can perform their lease management responsibilities.

Form MMS–4054, Oil and Gas Operations Report (OGOR), is a three-part form that identifies all oil and gas lease production and dispositions. The form is used for all production reporting on the OCS and for onshore Federal and Indian lands. Monthly production information is compared with monthly sales and royalty data submitted on Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0140) to ensure proper royalties are paid on the oil and gas production reported to MMS. MMS uses the information from parts A, B, and C of the OGOR to track all oil and gas from the point of production to the point of first sale or other disposition. To streamline preparation of modified reports, the operator has the option of modifying the reporting line (delete/add by detail line) or replacing (overlaying) the previous report.

OGOR, Part A, Well Production: All operators submit part A, Well Production, for each lease or agreement with active wells until such wells are abandoned and inventories are disposed. Each line identifies a well/producing interval combination showing well status; days on production; volumes of oil, gas, and water produced; and any volumes injected during the report month.

OGOR, Part B, Product Disposition: For any month with production volumes, operators submit part B, Product Disposition, to identify the sales, transfers, and lease use of production reported on part A. A separate line for each disposition shows: (1) The volume of oil, gas, or water; (2) the sales meter or other meter identifier; (3) the gas plant for instances where gas was processed prior to royalty determination; and (4) the quality of production sold.

OGOR, Part C, Product Sales from Facility: The lease operators who store their production before selling it must submit part C, Product Sales from Facility. Separate lines for each product identify the storage facility, sales meter if applicable, quality of production sold, beginning and ending storage inventory, volume of sales, and volumes of other gains and losses to inventory.

Form MMS–4058, Production Allocation Schedule Report (PASR), is submitted monthly by operators of the facilities and measurement points where production from an offshore lease or metering point is commingled with production from other sources before it is measured for royalty determination. MMS uses the data to determine whether sales reported by the lessee are reasonable. Each line identifies a lease or metering point and allocated sales or transfer volumes. Delivered production volumes are no longer reported. Space has been provided on each detail line for the operator's property name (area/block), and a column has been added for indicating whether the operator is injecting oil, gas, or both into the pipeline system. Beginning and ending inventory are no longer reported. To streamline preparation of modified reports, the operator has the option of modifying (delete/add by detail line) or replacing (overlaying) the previous report.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is mandatory.

We have also changed the title of this ICR from ''Production Accounting and Auditing System Oil and Gas Reports (Forms MMS–4054, MMS–4055, MMS–4056, and MMS–4058)'' to ''30 CFR Part 216, Production Accounting, Subparts A and B; Part 210, Forms and Reports (Forms MMS 4054 and MMS 4058)'' to clarify the regulatory language we are covering under 30 CFR parts 216 and 210.

Frequency: Monthly and as required.

Estimated Number and Description of Respondents: 2,500 industry operators.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 76,630 hours.

The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR Part 216 Subparts A and B	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
216.11; 216.16(a); 216.21; 216.40(d); 216.53(a), (b), and (c); 210.20(a); 210.21(c)(1); and 210.50.	You must submit your Oil and Gas Operations Report, Form MMS–4054, in accordance with electronic reporting requirements * * * All reporting forms * * * should be mailed to the Minerals Management Service, Minerals Revenue Management, * * * The reporter shall submit accurately, completely, and timely, * * * all information forms and other information required by MMS * * * The reporter shall have the burden of proving that a reporting problem was unavoidable. You must file an Oil and Gas Operations Report, Form MMS–4054, * * * You must submit a Form MMS–4054 for each well for each calendar month * * * MMS must receive your completed Form MMS–4054 * * * Electronically * * * Other than electronically * * * You must submit Form MMS–4054 to MMS electronically * * * Before you may begin reporting electronically, you must submit an electronic sample of your report for MMS approval using the MMS-supplied electronic reporting guidelines * * * Records may be maintained in microfilm, microfiche, or other recorded media..	.25 (Electronic) .25 (Manual)	294,000 6,000	73,500 1,500
216.56(a), (b), and (c).	Any operator of an offshore Facility Measurement Point * * * must file a Production Allocation Schedule Report (Form MMS–4058). You must submit a Production Allocation Schedule Report, Form MMS–4058, for each calendar month * * * MMS must receive your Form MMS–4058 * * * Electronically * * * Other than electronically * * *.	.1167 (Electronic) .25 (Manual)	7,280 3,120	850 780
216.57	Operators who have been granted a reduced royalty rate(s) by BLM must submit a Stripper Royalty Rate Reduction Notification (Form MMS–4377) to MMS: * * *.	Burden covered under OMB Control Number 1010–0090.		
Total	.....	.....	310,400	76,630

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: Reporters require access to the internet through a subscription to an internet provider service. The annual subscription is estimated at $240 per reporter.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on April 21, 2003 (68 FR 19575), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to this notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 25, 2003.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous 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.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: July 15, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–18893 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, modified, discontinued, or completed since the last publication of this notice on April 29, 2003. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, April 13, 1987, Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

The February 28, 2003, notice should be used as a reference point to identify changes. The numbering system in this notice corresponds with the numbering system in the February 28, 2003, notice.

Definitions of Abbreviations Used in This Document

BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR **Federal Register**
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
O&M Operation and Maintenance
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
SOD Safety of Dams
WD Water District

Pacific Northwest Region:

Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5223.

New contract action:

21. Tualatin Valley ID, Clean Water Services, and the Cities of Hillsboro, Forest Grove, Beaverton, and Lake Oswego; Tualatin Project; Oregon: Repayment agreements for repayment of reimbursable cost of SOD modifications to Scoggins Dam.

Modified contract action:

17. Hermiston and West Extension IDs, Umatilla Project, Oregon: Amendatory repayment contracts for long-term boundary expansions to include lands outside of federally recognized district boundaries.

Completed contract actions:

17. Stanfield ID, Umatilla Project, Oregon: Amendatory repayment contracts for long-term boundary expansions to include lands outside of federally recognized district boundaries. Contract was executed April 30, 2003.

18. Emmett ID and 12 individual contract spaceholders, Boise Project,

Payette Division, Idaho: Repayment agreements or contracts for reimbursable costs of SOD modifications to Deadwood Dam. Repayment contract with District and letters of agreement with individual contractors were executed June 2003.

Mid-Pacific Region:

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract actions:

41. Orland Unit Water User's Association, Orland Project, California: Repayment contract for the SOD costs assigned to the irrigation purpose of Stony Gorge Dam.

42. Delta Lands Reclamation District No. 770, CVP, California: Long-term operations contract for conveying nonproject flood flows.

43. Banta-Carbona ID, CVP, California: Proposed partial assignment of up to 5,000 acre-feet of Banta-Carbona ID's CVP irrigation water to City of Tracy for M&I use.

44. The West Side ID, CVP, California: Proposed partial assignment of up to 5,000 acre-feet of the West Side ID's CVP irrigation water to City of Tracy for M&I use.

Completed contract actions:

10. Mercy Springs WD, CVP, California: Partial assignment of about 7,000 acre-feet of Mercy Springs WD's water service contract to Westlands WD for agricultural use. Contract for the partial assignment executed March 1, 2003.

23. Lower Tule River, Porterville, and Vandalia IDs, and Pioneer Water Company, Success Project, California: Repayment contract for the SOD costs assigned to the irrigation purpose of Success Dam. Repayment contract was executed March 12, 2003.

35. Cachuma Operation and Maintenance Board, Cachuma Project, California: Long-term contract to transfer responsibility for O&M and O&M funding of certain Cachuma Project facilities to the member units. Long-term contract was executed March 1, 2003.

Lower Colorado Region:

Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New contract actions:

52. Fishers Landing, LLC, BCP, Arizona: Water delivery contract for 53 acre-feet of Colorado River water.

53. City of Tucson, CAP, Arizona: Partial transfer of 4,454 acre-feet of M&I allocation from the City of Tucson to Wells Fargo Bank of Arizona, Trustee, for the town of Oro Valley.

Modified contract action:

31. Jessen Family Limited Partnership, BCP, Arizona: Contract for the delivery of 1,080 acre-feet of Colorado River water for agricultural purposes.

Discontinued contract action:

6. Curtis Family Trust *et al.,* BCP, Arizona: Contract for 2,100 acre-feet per year of Colorado River water for irrigation.

Completed contract actions:

32. Robson Communities, Southern Arizona Water Rights Settlement Act, Arizona: United States contract with Robson Communities for the sale of 3,500 acre-feet of long-term water storage credits accrued in the Tucson area during calendar year 2000–2001.

37. Citizens Communications Company (Agua Fria Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City).

40. Pasquinelli, Gary J. and Barbara J., BCP, Arizona: Contract for the delivery of 486 acre-feet of Colorado River water for agricultural purposes.

41. Citizens Communications Company (Sun City Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City Division).

42. Citizens Communications Company (Sun City West Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City West Division).

Upper Colorado Region

Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

New contract actions:

21. Project Operations Committee, Animas-La Plata Project, Colorado and New Mexico: Agreement among the United States, the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Navajo Nation, San Juan Water Commission, Animas-La Plata Water Conservancy District, State of Colorado, and La Plata Conservancy District of New Mexico to coordinate and oversee the necessary operation, maintenance, and replacement activities of the project works.

22. Southern Ute Indian Tribe, Colorado, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for an average annual depletion not to exceed 16,525 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

23. Ute Mountain Ute Tribe, Colorado, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for an average annual depletion not to exceed 16,525 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

24. Navajo Nation, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for an average annual depletion not to exceed 2,340 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

25. Elk Meadows Homeowners Association, Aspinall Storage Unit, CRSP, Colorado: Elk Meadows has requested a 40-year water service contract for 3 acre-feet of water out of Blue Mesa Reservoir to support their plan of augmentation, Case No. 03WC20, District Court, Water Division 4.

26. Paul Hudgeons, Aspinall Storage Unit, CRSP, Colorado: Mr. Hudgeons has requested a 40-year water service contract for 1 acre-foot of water out of Blue Mesa Reservoir to support his plan of augmentation, Case No. 02WC283, District Court, Water Division 4.

Completed contract actions:

1.(h) Lamar Northworthy, Aspinall Storage Unit, CRSP, Colorado: Mr. Northworthy has requested a 40-year water service contract for 2 acre-feet of water out of Blue Mesa Reservoir to support his plan of augmentation, Case No. 02WC240, District Court, Water Division 4. Contract was executed May 30, 2003.

(i) Heatherwood Villas Condominium Association, Aspinall Storage Unit, CRSP, Colorado: The Association has requested a 40-year water service contract for 2 acre-feet of water out of Blue Mesa Reservoir to support its plan of augmentation. The Association is in the process of filling a plan of augmentation with the State of Colorado, Water Division 4. Contract was executed April 21, 2003.

(j) Riverland Lot Owners Association, Aspinall Storage Unit, CRSP, Colorado: The Association has requested a 40-year water service contract for 14 acre-feet of water out of Blue Mesa Reservoir to support its plan of augmentation. The Association is in the process of filling a plan of augmentation with the State of Colorado, Water Division 4. Contract was executed May 30, 2003.

5. Provo River Water Users Association, Provo River Project, Utah: Contract to provide for repayment of

reimbursable portion of construction costs of SOD modifications to Deer Creek Dam. Contract was executed April 25, 2003.

Great Plains Region

Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7790.

New contract actions:

46. Town of Deaver, Shoshone Project, Wyoming: Negotiate a long-term contract for up to 475 acre-feet of irrigation water from the two drains below Deaver Reservoir.

47. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: The District has requested deferment of its 2003 repayment obligation. A basis of negotiation has been prepared to amend contract No. 14–06–500–369. A public notice has been published in the San Angelo Times.

Modified contract actions:

19. Savage ID, P–SMBP, Montana: The District is currently seeking title transfer. The contract is subject to renewal pending the outcome of the title transfer process. The final version of a 5-year interim contract has been sent to the District for signature. The District has requested information concerning renewal of the long-term contract.

24. Belle Fourche ID, Belle Fourche Project, South Dakota: Belle Fourche ID has requested a $25,000 reduction in construction repayment. The contract amendment has been sent to the District for signature.

40. Clayton and Debbie Fulfer (Individual), P–SMBP, Boysen Unit, Wyoming: Renewal of long-term contract for up to 15 acre-feet of supplemental irrigation water to service 5.72 acres.

Discontinued contract action:

44. Frenchman-Cambridge ID, Frenchman Unit, P–SMBP, Nebraska: Proposed contract amendment for deferment of annual payment due to severe drought.

Completed contract actions:

27. Milk River Project, Montana: City of Harlem water service contract expired in December 2002. Initiating negotiations for renewal of a water service contract for an annual supply of raw water for domestic use from the Milk River not to exceed 500 acre-feet. Contract was executed May 22, 2003.

28. Lower Marias Unit, P–SMBP, Montana: Town of Chester water service contract expired in December 2002. Initiating negotiations for renewal of a long-term water service contract for an annual supply of raw water for domestic use from Tiber Reservoir not to exceed 500 acre-feet. Contract was executed May 27, 2003.

37. Chippewa Cree Tribe (Tribe), Rocky Boy's Indian Reservation, Montana: Pursuant to Title II, section 201(a)(2), of the Rocky Boy's Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Pub. L. 106–163), Reclamation is negotiating to allocate 10,000 acre-feet per year of stored water in Lake Elwell. Contract was executed March 6, 2003.

41. Midvale ID, P–SMBP, Riverton Unit, Wyoming: Negotiations of a SOD Program contract for modification of Bull Lake Dam. An agreement was executed February 13, 2003.

Dated: June 23, 2003.

Wayne O. Deason,

Acting Director, Program and Policy Services.

[FR Doc. 03–18799 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 03–43]

Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion for Southern Steelhead Trout, Santa Barbara County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft environmental impact statement/environmental impact report (EIS/EIR).

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Reclamation (Reclamation) has prepared a Draft EIS/EIR for the Lower Santa Ynez River Fish Management Plan (Plan) and Cachuma Project Biological Opinion (Opinion) for Southern Steelhead Trout. The Plan and Opinion include various flow and non-flow measures to be implemented by Reclamation and the Cachuma Project Member Units to protect and enhance habitat for the endangered southern steelhead trout along the Santa Ynez River downstream of Bradbury Dam.

DATES: Written comments on the Draft EIS/EIR will be accepted for 45 days following the date the Environmental Protection Agency publishes the Notice of Availability of the Draft EIS/EIR in the **Federal Register**, anticipated to occur in April 2003.

ADDRESSES: Written comments should be sent or hand-delivered to: David Young, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, California, 93721, phone: 559–487–5127. Comments submitted by electronic mail should be sent to: *dkyoung@mp.usbr.gov.* Please include ''Cachuma EIS/EIR'' and your name and return address in the text of the message.

Copies of the Draft EIS/EIR for the Plan and Opinion are available in the South-Central California Area Field Office at the above address, or at the Cachuma Operation and Maintenance Board Office, 3301 Laurel Canyon Road, Santa Barbara, California, 93105, from 7:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David Young, Bureau of Reclamation, at the above address, or at 559–487–5127.

SUPPLEMENTARY INFORMATION: The Cachuma Project consists of Bradbury Dam, Cachuma Lake, and various water conveyance facilities. The dam impounds water along the Santa Ynez River in northern Santa Barbara County. Water is provided to the Cachuma Project Member Units for irrigation, domestic, and municipal and industrial water uses. The current Member Units consist of the City of Santa Barbara, Goleta Water District, Montecito Water District, Carpinteria Valley Water District, and the Santa Ynez River Water Conservation District—Improvement District #1. Reclamation owns all project facilities and operates Bradbury Dam. Operation and maintenance of the Cachuma Project facilities, other than Bradbury Dam, was transferred in 1956 to the Member Units who formed Cachuma Operation and Maintenance Board (COMB) to carry out these responsibilities.

In August 1997, the National Marine Fisheries Service (NMFS) designated the anadromous steelhead (*Oncorhynchus mykiss*) of the Southern Evolutionarily Significant Unit (ESU), which includes the lower Santa Ynez River below Bradbury Dam, as an endangered species under the Federal Endangered Species Act. In April 1999, Reclamation requested initiation of consultation with NMFS regarding ongoing operations of the Cachuma Project under the provisions of Section 7 of the Federal Endangered Species Act. Reclamation submitted a Biological Assessment (BA) to NMFS in 1999. The proposed actions described in the BA are designed to improve the availability and quality of habitat for the steelhead in the lower river. NMFS issued a final Opinion in September 2000. The Opinion concluded that the proposed actions described in the BA would not jeopardize the continued existence of the anadromous steelhead of the Southern ESU, nor destroy or adversely

modify critical habitat. The Opinion included mandatory terms and conditions that require Reclamation to implement 15 specific reasonable and prudent measures to minimize ''take'' of the southern steelhead. Reclamation will implement the management actions and projects in the Opinion to ensure compliance with the Federal Endangered Species Act.

Prior to, and concurrent with, the endangered species consultation, Reclamation and the Cachuma Member Units prepared a Fish Management Plan (FMP) for the lower Santa Ynez River. The FMP management actions include (1) creating new habitat and improving existing habitat in the lower river and tributaries; (2) improving access to spawning and rearing habitats in the lower river and tributaries; and (3) increasing public awareness and support for beneficial actions on private lands. The FMP identifies specific reaches of the mainstem and tributaries for habitat protection and improvement. The highest priority has been assigned to lower Hilton Creek, which is located on Reclamation property, and the mainstem of the river between Bradbury Dam and Highway 154. A high priority is also assigned to enhancing habitats on the following tributaries which have favorable flows and habitat conditions for aquatic resources: Quiota, El Jaro, and Salsipuedes creeks.

The overall purposes of the BO and FMP management actions are two-fold:

(1) Ensure that operation of the Cachuma Project is consistent with the Federal Endangered Species Act regarding effects on the southern steelhead; and (2) improve conditions for native fish, particularly the endangered southern steelhead, in the Santa Ynez River watershed below Bradbury Dam.

Reclamation and Cachuma COMB have prepared the draft EIS/EIR to evaluate the incidental adverse impacts of the proposed management actions and projects to improve fish habitat conditions on the Santa Ynez River below Bradbury Dam in northern Santa Barbara County. These impacts include temporary construction related disturbances to riparian and aquatic habitat during fish habitat restoration work in the river and tributaries; impacts to oak trees and recreational facilities at Cachuma Lake due to surcharging the reservoir to store additional water for downstream releases for fish; and others described in the Draft EIS/EIR.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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.

Editorial Note: This document was received in the Office of the Federal Register on July 21, 2003.

Dated: March 31, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–18905 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Martin Marietta Materials, Inc.,* Case No. 7:03–CW–122–F(1), (E.D.N.C.), was lodged with the United States District Court for the Eastern District of North Carolina on July 8, 2003. The proposed Consent Decree concerns alleged violations of sections 301(a), 402, and 404 of the Clean Water Act, 33 U.S.C. 1311(a), 1342 and 1344, resulting from Defendant's unauthorized discharge of pollutants into waters of the United States at the Leland Stone Yard which is located on the south side of US Highway 74/76, east of Malmo Loop Road, in Brunswick County, North Carolina.

The proposed Consent Decree would require the payment of a civil penalty of $30,000 and completion of site restoration activities, including the filling of ditches.

The United States Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to Martin F. McDermott, Attorney, United States Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Martin Marietta Materials, Inc.,* Case No. 7:03–CV–122–F(1), (E.D.N.C.).

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of North Carolina, 310 New Bern Avenue, Federal Building, 5th Floor, Raleigh, North Carolina, or at the following Web site: *http://www.usdoj.gov/enrd/open.html.*

Stephen Samuels,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 03–18770 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Consistent with the procedures in 28 CFR 50.7 and 42 U.S.C. 9622(i), notice is hereby given that on July 3,2003, a proposed consent decree (''consent decree'') in *United States* v. *Waste Management of Indiana, L.L.C.,* Civil Actions No. 3:03CV0483AS, was lodged with the United States District Court for the Northern District of Indiana, South Bend Division. This consent decree resolves claims against Waste Management of Indiana, L.L.C., for costs incurred and to be incurred under the Comprehensive Environmental Response, Compensation, and Liability Act, in connection with the Waste, Inc. Superfund Site located in Michigan City, Indiana. Under the terms of the consent decree, Waste Management of Indiana agrees to reimburse $95,000 to the Superfund.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Chicago Specialties, L.L.C.,* Civil Action No. 3:03CV0483AS, D.J. Ref. 90–11–3–1376/7.

The consent decree may be examined at the Office of the United States Attorney, 204 South Main Street, South Bend, Indiana 46601, and at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, Illinois 60604. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/*

open.html. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the consent decree, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury for the consent decree.

William Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–18769 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States, the State of Michigan, and the Wisconsin Electric Power Company Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on July 10, 2003, a proposed Amended Consent Decree (''Amended Consent Decree'') between the United States, Michael A. Cox, Attorney General of the State of Michigan, *ex rel.* Michigan Department of Environmental Quality (''State of Michigan''), and the Wisconsin Electric Power Company (''Wisconsin Electric''), Civil Action No. 03–C–0371, was lodged with the United States District Court for the Eastern District of Wisconsin.

This Amended Consent Decree modifies the Consent Decree that was lodged in the Eastern District of Wisconsin on April 29, 2003, notice of which was provided at 68 FR 26354 (May 15, 2003). Like the original proposed Consent Decree, this proposed Amended Consent Decree would resolve claims asserted by the United States against Wisconsin Electric pursuant to Sections 113(b) and 167 of the Clean Air Act (the ''Act''), 42 U.S.C. 7413(b) and 7477, and seeks injunctive relief and the assessment of civil penalties for Wisconsin Electric's violations of:

(a) The Prevention of Significant Deterioration provisions in Part C of Subchapter I of the Act, 42 U.S.C. 7470-92;

(b) The nonattainment New Source Review provisions in Part D of Subchapter I of the Act, 42 U.S.C. 7501–7515;

(c) The federally-enforceable State Implementation Plan developed by the State of Michigan (the ''Michigan SIP''); and

(d) The federally-enforceable State Implementation Plan developed by the State of Wisconsin (the ''Wisconsin SIP'').

In addition, this Amended Consent Decree would resolve claims asserted by the State of Michigan against Wisconsin Electric pursuant to Section 167 of the Act, 42 U.S.C. 7477, and Section 5530 of Part 55 of Michigan's Natural Resources and Environmental Protection Act (''Part 55 of NREPA''), MCL § 324.5530, for injunctive relief and the assessment of civil fines for alleged violations of:

(a) The Prevention of Significant Deterioration provisions in Part C of Subchapter I of the Act, 42 U.S.C. 7470–92; and

(b) Section 5505 of Part 55 of NREPA, MCL § 324.5505.

The proposed Amended Consent Decree incorporates two types of changes from the original Consent Decree. First, various changes have been made to reflect the addition of the State of Michigan as a Plaintiff-Intervenor. Among these are changes to the Penalty and Fines Section (Section X), in which Wisconsin Electric would be required to pay a fine of $100,000 to the State of Michigan and a civil penalty of $3.1 million to the United States, and changes to the Resolution of Claims Section (Section XI), in which a Resolution of Claims parallel to that provided by the United States is provided for claims that may be brought by the State of Michigan. Second, clarifying changes have been made to six paragraphs in which Wisconsin Electric's emissions would be limited to levels that are measured as either a 30-day or 12-month rolling average. (*See* paragraphs 58, 62, 63, 73, 76, and 77.) Each of these clarifying changes is intended to eliminate any ambiguity as to when the compliance requirement actually commences, given that, in each provision, the emission limit is measured by reference to a historical period (*i.e.,* the last 30 days or 12 months).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Wisconsin Electric,* D.J. Ref. No. 90–5–2–1–07493.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Wisconsin, Federal Courthouse, 517 East Wisconsin Ave., Milwaukee, Wisconsin 53202, and at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604–3507. During the public comment period, the Consent Decree, may also be examined on the following Department of justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $19.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–18771 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Callahan's Foods; Denial of Application

On October 28, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Callahan's Foods (Callahan's) proposing to deny its application, executed on May 13, 1997, for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting the application of Callahan's would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a)(4). The Order to Show Cause also notified Callahan's that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Callahan's at its proposed registered location in Pulaski, Virginia and was received on November 2, 2001. DEA has not received a request for hearing or any other reply from Callahan's or anyone purporting to represent the company in this matter.

Therefore, the Acting Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause at the applicant's

proposed registered address, and (2) no request for hearing having been received, concludes that Callahan's has waived its hearing right. See Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Acting Administrator now enters his final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67 (2003). The Acting Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Acting Administrator's review of the investigative file reveals that on May 21, 1997, DEA's Chemical Operations Registration section received an application dated May 13, 1997, on behalf of Callahan's. The application was submitted by the company's owner, Tony L. Callahan. The applicant sought DEA registration as a distributor of the list I chemicals, ephedrine, pseudoephedrine, and phenylpropanolamine. Because Callahan's submitted its application for registration on or before July 12, 1997, the firm qualified for temporary exemption from the requirement of registration, pursuant to 21 CFR 1309.10.

For reasons unknown, Callahan's registration application was not received by the DEA Richmond (Virginia) District Office for follow-up investigation until April 4, 1999. Nevertheless, on six separate occasions between April 27, 1999 and June 10, 1999, a DEA Diversion Investigator attempted to reach Tony Callahan by telephone to discuss information necessary for completion of the application process. There is no information in the investigative file demonstrating that DEA personnel were successful in reaching Tony Callahan during that time period. However, on December 3, 1999, and again on May 15, 2000, a DEA Diversion Investigator contacted Tony Callahan, and requested the following information:

a. A list of the company's officers;

b. A brief description of the company's main business;

c. Percentage of the company's business pertaining to list I chemicals;

d. A list of list I chemical suppliers;

e. A list of list I chemical customers;

f. Copies of relevant licenses; and

g. Description of the company's security as well as a copy of any security contracts.

Callahan's failed to provide the requested information. In response, a DEA Diversion Investigator traveled to Callahan's on January 4, and March 2, 2000, again requesting information necessary to process the company's registration application. On both occasions, the investigator met with Robert Callahan (son of Tony Callahan) and his wife Lisa. Robert and Lisa Callahan were part of the management structure and provided assistance to Tony Callahan in the operation of Callahan's. Despite DEA's repeated requests, the requested information was not provided.

On February 2, 2001, the DEA Richmond office directed a letter to Tony Callahan. The letter recited DEA's repeated attempts to obtain information from Callahan's and again requested information needed to process its pending DEA application. The letter further informed Tony Callahan that pursuant to 21 CFR 1309.35, DEA ''may require an applicant to submit documents of written statements of fact'' relevant to process a pending application. The letter further stated that ''[t]he failure of the applicant to provide such documents or statements within a reasonable time after [such request] shall be deemed a waiver by the applicant of an opportunity to present * * * documents or facts for consideration by DEA in granting the application.'' The letter concluded that should the company fail to respond to DEA correspondence, such failure would be deemed a withdrawal of Callahan's pending application, pursuant to 21 CFR 1309.36(b). Callahan's was given thirty days to respond to DEA's letter. A similar letter was subsequently sent to Callahan's on April 16, 2001.

On or about March 5, 2001, Tony Callahan telephoned the DEA Richmond office and stated that he had sent the requested documents to DEA. However, DEA records did not show receipt of the requested information. Tony Callahan assured DEA personnel that he would send the documents.

On April 20, 2001, Tony Callahan called the Diversion Group Supervisor of the DEA Richmond Office stating that he wished to continue the registration process and to that end, again informed DEA personnel that he would submit all necessary documents. However, when DEA personnel finally received documents from Tony Callahan on May 3, 2001, the information contained therein was found to be incomplete with respect to names, addresses, phone numbers, and DEA registration numbers of both suppliers and customers of Callahan's Foods. During the following two months, DEA's repeated attempts to obtain further information from Callahan's, and/or arrange times for on-site inspections of the business were unsuccessful.

Pursuant to 21 U.S.C. 823(h), the Acting Administrator may deny an application for Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Acting Administrator may rely on any one or combination of factors, and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See, *e.g.* Energy Outlet, 64 FR 14269 (1999). See also Harry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Acting Administrator finds factors one, four, and five relevant to Callahan's Foods' pending application.

With respect to factor one, maintenance of effective controls against the diversion of listed chemicals, the Acting Administrator's review of the investigative file reveals that Callahan's Foods failed to provide to DEA information regarding security or any security contracts that the company had entered into. Therefore, the record before the Acting Administrator contains no information as to any security measures employed by Callahan's designed to prevent the diversion of listed chemicals.

Regarding factor four, the applicant's past experience in the distribution of chemicals, DEA's investigation revealed

that Callahan's failed to provide information with respect to its list I chemical suppliers and customers. Similarly, with respect to factor five, other factors relevant to and consistent with the public safety, Callahan's failure to provide information necessary to the processing of its application for DEA registration supports the denial of its pending application. In addition, DEA investigators were unable to perform an on-site inspection of Callahan's to determine whether or not the company could adequately handle listed chemicals and the company provided incomplete information necessary to the processing of its DEA application. See, CHM Wholesale Co., 67 FR 9985 (2002).

In light of the above, and the absence of evidence to the contrary, the Acting Administrator is left with the conclusion that Callahan's cannot be entrusted with the responsibilities of a DEA registration. As a result, the Acting Administrator further concludes that it would be inconsistent with the public interest to grant the application of Callahan's Foods.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by Callahan's Foods be, and it hereby is denied. This order is effective August 25, 2003.

Dated: July 3, 2003.

William B. Simpkins,

Acting Administrator.

[FR Doc. 03–18868 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

G & O Pharmacy of Paducah, Incorporated; Denial of Application

On April 19, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to G & O Pharmacy [1] (G & O) notifying the applicant of an opportunity to show cause as to why DEA should not deny its pending application for DEA Certificate of Registration as a retail-pharmacy practitioner pursuant to 21 U.S.C. 823(f). As a basis for the denial, the Order to Show Cause alleged that G & O's registration would be inconsistent with the public interest. The Order to Show Cause also notified G & O that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to G & O at its proposed registered location in Paducah, Kentucky, and was received on April 26, 2002. DEA has not received a request for hearing or any other reply from G & O or anyone purporting to represent the pharmacy in this matter.

Therefore, the Acting Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause at the applicant's last known address, and (2) no request for hearing having been received, concludes that G & O is deemed to have waived its hearing right. See David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Acting Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Administrator finds that G & O previously possessed DEA Certificate of Registration AG2999691. On July 23, 1992, an Order to Show Cause was issued proposing to revoke that Certificate of Registration. The Order to Show Cause alleged in substance that (1) in July 1990, an individual had overdosed on Demerol received from the owner-manager pharmacist of G & O Pharmacy, Randall Lockhart, without the benefit of a prescription; (2) accountability audits conducted of G & O Pharmacy by DEA investigators in 1990 revealed shortages of Schedules II and III controlled substances; (3) G & O Pharmacy had filled at least 217 call-in prescriptions not authorized by the physicians whose names appeared on the pharmacy's records; and (4) at least one individual, on multiple occasions, had received controlled substances from Mr. Lockhart without seeing the physician listed on the call-in prescription.

Following prehearing procedures, a hearing was held in Louisville, Kentucky, on March 10 and 11, 1993. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. Subsequently, on December 16, 1993, counsel for the Government filed a motion to reopen the proceedings, alleging that Mr. Lockhart transferred ownership of G & O to AML Corporation (AML). The motion also alleged that AML had applied for and received DEA Certificate of Registration BA3838553 to operate G & O and that DEA had not been notified pursuant to 21 CFR 1301.62 and 1307.14(b) (both sections presently designated as section 1301.52). The motion further alleged that G & O Pharmacy had ceased doing business under it previous ownership or that Mr. Lockhart had transferred ownership to another entity. When G & O failed to respond to the Government's motion, Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an order reopening the proceedings in Docket No. 92–78.

On March 11, 1994, an Order to Show Cause was issued to AML d/b/a G & O Pharmacy (containing the same allegations as those raised in the July 23, 1992, Order to Show Cause) alleging that its continued registration was inconsistent with the public interest. The Order to Show Cause further alleged that Mr. Lockhart had improperly transferred ownership of G & O without notifying DEA as required. Following the consolidation of the two cases, a hearing was conducted on November 17, 1994.

After finding that the continuance of a registration would be inconsistent with the public interest, the then-Deputy Administrator of DEA revoked DEA Certificate of Registration BA3838553 previously issued to AML Corporation d/b/a G & O Pharmacy. See, AML Corporation d/b/a G & O Pharmacy, and G & O Pharmacy, 61 FR 8973 (March 6, 1996). The Acting Administrator finds that the findings of fact and conclusions of law, which led to the revocation of AML/G & O's DEA Certificate of Registration, are set forth in great detail in the referenced final order. They will not be repeated in this final order, but are incorporated herein and will be referred to as necessary in rendering a decision in this matter.

G & O has a documented history of non-compliance with DEA laws and regulations. From 1989 to 1991 while registered under DEA registration number AG2999691, the pharmacy dispensed 24 vials of Demerol, a Schedule II controlled substance, to a dentist without a valid prescription. It was later determined that these drugs were dispensed for the dentist's personal use. Accountability audits conducted by DEA investigators of G & O's controlled substances revealed significant shortages of various Schedules II, III, and IV controlled substances and the pharmacy filled numerous prescriptions for controlled substances that were not authorized by physicians whose names appeared on the prescriptions. In addition, Mr. Lockhart improperly transferred ownership of G & O to AML without

[1] On the July 18, 2001 application for DEA registration, Mr. Lockhart listed the business address of the pharmacy as ''G & O Pharmacy of Paducah Inc.''

notifying DEA as required by the agency's regulations.

The Acting Administrator also finds that effective March 17, 1999, Mr. Lockhart and the Kentucky Board of Pharmacy (Board) entered into an Agreed Order with respect to Mr. Lockhart's license to practice pharmacy in that state. Among the factual findings agreed upon by the parties was that in September 1997, Mr. Lockhart made a false or fraudulent statement or misrepresentation of a material fact to the Board in securing renewal of his pharmacist license. As a result, Mr. Lockhart was ordered to pay a fine of $1,000 and obtain ten hours of continuing education.

The parties entered into a second Agree Order on September 13, 2000, when it was determined that Mr. Lockhart failed to submit evidence of continuing education hours as required by the order of March 17, 1999. as a result, Mr. Lockhart was fined $500, and ordered to obtain an additional 6.5 hours of continuing education within six months of the entry of the Agreed Order.

Pursuant to 21 U.S.C. 823(f), the Acting Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Acting Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

Regarding factor one, recommendation of appropriate state licensing board or professional disciplinary authority, in 1997 and again in 2000, Mr. Lockhart's license to practice pharmacy was subject to review and sanction by the Kentucky Board of Pharmacy. These actions were based upon Mr. Lockhart's misrepresentations on a renewal application regarding his continuing education, and his failure to obtain continuing education as required by the Board.

Factors two and four, experience in dispensing controlled substances and compliance with applicable controlled substance laws are relevant in determining whether G & O's registration would be inconsistent with the public interest. The then-Deputy Administrator previously found that Mr. Lockhart's improperly dispensed Schedule II controlled resulting in the transfer of 24 dosage units of Demerol to a dentist for his personal use. 61 FR at 8976. Further, accountability audits conducted by DEA investigators revealed shortages of over 40,000 dosage units of various Schedules II through IV controlled substances with no evidence adduced by G & O to explain the shortages. In addition, DEA's previous investigation of G & O revealed that the pharmacy unlawfully dispensed controlled substances in which approximately 198 prescriptions retrieved from the pharmacy were not authorized by the physicians whose names appeared on the pharmacy records. Such conduct is grounds for denying G & O's pending application for DEA registration.

In addition, Mr. Lockhart and G & O demonstrated non-compliance with DEA regulations when Mr. Lockhart transferred ownership of G & O to AML. Pursuant to 21 CFR 1307.14(b) (since redesignated as 21 CFR 1301.52), Mr. Lockhart was required to provide the Special Agent in Charge in his area specific information at least 14 days in advance of the date of the proposed transfer of his ownership in G & O. The record before the Acting Administrator reveals that Mr. Lockhart failed to inform DEA of the transfer.

As to factor five, the Acting Administrator finds relevant a finding in the previous proceeding that the transfer of ownership from G & O to AML was not a bona fide transaction, but as Judge Bittner described, ''a stratagem to obtain a new DEA registration.'' 61 FR at 8976. The apparent ruse designed to secure a DEA Certificate of Registration demonstrates a disturbing willingness on the part of Mr. Lockhart to engage in dishonest conduct, and further weighs in favor of denying G & O's pending application. Similarly, factor five is relevant to Mr. Lockhart's use of false information on the application for renewal of his pharmacist license. It is well settled that a registration of pharmacy may be revoked or application denied based on the wrongdoing of its owner or officers, Crosstown Drugs, 54 FR 28521 (1989). See also, Alexander Drug Company, Inc., 66 FR 18299 (2001).

It is clear that G & O's past experience in handling controlled substances is dismal at best. The pharmacy, through its owner Randall Lockhart improperly dispensed controlled substances, including instances where the pharmacy failed to obtain physician authorization and G & O also failed to account for shortages of large quantities of controlled substances. Mr. Lockhart further engaged in the deceptive transfer of his ownership interest in G & O to another entity for the purpose of securing a DEA registration.

The Acting Administrator acknowledges that most of these events took place more than ten years ago. However, in light of G & O's failure to request a hearing in this matter, and the absence of evidence to rebut the above allegations, the Acting Administrator is left with the conclusion that the applicant has not corrected the deficiencies which led to the revocation of its previous Certificate of Registration. This conclusion is further supported by evidence that Mr. Lockhart has continued to engage in dishonest conduct by providing false information on a state professional application, resulting in fines and further conditions being placed on his pharmacist license. In view of the foregoing, the Acting Administrator concludes that G & O cannot be entrusted to handle controlled substances, and the granting of its application would not be in the public interest.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for DEA Certificate of Registration submitted by G & O Pharmacy of Paducah, Incorporated be, and it hereby is, denied. This order is effective August 25, 2003.

Dated: July 3, 2003.

William B. Simpkins,

Acting Administrator.

[FR Doc. 03–18870 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–26]

J&P Distributor; Denial of Application

On December 28, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to J&P Distributor (J&P), proposing to deny its application, executed on November 15, 2000, for DEA Certificate of Registration as a distributor of the list I chemical ephedrine. Prior to the issuance of the show cause order, J & P requested modification of its application to include psuedoephedrine, also a list I chemical. The Order to Show Cause alleged that granting J & P's application would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a)(4).

The Order to Show Cause was delivered to J&P by certified mail, and the applicant timely requested a hearing. However, after the matter was docketed before Administrative Law Judge Mary Ellen Bittner (Judge Bittner), the Government filed a request for termination of proceedings on the ground that J&P withdrew its request for hearing. In her April 19, 2002, Order Terminating Proceedings, Judge Bitter similarly found that J&P had withdrawn its request for hearing and she subsequently terminated all proceedings before her. The matter was later transmitted to the Acting Deputy Administrator for issuance of a final order.

In light of the withdrawal of its request for hearing, the Acting Administrator finds that J&P has waived its hearing right. Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Acting Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46. The Acting Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34) and 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Acting Administrator's review of the investigative file reveals that in or around December 2000, an application dated November 15, 2000, was received by DEA on behalf of J&P. The applicant sought DEA registration as a distributor of the list I chemical ephedrine. On March 15, 2001, Pat Alexander, co-owner of J&P, submitted a written request to add pseudoephedrine to J&P's application. Because J&P did not submit its application for registration on or before July 12, 1997, the firm did not qualify for temporary exemption from the requirement of registration, pursuant to 21 CFR 1309.10. Accordingly, J&P was not authorized to distribute listed chemicals prior to approval of its pending application for registration. See, Aseel, Incorporated, Wholesale Division, 66 FR 35459 (2001).

The Acting Administrator finds that J&P is a retail distributor located in Rockmart, Georgia, and is owned by Jeff Alexander and his wife Pat. The firm specializes in the sale of candy, hats, gloves and other novelty items. J&P was purchased from Mrs. Alexander's brother Larry Weaver under its former name, Novelty Plus. Novelty Plus was previously registered with DEA as a distributor of list I chemicals under Certificate of Registration number 002093NYY. That registration expired on October 31, 2000.

As part of a pre-registration investigation, DEA Diversion Investigators met with J&P's owners on March 15, 2001. J&P's owners informed DEA personnel that the firm anticipated that its retail sale of list I chemical products would constitute fifty-percent of the firm's business. J&P also provided to DEA investigators a list of ephedrine and pseudoephedrine products that it intended to sell, including ''Heads Up'' and ''Max Alert'' brands in 60-count bottles. A review of J&P's list of proposed customers reveals that they are comprised primarily of convenience stores or gas stations.

J&P also provided to DEA investigators the names of two of its proposed suppliers of list I chemical products. One of the suppliers, located in Belvedere, South Carolina, was previously the subject of DEA show cause proceedings to revoke its DEA registration, and was alleged to have violated DEA requirements related to recordkeeping, excessive purchases and failure to report suspicious orders of listed chemicals. In addition, as part of a December 2000 seizure of listed chemical products, law enforcement personnel in Springdale, Arizona seized approximately 51,000 pseudoephedrine tablets. It was subsequently determined that these products originated from J&P's proposed supplier.

During the month of July 2001, DEA conducted an unrelated regulatory investigation of J&P's second proposed supplier of listed chemicals, Galaxy Wholesale, Incorporated, of Mabletonton, Georgia. During an inspection of Galaxy Wholesale's distribution records, DEA investigators uncovered a sales invoice (with the purported signature of Pat Alexander) which revealed that on March 1, 2001, J&P purchased ''Heads Up'' ephedrine products (60-count bottles and 6-count packets) from Galaxy Wholesale. At the time of the purchase, J&P was not registered with DEA to handle listed chemicals. During the pre-registration inspection of March 15, 2001, neither Jeff or Pat Alexander informed DEA investigators of J&P's purchase of list I chemicals from Galaxy Wholesale when asked about their experience in handling list I chemicals products.

DEA's investigation further revealed that between December 2000 and March 2002, J&P sold to three retail establishments approximately 350 bottles (60-count) of various ephedrine products, as well as blister packets of other ephedrine and pseudoephedrine products. At the time of these sales, J&P's application for DEA registration was pending approval.

Pursuant to 21 U.S.C. 823(h), the Acting Administrator may deny an application for Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Acting Administrator may rely on any one or combination of factors, and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See, e.g. Energy

Outlet, 64 FR 14269 (1999). See also Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Acting Administrator finds factors two, four and five relevant to J & P's pending application.

With respect to factor two, the applicant's compliance with applicable law, the Acting Administrator finds that between December 2000 and March 2002, J&P violated applicable law by distributing, without a DEA registration, bottle quantities of ephedrine as well as pseudoephedrine products to three retail establishments, in violation of 21 U.S.C. 843(a)(9). The Acting Administrator also finds factor two relevant to J&P's March 2001 purchase of ephedrine products from Galaxy Wholesale while not registered with DEA, in violation of 21 U.S.C. 822(a) and 21 CFR 1309.21(a) and 1310.09.

With respect to factor four, the applicant's past experience in the distribution of chemicals, the Acting Administrator finds that notwithstanding the above referenced purchase and sale of listed chemical products by the owners of J&P, the applicant has not demonstrated that it possesses any meaningful experience in the distribution of these products. The Acting Administrator finds J&P's lack of experience most telling in the fact that its owners continued the purchase and sale of listed chemical products even as its application for registration was being reviewed by DEA. This factor weighs against the granting of Respondent's pending application. See, CHM Wholesale Co., 67 FR 9985 (2002); Hologram Wonders, Inc., 67 FR 10231 (2002); Southern Illinois Wholesale, Inc., 67 FR 12583 (2002).

J&P's continued sale and purchase of listed chemical products during the pendency of its registration application is also relevant to factor five, other factors relevant to and consistent with the public safety. The Acting Administrator also finds factor five relevant to the failure on the part of J&P's owners to inform DEA investigators of any previous experience handling listed chemicals, when the firm in fact purchased ephedrine products from Galaxy Wholesale.

The Acting Administrator also finds that J&P provided to DEA investigators a list of customers that are comprised solely of convenience stores and gas stations. While there are no specific prohibitions regarding the sale of listed chemicals products to these entities, DEA has nevertheless found on previous occasions that gas stations and convenience stores constitute sources for the diversion of listed chemical products. See, *e.g.,* Sinbad Distributing, 67 FR 10232, 10233 (2002); K.V.M. Enterprises, 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine); Xtreme Enterprises, Inc., 67 FR 76195 (2002).

Factor five is further relevant to J&P's proposed use of listed chemical supplier that previously was the subject of DEA show cause proceedings. The show cause proceedings were based on allegations that the supplier violated laws and regulations related to its DEA registration, and engaged in distribution practices that led to the diversion of listed chemicals.

In light of the above, the Acting Administrator concludes that it would be inconsistent with the public interest to grant the application of J&P Distributor.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by J&P Distributor be, and it hereby is, denied. This order is effective August 25, 2003.

Dated: July 3, 2003.

William B. Simpkins,

Acting Administrator.

[FR Doc. 03–18869 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Sustances; Notice of Registration

By Notice dated March 11, 2003, and published in the **Federal Register** on April 2, 2003, (68 FR 16091), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application by renewal to the Drug Enfocement Adminstration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Ecgonine (9180)	II

The above cited Notice contained an error in that the drug code for Cocaine was listed as 9040 rather than 9041.

The firm plans to manufacture the listed controlled substances for the manufacture of a non-controlled substance flavor extract.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Penick Corporation to manufacture the listed contolled substances is consistent with the public interest at this time. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: July 18, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–18867 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 25, 2001, the University of Massachusetts, Lyle E. Craker, Professor, Department of Plant and Soil Science, Stockbridge Hall, Box 37245, Amherst, Massachusetts 01003, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Marijuana (7360) and Tetrahydrocannabinols (7370), basic classes of Schedule I controlled substances.

The University of Massachusetts-Amherst plans to bulk manufacture (cultivate) Marijuana and Tetrahydrocannabinols for distribution to approved researchers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to this notice of application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than September 22, 2003.

Dated: July 2, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–18866 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) Docket No.1379]

Notice of Funding Availability for Girls Study Group

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of funding availability.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is soliciting applications from public or private agencies or organizations to assemble and convene a Girls Study Group. The purpose of the Girls Study Group is to develop a sound theoretical and empirical foundation to guide future development, testing, and dissemination of strategies to effectively prevent and reduce girls' involvement in delinquency and violence and reduce the negative consequences of such involvement. The Girls Study Group will provide state and local policymakers and practitioners with theoretically sound, culturally and developmentally appropriate, and empirically grounded strategies (encompassing program elements, principles, and policies) to prevent and reduce female delinquency and its consequences. One 2-year cooperative agreement will be awarded.

DATES: Applications must be received by September 22, 2003.

ADDRESS: All applications must be completed online using OJP's Grants Management System (*http://www.ojp.usdoj.gov/fundopps.htm*). Faxed or e-mailed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Barbara Allen-Hagan, by telephone, at 202–307–1308 (this is not a toll-free number) or by e-mail, at *barbara@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION: The ultimate goal of the Girls Study Group project is to develop the research foundation that communities need to make sound decisions about how best to prevent and reduce delinquency and violence by girls. The Girls Study Group will consist of 12 to 15 individuals who have the collective expertise (both practical and theoretical) in female development and juvenile justice system involvement to undertake a comprehensive study of this kind.

The successful applicant must possess the necessary leadership, organizational, and analytical capabilities essential for the Study Group's success. The project tasks require the ability to organize and convene a group of researchers and practitioners with recognized expertise in diverse areas of female juvenile delinquency, child development and adolescent health; childhood victimization (including child maltreatment, domestic violence, and other forms of victimization); mental health; substance abuse; community-based treatment; youth work and outreach; the juvenile justice, child welfare, and related systems; and education. Expertise in statistics, research methodology, prevention research, and program evaluation is also required. The successful applicant must also demonstrate the ability to lead and interact with group members in order to coordinate a comprehensive literature review, synthesize information from diverse sources, recommend future research topics, and produce interim and final reports and related publications that effectively communicate the results to a broad audience of Federal, State, and local policymakers, practitioners, and researchers.

Because this is a cooperative agreement, OJJDP will review and approve all project consultants, plans, and products developed.

Interested applicants may access the program announcement for the Girls Study Group at OJJDP's Web site (*http://www.ojp.usdoj.gov/ojjdp*, click on ''Grants & Funding'').

Dated: July 18, 2003.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 03–18760 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,283]

Advanced Micro Devices (AMD), Fab 25, Austin, TX; Notice of Revised Determination on Reconsideration

By application of April 29, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation under this case number was for Advanced Micro Devices (AMD), Lone Star Fab Division, Austin, Texas, and resulted in a negative determination issued on April 7, 2003, based on the finding that imports of wafers and dies did not contribute importantly to worker separations at the subject plant. The denial notice was published in the **Federal Register** on April 24, 2003 (68 FR 20177).

To support the request for reconsideration, the petitioner stated that the Department had investigated the wrong worker group. Upon further review, it was revealed that the petitioner had not worked in the Lone Star Fab (also known as Fab 14 and Fab 15) but rather Fab 25, which produced a different product (a microprocessor chip).

Having identified the appropriate worker group, the Department contacted the company regarding imports of products like or directly competitive with those produced at Fab 25. As a result, it was revealed that the subject firm shifted production from Fab 25 to a foreign source within the relevant period, and subsequently imported directly competitive products to the U.S., contributing to layoffs at the subject plant.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Advanced Micro Devices (AMD), Fab 25, Austin, Texas, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Advanced Micro Devices (AMD), Lone Star Fab Division, Austin, Texas, who became totally or partially

separated from employment on or after November 23, 2001, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 9th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18822 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,880]

AII Technologies, Inc., El Paso, T; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 12, 2000, applicable to workers of AII Technologies, Inc., El Paso, Texas. The notice was published in the **Federal Register** on September 22, 2000 (65 FR 57386).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of desk top computers until the company closed in June, 2000.

New information shows that a worker was retained at the subject firm beyond the September 12, 2002 expiration date of the certification. This employee was engaged in employment related to the production of desk top computers until her termination on October 2, 2002.

Based on these findings, the Department is amending the certification to extend the September 12, 2002 expiration date for TA–W–37,880 to read October 2, 2002.

The intent of the Department's certification is to include all workers of AII Technologies, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–37,880 is hereby issued as follows:

''All workers of AII Technologies, Inc., El Paso, Texas, who became totally or partially separated from employment on or after August 21, 1999, through October 2, 2002, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18819 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,158]

Alcatel USA Marketing, Inc., Voice Network Division, PB3 Building, Jupiter 1 Building, Plano, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 7, 2003, applicable to workers of Alcatel USA Marketing, Inc., Voice Network Division (VND), PB3 Building, Plano, Texas, engaged in the production of printed circuit boards (PCBs). The notice was published in the **Federal Register** on March 26, 2003 (68 FR 17407).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information provided by the State agency representative and a company official, reveal that the overflow of PCB's manufactured at Alcatel USA Marketing, Inc., Voice Network Division, PB3 Building, are produced at the company's Jupiter 1 Building in Plano, Texas. Employment at Jupiter 1 has declined.

The intent of the Department's certification is to include all workers of the firm adversely affected by the shift in production of PCBs to Mexico.

Accordingly, the certification is being amended to include workers at Jupiter 1 Building engaged in employment related to the production of PCBs at Alcatel USA Marketing, Inc., Voice Network Division, Plano, Texas.

The amended notice applicable to TA–W–50,158 is hereby issued as follows:

Workers of Alcatel USA Marketing, Inc., Voice Network Division, PB3 Building, and Jupiter 1 Building, Plano, Texas, engaged in the production of printed circuit boards (PCBs), who became totally or partially separated from employment on or after November 19, 2001, through March 7, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18824 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,581]

American Standard, Inc., Trenton, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 12, 2001, applicable to workers of American Standard, Inc. The notice was published in the **Federal Register** on April 16, 2001 (66 FR 19521).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of sanitary wares including bowls, toilets, pedestals, basins, lavatories, and combination toilets until the company closed at the end of 2001.

New information shows that workers were retained at the subject firm beyond the March 12, 2003 expiration date of the certification. These employees completed the close-down process until their termination on April 12, 2003. Based on these findings, the Department is amending the certification to extend the March 12, 2003 expiration date for TA–W–38,581 to read April 12, 2003.

The intent of the Department's certification is to include all workers of American Standard, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,581 is hereby issued as follows:

All workers of American Standard, Inc., Trenton, New Jersey, who became totally or partially separated from employment on or after January 10, 2000, through April 12, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 9th day of July 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18829 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,195]

APW, Creedmoor, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 1, 2003 in response to a worker petition filed a company official on behalf of workers at APW, Creedmoor, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 11th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18812 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,788]

ASF—Keystone, Inc., Alliance, Ohio; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply for Worker Adjustment Assistance issued by the Department on January 22, 2002 for all workers of ASF—Keystone, Inc., Alliance, Ohio. The notice was published in the **Federal Register** on June 19, 2003 (68 FR 36847).

The Department, at the request of the State Agency, reviewed this certification for workers of the aforementioned group.

The certification review revealed that the petitioning group of workers is covered by an active certification (TA–W–39,744) issued on January 22, 2002.

Since the workers of ASF—Keystone, Inc., Alliance, Ohio are currently under certification, the investigation of TA–W–51,788 was conducted erroneously and the certification is thus invalid. Workers at ASF—Keystone, Inc., Alliance, Ohio continue to be eligible to apply for benefits of the TA–W–39,744 Trade Adjustment Assistance certification which remains in effect until January 22, 2004.

The certification issued under investigation TA–W–51,788 has been terminated.

Signed at Washington, DC, this 16th day of July, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18817 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,626]

Avaya Communications, Westminster, Colorado; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 9, 2003, in response to a worker petition filed by a State Agency Representative on behalf of workers at Avaya Communications, Westminster, Colorado.

The State Agency Representative has withdrawn the petition; thus, further investigation would serve no purpose and the investigation under this petition has been terminated.

Signed at Washington, DC, this 14th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18818 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,258]

Block Drug Co., a.k.a Glaxo Smith Kline, Jersey City, NJ, Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 9, 2003, in response to a petition filed on behalf of workers at Block Drug Co., a.k.a Glaxo Smith Kline, Jersey City, New Jersey.

The company official who filed the petition requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 11th day of July 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18810 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,114]

Cadmus Mack (CPS), East Stroudsburg, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked February 12, 2003, the Graphic Communications International Union (GCIU), Local 350C, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on January 17, 2003, and published in the **Federal Register** on February 6, 2003 (68 FR 6211).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Cadmus Mack (CPS), East Stroudsburg, Pennsylvania was denied because the ''contributed importantly'' group eligibility requirement of section 222 of the Trade Act of 1974, was not met. Imports did not contribute importantly to the layoffs at the subject plant nor was there a shift in production to a foreign source.

The union asserts that the loss in business at the subject firm was directly attributable to competition with a Canadian competitor and its ''dominance in the marketplace'' is responsible for declines at the subject firm. Specifically, the union states that this Canadian firm has been the ''largest commercial printer in the U.S. and Canada for four years in a row.''

The original investigation established that layoffs and the closing of the East Stroudsberg facility were directly attributable to a transfer of production to a domestic affiliate. Further, sales and production declined minimally prior to the domestic shift.

In addition, a review of aggregate U.S. import data of newspapers, journals and periodicals for January through October 2002 declined in volume over the corresponding period of 2001.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18823 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,047]

CEMCO, Willits, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 16, 2003, in response to a worker petition filed by a company official on behalf of workers at CEMCO, Willits, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of July 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18814 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,108]

Custom Screens, Inc., Stoneville, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 20, 2003 in response to a petition filed by a company official on behalf of workers at Custom Screens, Inc., Stoneville, North Carolina.

The company official has requested that the investigation be terminated.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 10th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18813 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,028]

Cutler-Hammer, Inc., a Subsidiary of Eaton Corporation, Brooksville, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 13, 2003 in response to a petition filed by a company official on behalf of workers at Cutler-Hammer, Inc., a subsidiary of Eaton Corporation, Brooksville, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18816 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 14th day of July 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

Appendix

Petitions Instituted Between 06/30/2003 and 07/03/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,172	Garan Manufacturing (Comp)	Marksville, LA	06/30/2003	06/27/2003
52,173	Carr Lowrey (MD)	Baltimore, MD	06/30/2003	06/27/2003
52,174	Elkem Metals (PACE)	Alloy, WV	06/30/2003	06/25/2003
52,175	Froedtert Malt Co., Inc. (UAW)	Milwaukee, WI	06/30/2003	06/27/2003
52,176	Belmont Dyers (Wkrs)	Belmont, NC	06/30/2003	06/04/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,177	Redman Knitting, Inc. (Comp)	Ridgewood, NY	06/30/2003	05/20/2003
52,178	Adobe Air., Inc. (Wkrs)	Phoenix, AZ	06/30/2003	06/24/2003
52,179	Jim Michel Logging, Inc. (Comp)	Baker City, OR	06/30/2003	06/27/2003
52,180	Stencil Aire, LLC (Wkrs)	Green Lake, WI	06/30/2003	06/27/2003
52,181	Electrical Wholesalers, Inc. (Comp)	Sumter, SC	06/30/2003	06/26/2003
52,182	Saint-Gobain Abrasives (Comp)	Brownsville, TX	06/30/2003	05/19/2003
52,183	Fishing Vessel (F/) Kristi Lynn (Comp)	Petersburg, AK	06/30/2003	06/26/2003
52,184	F/V Partisan (Comp)	Sitka, AK	07/01/2003	06/16/2003
52,185	F/V Flounder Flats (Comp)	Dillingham, AK	07/01/2003	06/06/2003
52,186	BASF Corporation (Wkrs)	Fenton, MO	07/01/2003	05/18/2003
52,187	General Electric (Comp)	Jonesboro, AR	07/01/2003	06/27/2003
52,188	Hewlett Packard (TX)	Cypress, TX	07/01/2003	06/25/2003
52,189	Oplink Communications (Wkrs)	San Jose, CA	07/01/2003	06/18/2003
52,190	Stearns, Inc. (Wkrs)	Grey Eagle, MN	07/01/2003	06/24/2003
52,191	Image Metal Works (Comp)	Milton Freewate, OR	07/01/2003	06/30/2003
52,192	Polymark Corporation (ITW)	Cincinnati, OH	07/01/2003	06/27/2003
52,193	Planar Systems, Inc. (Wkrs)	Hillsboro, OR	07/01/2003	06/23/2003
52,194	Cascades Diamond, Inc. (PACE)	Thorndike, MA	07/01/2003	06/24/2003
52,195	APW (Comp)	Creedmoor, NC	07/01/2003	06/30/2003
52,196	Emerson Motor Company (Wkrs)	Humboldt, TN	07/01/2003	06/25/2003
52,197	Specialty Mode, Inc. (Wkrs)	Jacksonville, NC	07/01/2003	05/19/2003
52,198	Agere Systems (IBEW)	Allentown, PA	07/01/2003	06/02/2003
52,199	Cirrus Logic (Comp)	Austin, TX	07/01/2003	06/27/2003
52,200	Ladd Furniture, Lea Industries div. (Comp)	Morristown, TN	07/01/2003	06/27/2003
52,201	Meridian Beartrack Company (Comp)	Salmon, ID	07/01/2003	06/16/2003
52,202	Lexel (Wkrs)	Hutsonville, IL	07/01/2003	06/23/2003
52,203	Dresser, Inc. (Comp)	Berea, KY	07/01/2003	07/01/2003
52,204	Ericsson (Comp)	Lynchburg, VA	07/01/2003	06/27/2003
52,205	Kimball (Comp)	Boise, ID	07/01/2003	06/26/2003
52,206	Say Cheese (Wkrs)	Lewiston, ME	07/01/2003	06/26/2003
52,207	F/V Selah (Comp)	Haines, AK	07/02/2003	06/26/2003
52,208	Neuville Industries, Inc. (Comp)	Athens, TN	07/02/2003	07/01/2003
52,209	H. Warshow & Sons, Inc. (Comp)	Milton, PA	07/02/2003	07/01/2003
52,210	Woodgrain Millwork (Comp)	White City, OR	07/02/2003	07/01/2003
52,211	Heraeus Quartztech, Inc. (Comp)	Fairfield, NJ	07/02/2003	06/30/2003
52,212	OBG Distribution LLC (UFCW)	Gainesboro, TN	07/02/2003	06/30/2003
52,213	Hoover Company (The) (IBEW)	North Canton, OH	07/02/2003	06/25/2003
52,214	ITT Industries (Comp)	Searcy, AR	07/02/2003	06/22/2003
52,215	B-Line Systems (Wkrs)	Portland, OR	07/02/2003	06/26/2003
52,216	Scope Molding LLC (Wkrs)	Almena, WI	07/02/2003	07/01/2003
52,217	Modular Mining Systems, Inc. (Wkrs)	Tucson, AZ	07/02/2003	07/01/2003
52,218	Giddings and Lewis (Comp)	Fond du Lac, WI	07/02/2003	06/26/2003
52,219	Geo-Form, Inc. (Comp)	Girard, PA	07/02/2003	06/20/2003
52,220	Nickell Molding Company (AR)	Malvern, AR	07/02/2003	06/30/2003
52,221	Motorola (Wkrs)	Mesa, AZ	07/02/2003	06/30/2003
52,222	O'Neill and Sons, Inc. (IBT)	Tumwater, WA	07/03/2003	07/02/2003
52,223	O'Neill Transportation, L.L.C. (IBT)	Tumwater, WA	07/03/2003	07/02/2003
52,224	VF Imagewear (Comp)	Brownsville, TX	07/03/2003	07/02/2003
52,225	Sanmina-SCI (Comp)	Stanton, KY	07/03/2003	05/12/2003
52,226	Yorkshire Americas, Inc. (Comp)	Charlotte, NC	07/03/2003	07/02/2003
52,227	Vestshell Vermont, Inc. (Comp)	St. Albans, VT	07/03/2003	07/03/2003
52,228	Harbison-Walker Refractories Co. (Comp)	Ludington, MI	07/03/2003	07/03/2003
52,229	Motorola (Wkrs)	Fort Worth, TX	07/03/2003	06/13/2003
52,230	Faribault Woolen Mill (Wkrs)	Faribault, MN	07/03/2003	02/14/2003
52,231	Salisbury Sportswear (Wkrs)	Salisbury, PA	07/03/2003	07/02/2003
52,232	Schas Industries, LLC (Comp)	Wilkesboro, NC	07/03/2003	06/27/2003
52,233	F/V Western Queen (Comp)	Southeast, AK	07/03/2003	07/01/2003

[FR Doc. 03–18805 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,402]

Geiger Bros, Inc., Lewiston, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 16, 2003, applicable to all workers of Geiger Bros, Inc. located in Lewiston, Maine. The notice was published in the **Federal Register** on May 1, 2003 (68 FR 23323).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The

workers produce diaries, day planners and calendars.

New information provided by a State agency representative and a company official shows that workers producing diaries, day planners and calendars are not separately identifiable among those products but are separately identifiable from workers in other divisions at the Lewiston, Maine plant.

Accordingly, the certification is being limited to the workers of Geiger Bros, Inc., Lewiston, Maine, engaged in employment related to the production of diaries, day planners and calendars, not all workers of the firm.

The amended notice applicable to TA–W–51,402 is hereby issued as follows:

Workers of Geiger Bros, Inc., Lewiston, Maine, engaged in employment related to the production of diaries, day planners and calendars, who became totally or partially separated from employment on or after March 31, 2002, through April 16, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18826 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,281]

Honeywell, Incorporated Advanced Circuits Division Including Leased Workers of TekSystems, Minnetonka, MN; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 13, 2002, applicable to workers of Honeywell, Incorporated, Advanced Circuits Division, Minnetonka, Minnesota. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9327).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of TekSystems were employed at Honeywell, Incorporated, Advanced Circuits Division, were engaged in employment related to the production of multilayer printed circuit boards at the Minnetonka, Minnesota location of the subject firm.

Based on these findings, the Department is amending the certification to include leased workers of TekSystems employed at Honeywell, Incorporated, Advanced Circuits Division, Minnetonka, Minnesota.

The intent of the Department's certification is to include all workers of Honeywell, Incorporated, Advanced Circuits Division, who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,281 is hereby issued as follows:

All workers of Honeywell, Incorporated, Advanced Circuits Division, Minnetonka, Minnesota, and leased workers of TekSystems engaged in employment related to production of multilayer printed circuit boards working at Honeywell, Incorporated, Advanced Circuits Division, Minnetonka, Minnesota, who became totally or partially separated from employment on or after May 7, 2000, through February 13, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18828 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of July 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

Appendix

Petitions Instituted Between 07/08/2003 and 07/11/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,234	Kellwood Company (Comp)	Calhoun City, MS.	07/08/2003	06/26/2003
52,235	Honeywell Nylon, Inc. (Comp)	Anderson, SC	07/08/2003	07/07/2003
52,236	International Wire (Wkrs)	Kendallville, IN.	07/08/2003	07/02/2003
52,237	Alstom Power, Inc. (IBB)	Chattanooga, TN.	07/08/2003	07/03/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,238	PCS Administration (USA), Inc. (Wkrs)	North Brook, IL.	07/08/2003	07/04/2003
52,239	Titan Tire Corp (USWA)	Des Moines, IA.	07/08/2003	06/24/2003
52,240	LTD Industries, Inc. (Comp)	Lewistown, IL	07/08/2003	06/30/2003
52,241	Research Seeds, Inc. (Comp)	St. Joseph, MO.	07/08/2003	07/03/2003
52,242	Louisiana Pacific Corp. (Comp)	Belgrade, MT	07/08/2003	07/07/2003
52,243	Nestle Purina Pet Food (Wkrs)	St. Joseph, MO.	07/08/2003	07/01/2003
52,244	Schneider Electric—Square D (Comp)	Cedar Rapids, IA.	07/08/2003	07/02/2003
52,245	Thomasville Furniture Industries, Inc. (C	Winston Salem, NC.	07/08/2003	07/03/2003
52,246	U.S. Data Source (CA)	Rancho Cucamong, CA.	07/08/2003	07/07/2003
52,247	Mackie Designs, Inc. (Comp)	Woodinville, WA.	07/08/2003	07/02/2003
52,248	Fibergrate Composite Structures, Inc. (W	Piney Flats, TN.	07/08/2003	07/01/2003
52,249	Paul Schurman Machine, Inc. (Comp)	Ridgefield, WA.	07/08/2003	07/07/2003
52,250	Hi-Tech Plastics, Inc. (Comp)	Cambridge, MD.	07/08/2003	06/27/2003
52,251	Waukesha Cherry Burrell—SPX (WI)	Delevan, WI	07/08/2003	07/08/2003
52,252	Richmond Management LLC (Comp)	Talbott, TN	07/08/2003	07/03/2003
52,253	Scope Molding, LLC (Wkrs)	Almena, WI	07/09/2003	07/01/2003
52,254	Alexander Fabircs (Wkrs)	Burlington, NC.	07/09/2003	07/01/2003
52,255	Solectron Technology (Comp.)	Charlotte, NC	07/09/2003	07/01/2003
52,256	Telco Systems, a BATM Co. (MA)	Foxboro, MA	07/09/2003	07/08/2003
52,257	Stoneville Furniture Co., Inc. (Comp)	Stoneville, NC.	07/09/2003	07/09/2003
52,258	Block Drug Co. (Comp)	Jersey City, NJ.	07/09/2003	07/27/2003
52,259	Bindery, Inc., (The) (MN)	Cambridge, MN.	07/09/2003	07/08/2003
52,260	Rockwell Automation (Comp)	Mequon, WI	07/10/2003	07/08/2003
52,261	Cummings Fisheries (Comp)	Dillingham, AK.	07/10/2003	07/10/2003
52,262	Sierra Pine Ltd. (Comp)	Springfield, OR.	07/10/2003	07/10/2003
52,263	Trelleborg Automotive (Comp)	Logansport, IN.	07/10/2003	07/10/2003
52,264	Springs Industries, Inc. (Comp)	Lyman, SC	07/10/2003	07/10/2003
52,265	Gasboy International LLC (Comp)	Lansdale, PA	07/10/2003	07/10/2003
52,266	Dana Corporation (Comp)	Crenshaw, MS.	07/10/2003	07/10/2003
52,267	Ken-Bar Manufacturing (Comp)	Baldwin, GA	07/10/2003	07/10/2003
52,268	California Cedar Products (Comp)	McCloud, CA	07/10/2003	07/10/2003
52,269	L.A. Darling Co. (Comp)	Paragould, AR.	07/10/2003	07/10/2003
52,270	LM Services LLC (Comp)	Cumberland, MD.	07/10/2003	07/10/2003
52,271	Kerr McGee Chemical (Comp)	Theodore, AL	07/10/2003	07/10/2003
52,272	Cooper Bussmann (Comp)	Black Mountain, NC.	07/10/2003	07/10/2003
52,273	Rapidigm (Comp)	Pittsburgh, PA.	07/10/2003	07/10/2003
52,274	Thomson Incorporated (Comp)	Circleville, OH.	07/10/2003	07/10/2003
52,275	Cordis Corp. (Comp)	Miami Lakes, FL.	07/10/2003	07/10/2003
52,276	Bureau of Engraving, Inc. (Comp)	Minneapolis, MN.	07/10/2003	07/10/2003
52,277	Hubbell Electrical Products (Comp)	Louisiana, MO.	07/10/2003	07/10/2003
52,278	Brandt, A Varco Company (Comp)	Okllalhoma City, OK.	07/10/2003	07/10/2003
52,279	Jacuzz Bros (Comp)	Little Rock, AR.	07/11/2003	07/09/2003
52,280	Stone County Ironworks (Comp)	Mountain View, AR.	07/11/2003	07/09/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,281	Tiffany Industries (Comp)	Conway, AR	07/11/2003	07/09/2003
52,282	Joe A. Craig (Comp)	Elfin Cove, AK.	07/11/2003	07/08/2003
52,283	Peregrine's Catch (Comp)	Haines, AK	07/11/2003	07/08/2003
52,284	Fisher Pierce (Comp)	Weymouth, MA.	07/11/2003	07/09/2003
52,285	Kinko's Inc. (Comp)	Mission, KS	07/11/2003	07/10/2003
52,286	L. A. Darling (Comp)	Piggot, AR	07/11/2003	07/09/2003
52,287	Vesuvius USA (Comp)	Cleveland, OH.	07/11/2003	07/08/2003
52,288	Pliana, Inc. (Comp)	Charlotte, NC	07/11/2003	06/30/2003
52,289	Phillips Plastic Medical Molding (Comp)	Menomonie, WI.	07/11/2003	07/08/2003
52,290	Ace Supply, Inc. (Comp)	Richmond, IN	07/11/2003	07/11/2003
52,291	Sterling China Co. (Comp)	Wellsville, OH	07/11/2003	07/11/2003
52,292	Manning Lighting (Comp)	Sheboygan, WI.	07/11/2003	07/11/2003
52,293	Hilti (Comp)	Tulsa, OK	07/11/2003	07/09/2003
52,294	Richardson Brothers Furniture Co. (Comp)	Sheboygan Falls, WI.	07/11/2003	07/09/2003
52,295	Breed Steering Systems (Comp)	Brownsville, TX.	07/11/2003	07/11/2003
52,296	L. A. Darling Co. (Comp)	Paragould, AR.	07/11/2003	07/03/2003

[FR Doc. 03–18804 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,241]

Research Seeds, Inc., a Subsidiary of Land O'Lakes, St. Joseph, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 8, 2003 in response to a petition filed by a company official on behalf of workers at Research Seeds, Inc., a subsidiary of Land O'Lakes, St. Joseph, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 15th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18811 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,274]

RFD Publications, LLC, Including Leased Workers of Sirius, Wilsonville, OR; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 23, 2003, applicable to workers of RFD Publications, LLC, Wilsonville, Oregon. The notice was published in the **Federal Register** on May 7, 2003 (68 FR 24504).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of advertising inserts/flyers until the company closed in April 2003.

Information shows that RFD Publications, LLC, leased workers of Sirius that were engaged in employment related to the production of advertising inserts/flyers at the Wilsonville, Oregon plant.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of RFD Publications, LLC, who were adversely affected by increased imports.

The amended notice applicable to TA-W–51,274 is hereby issued as follows:

All workers of RFD Publications, LLC, Wilsonville, Oregon, and leased workers of Sirius engaged in employment related to the production of advertising inserts/flyers at RFD Publications, LLC, Wilsonville, Oregon, who became totally or partially separated from employment on or after March 19, 2002, through April 23, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18825 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,031]

Swing-N-Slide, Janesville, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 13, 2003, in response to a worker petition filed by a company official on behalf of workers at Swing-N-Slide, Janesville, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of July, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18815 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,915]

TechBooks, York, PA; Notice of Revised Determination on Reconsideration

By application of May 7, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on March 31, 2003, based on the finding that the petitioning workers did not produce an article within the meaning of section 222(3) of the Act. The denial notice was published in the **Federal Register** on April 11, 2003 (68 FR 17831).

To support the request for reconsideration, the petitioner supplied additional information to supplement that which was gathered during the initial investigation. Upon further review, including an examination of the materials provided by the petitioner, it was established that the petitioning workers did produce a product.

In addition, it was revealed that the company shifted pre-press produced by the subject firm workers to a foreign source, and shipped the product back to the United States during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at TechBooks, York, Pennsylvania, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of TechBooks, York, Pennsylvania, who became totally or partially separated from employment on or after February 11, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 11th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18820 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,599]

Teksystems Workers Employed at Honeywell, Incorporated Advanced Circuits Division, Minnetonka, MN, Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 6, 2003 in response to a worker petition which was filed on behalf of workers at TekSystems employed at Honeywell, Incorporated, Advanced Circuits Division, Minnetonka, Minnesota.

An active certification covering the petitioning group of workers is already in effect (TA–W–39,281, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of July 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18827 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,468]

Textron, Cushman, Inc., Lincoln, NE; Notice of Revised Determination on Reconsideration

By letter postmarked March 26, 2003, the Paper, Allied-Industrial, Chemical and Energy International Workers Union, Local 5–0907, requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on February 3, 2003, based on the finding that imports of mini trucks, three wheel scooters, turf care application products, etc., did not contribute importantly to worker separations at the subject plant. The denial notice was published in the **Federal Register** on February 24, 2003 (68 FR 8619).

To support the request for reconsideration, the union supplied additional information to supplement that which was gathered during the initial investigation.

Upon further review and contact with the company, it was revealed that the company increased their imports of components competitive with those produced by the subject firm during the relevant period, contributing to the layoffs at the subject firm. The workers are not separately identifiable by product line.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Textron, Cushman, Inc., Lincoln, Nebraska, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Textron, Cushman, Inc., Lincoln, Nebraska, who became totally or partially separated from employment on or after December 30, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18821 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Preservation

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Preservation for a two-year period. In accordance with the Office of Management and Budget (OMB) Circular A–135, OMB has approved the inclusion of the Advisory Committee on Preservation in NARA's ceiling of discretionary advisory committees.

The Archivist of the United States has determined that the renewal of the Advisory Committee on Preservation is in the public interest due to the expertise and valuable advice the committee members provide on technical preservation issues affecting Federal records of all types of media. NARA uses the Committee's recommendations in NARA's implementation of strategies for preserving the permanently valuable records of the Federal government.

Dated: July 18, 2003.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 03–18806 Filed 7–23–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–315]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant, Unit 1; Exemption

1.0 Background

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License No. DPR–58 which authorizes operation of the Donald C. Cook (D.C. Cook) Nuclear Plant, Unit 1. The licensee provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in Stevensville, Michigan.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), part 50, Appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, Appendix G to 10 CFR part 50 states that ''[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions.'' Further, Appendix G of 10 CFR part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code). In this exemption, consistent with the current provisions of 10 CFR 50.55(a), all references to the ASME Code denote the 1995 Edition through the 1996 Addenda of the ASME Code.

In order to address provisions of amendments to the D.C. Cook, Unit 1, Technical Specification (TS) P-T limit curves, the licensee requested in its submittal dated December 10, 2002, that the NRC staff exempt D.C. Cook, Unit 1, from application of specific requirements of Appendix G to 10 CFR part 50, and substitute the use of ASME Code Case N–641. ASME Code Case N–641 permits the use of an alternate reference fracture toughness curve for RPV materials and permits the postulation of a circumferentially-oriented flaw for the evaluation of circumferential RPV welds when determining the P–T limits. The proposed exemption request is consistent with, and is needed to support, the D.C. Cook, Unit 1, TS amendment that was contained in the same submittal. The proposed D.C. Cook, Unit 1, TS amendment will revise the P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) through 32 effective full power years of operation.

Code Case N–641

The licensee has proposed an exemption to allow the use of ASME Code Case N–641 in conjunction with Appendix G to ASME section XI, 10 CFR 50.60(a) and 10 CFR part 50, Appendix G, to establish the P–T limits for the D.C. Cook, Unit 1 RPV.

The proposed TS amendment to revise the P–T limits for D.C. Cook, Unit 1, relies in part, on the requested exemption. These revised P–T limits have been developed using the lower bound K_{IC} fracture toughness curve shown in ASME section XI, Appendix A, Figure A–2200–1, in lieu of the lower bound K_{IA} fracture toughness curve of ASME section XI, Appendix G, Figure G–2210–1, as the basis fracture toughness curve for defining the D.C. Cook Unit 1 P–T limits. In addition, the revised P–T limits have been developed based on the use of a postulated circumferentially-oriented flaw for the evaluation of RPV circumferential welds in lieu of the axially-oriented flaw which would be required by Appendix G to section XI of the ASME Code. The other margins involved with the ASME section XI, Appendix G process of determining P–T limit curves remain unchanged.

Use of the K_{IC} curve as the basis fracture toughness curve for the development of P–T operating limits is more technically correct than use of the K_{IA} curve. The K_{IC} curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a RPV, whereas the K_{IA} fracture toughness curve codified into Appendix G to section XI of the ASME Code was developed from more conservative crack arrest and dynamic fracture toughness test data. The application of the K_{IA} fracture toughness curve was initially codified in Appendix G to section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. However, additional information has been gained about RPV materials which demonstrates that the lower bound on fracture toughness provided by the K_{IA} fracture toughness curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure.

Likewise, the use of a postulated circumferentially-oriented flaw in lieu of an axially-oriented one for the evaluation of a circumferential RPV weld is more technically correct. The flaw size required to be postulated for P–T limit determination has a depth of one-quarter of the RPV wall thickness and a length six times the depth. Based on the direction of welding during the fabrication process, the only technically reasonable orientation for such a large flaw is for the plane of the flaw to be circumferentially-oriented (*i.e.*, parallel to the direction of welding). Prior to the development of ASME Code Case N–641 (and the similar ASME Code Case N–588), the required postulation of an axially-oriented flaw for the evaluation of a circumferential RPV weld provided an additional, unnecessary level of conservatism to the overall evaluation.

In addition, P–T limit curves based on the K_{IC} fracture toughness curve and postulation of a circumferentially-oriented flaw for the evaluation of RPV circumferential welds will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations. The operating window through which the operator heats up and cools down the RCS, is determined by the difference between the maximum allowable pressure determined by Appendix G of ASME section XI, and the minimum required pressure for the reactor coolant pump seals adjusted for instrument uncertainties. A narrow operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent overpressure protection system actuation due to pressure surges associated with normal

plant evolutions such as RCS pump starts and swapping operating charging pumps with the RCS in a water-solid condition.

Since application of ASME Code Case N–641 provides appropriate procedures to establish maximum postulated defects and to evaluate those defects in the context of establishing RPV P–T limits, this application of the Code Case maintains an adequate margin of safety for protecting RPV materials from brittle failure. Therefore, the licensee concluded that these considerations were special circumstances pursuant to 10 CFR 50.12(a)(2)(ii), ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

In summary, the ASME section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor coolant pressure boundary materials and the estimated effects of operation. Since 1974, the level of knowledge about the fracture mechanics behavior of RCS materials has been greatly expanded, especially regarding the effects of radiation embrittlement and the understanding of fracture toughness properties under static and dynamic loading conditions. The NRC staff concurs that this increased knowledge permits relaxation of the ASME section XI, Appendix G requirements by application of ASME Code Case N–641, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety against brittle failure of the RPV.

The NRC staff has reviewed the exemption request submitted by the licensee and has concluded that an exemption should be granted to permit the licensee to utilize the provisions of ASME Code Case N–641 for the purpose of developing D.C. Cook, Unit 1, RPV P–T limit curves.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present in that continued operation of D.C. Cook, Unit 1, with the P–T curves developed in accordance with ASME section XI, Appendix G, without the relief provided by ASME Code Case N–641 is not necessary to achieve the underlying purpose of Appendix G to 10 CFR part 50. The underlying purpose of the regulations in Appendix G to 10 CFR part 50 is to provide an acceptable margin of safety against brittle failure of the RCS during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime. Application of ASME Code Case N–641 in lieu of the requirements of ASME Code section XI, Appendix G provides an acceptable alternative methodology which will continue to meet the underlying purpose of Appendix G to 10 CFR part 50.

The NRC staff examined the licensee's rationale to support the exemption request, and agrees within the licensee's determination that an exemption would be required to approve the use of Code Case N–641. The NRC staff agrees that the use of ASME Code Case N–641 would meet the underlying intent of Appendix G to 10 CFR part 50. The NRC staff concludes that the application of the technical provisions of ASME Code Case N–641 provides sufficient margin in the development of RPV P–T limit curves such that the underlying purpose of the regulations (Appendix G to 10 CFR part 50) continue to be met so that the use of all provisions in Appendix G to section XI of the ASME Code are not necessary. Therefore, the NRC staff concludes that the exemption requested by the licensee is justified based on the special circumstances of 10 CFR part 50(a)(2)(ii), ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of Appendix G to 10 CFR part 50; Appendix G to section XI of the ASME Code; and Regulatory Guide 1.99, Revision 2; the staff concludes that application of ASME Code Case N–641 as described would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the NRC staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate, and that the methodology of Code Case N–641 may be used to revise the P–T limits for the D.C. Cook, Unit 1, RPV.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.60 and 10 CFR part 50, Appendix G, to allow application of ASME Code Case N–641 in establishing TS requirements for the reactor vessel pressure limits at low temperatures for D.C. Cook, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 42137).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 18th day of July 2003.

For The Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18842 Filed 7–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–498 and 50–499]

STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF–76 and NPF–80, issued to STP Nuclear Operating Company* (STPNOC) acting on behalf of itself and for Texas Genco, LP, the City Public Service Board of San Antonio (CPS), Central Power and Light Company (CPL), and the City of Austin, Texas (COA) (the licensees), dated March 31, 2003, (the licensee), for operation of the South Texas Project, Units 1 and 2 located in Matagorda County, Texas. Therefore, as required by

* STP Nuclear Operating Company is authorized to act for Texas Genco, LP, the City Public Service Board of San Antonio, Central Power and Light Company, and the City of Austin, Texas, and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

Section 10 CFR 51.21 of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, the Commission is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Facility Operating Licenses No. NPF–76 and NPF–80, replacing ''Central Power and Light Company (CPL)'' with ''AEP Texas Central Company'' throughout the Operating License of each unit.

The proposed action is in accordance with the licensee's application dated March 31, 2003.

The Need for the Proposed Action

The application was submitted by STPNOC, acting on behalf of itself and for Texas Genco, LP, the City Public Service Board of San Antonio, Central Power and Light Company, and the City of Austin, Texas. The amendments change the operating license to reflect a change in the name of ''Central Power and Light Company (CPL),'' a licensed co-owner of the facility, to ''AEP Texas Central Company (AEP),'' effective December 23, 2002.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and changes to the licenses. We agree with the licensee that the name change will not impact the existing ownership of South Texas Project, Units 1 and 2 or the existing entitlement to power and will not alter the existing antitrust license conditions applicable to STPNOC's ability to comply with these conditions or with any of its other obligations or responsibilities. As stated by the licensee, ''With the exception of this name change, this transaction does not in any way affect the qualifications of AEP Texas Central Company for ownership of 25.2% [percent] of South Texas Project Electric Generating Station Units 1 and 2 (STPEGS), nor does it involve any direct or indirect transfer of control of the STPEGS Operating Licenses.'' Therefore, the change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the South Texas Project, Units 1 and 2.

Agencies and Persons Consulted

On July 15, 2003, the staff consulted with the Texas State official, Arthur Tate of the Division of Compliance and Inspection, Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated March 31, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 18th day of July, 2003.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18844 Filed 7–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop on Issues Related to the Level of Programmatic Information Needed in a Combined License Application; Submitted in Accordance With 10 CFR Part 52

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of August 25, 2003, public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is holding a workshop on August 25, 2003, on issues related to the level of programmatic information that would be needed in order to issue a combined license (COL) in accordance with the requirements of Title 10 of the Code of Federal Regulations Part 52, Subpart C without inspections, tests, analyses, and acceptance criteria (ITAAC) for any particular program. The NRC staff has developed a draft proposal titled, ''Use of Fire Protection as an Example Program to Discuss Programmatic Inspections, Tests, Analyses, and Acceptance Criteria,'' to address this issue. The NRC staff has scheduled the public workshop to discuss the issue and to solicit stakeholder comments on the staff's draft proposal. This workshop will be transcribed. To allow for timely registration on the day of the meeting, it is recommended that guests preregister for the workshop. To preregister for the workshop, contact Mr. Joseph Sebrosky (information provided below) and provide the following information: name, organization, phone number, and country of citizenship.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph M. Sebrosky, New, Research and Test Reactors Program, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Mr. Sebrosky may be reached by phone at 301–415–1132 or by e-mail at

jms3@nrc.gov. Questions on the public meeting process should be directed to Mr. Chip Cameron; e-mail: *fxc@nrc.gov*, telephone: 301–415–1642; Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

DATES: The workshop will be held on August 25, 2003, from 1 p.m. to 4:30 p.m. Comments on the NRC staff's draft proposal should be submitted by September 15, 2003. Comments received after the due date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: The workshop will be held at the Nuclear Regulatory Commission offices in the Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland.

The NRC staff's draft proposal to use fire protection as an example program to discuss programmatic ITAAC is available for public inspection in the Agencywide Document Access and Management System (ADAMS) in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Public File Area O1 F21, Rockville, Maryland. The information is also available electronically from the Publicly Available Records (PARS) component of ADAMS (ADAMS # ML031820084). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by e-mail to *pdr@nrc.gov*. In addition, the draft proposal and additional associated documentation can be found on NRC's Web site under the combined license discussion on the following Web page: *http://www.nrc.gov/reactors/new-licensing/licensing-process.html*.

Written comments on the draft proposal should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T6–D59, Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically by the Internet to the NRC at *nrcrep@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland or from the PARS component of NRC's document system (ADAMS).

SUPPLEMENTARY INFORMATION: In 1989, the NRC established new alternatives for nuclear plant licensing under Title 10 of the Code of Federal Regulations (10 CFR) Part 52, which describes, among other things, a process for issuing a combined construction and operating license, or combined license (COL). A COL authorizes construction and, with conditions, operation of a nuclear power plant. A COL application must describe the conditions (the ITAAC) that are necessary to ensure that the plant has been properly constructed and will operate safely. After issuing a COL, the NRC verifies that the licensee has completed the required ITAAC before the plant can operate. The NRC publishes notices of the successful completion of the ITAAC. Then, at least 180 days before the scheduled date for initial loading of nuclear fuel into the reactor, the NRC publishes a notice of intended operation. The notice will provide that any person whose interest may be affected by operation of the plant may request the Commission to hold a hearing on whether the facility complies, or on completion will comply with the acceptance criteria in the COL. A request for a hearing must demonstrate that the licensee has not met or will not meet the acceptance criteria in the COL.

The principle issue to be discussed at the workshop is the staff's draft proposal that categorizes operational programs such as emergency planning and training into those that will likely require ITAAC, those that may or may not require ITAAC (depending on the level of information available at the COL stage), and those that will be unlikely to require ITAAC. The staff would also like to discuss its proposal relative to the level of information needed for operational programs such as fire protection in order to issue a COL without ITAAC for any particular program.

In SECY–02–0067, ''Inspections, Tests, Analyses, and Acceptance Criteria for Operational Programs (Programmatic ITAAC),'' the staff requested Commission approval for its position that COLs for a nuclear power plant submitted in accordance with the requirements of 10 CFR Part 52 Subpart C contain ITAAC for operational programs required by regulations such as training and emergency planning (ADAMS Accession Number ML020700641). The Commission disapproved the staff's position in a September 11, 2002, staff requirements memorandum (SRM) (ADAMS Accession Number ML022540755). The Commission approved a much more limited use of programmatic ITAAC than that proposed by the staff. The Commission directed the staff to resolve the maximum number of programmatic issues prior to issuing a COL. The Commission also directed the staff to develop appropriate guidelines to support the submission of necessary and sufficient information on programs in COL applications and clarify when programs beyond emergency planning, if any, call for or are likely to call for ITAAC in the COL application.

In a public meeting on May 22, 2003, the NRC staff discussed a response to the SRM including a discussion of the following option. A draft standard review plan Section 14.3 Appendix E, ''Programmatic ITAAC'' would be developed for guidance. The staff stated that it was considering categorizing the 14 programs that it listed in SECY–02–0067 in the following manner as part of this guidance:

Category A: Programmatic ITAAC are required. A program that falls into this category is emergency planning.

Category B: Programmatic ITAAC are not necessary because hardware-related ITAAC address the results to which the program is directed. Examples of programs that may fall into this category are equipment qualification, quality assurance, and containment leak rate testing.

Category C: An ITAAC for a program or elements of the program is not necessary because the program and its implementation can be fully described [1] in the application and found to be acceptable at the COL stage.[2]

Category D: An ITAAC for a program or elements of the program is necessary because the program and its implementation cannot be fully described[1] in the application. That is, the COL applicant cannot provide the necessary and sufficient programmatic information for approval of the COL without ITAAC.[2]

Category E: An ITAAC for a program is not necessary because ITAAC will be dispositioned prior to fuel load and the program is not required to be implemented until after fuel load. Examples of programs that may fall into this category include the inservice inspection and inservice testing

[1] A principal issue for these categories is what constitutes a ''fully described'' program.

[2] The following programs may fall into Category C or D depending on the information provided at the time of the COL: fire protection, radiation protection, security, fitness for duty, training, access authorization, reportability, licensed operator training.

programs, and the maintenance rule program.

Subsequent to the May 22, 2003, meeting the NRC staff developed a proposal to use the fire protection program as an example program to illustrate the level of detail needed to determine if programmatic ITAAC are necessary. The fire protection program was chosen because it could fall into Category C or D above depending on the information provided at the time of a COL application.

During the workshop the following topics will be discussed:

• Is the categorization of the 14 programs listed in SECY–02–0067 appropriate?

—Are there programs that are missing from the list?

—Should any of the programs be placed in different categories?

• The NRC staff would like to discuss the programs that fall into Categories C and D. The NRC staff's proposal uses the fire protection program for the AP600 standard nuclear reactor design and the Callaway Plant as a starting point to develop guidelines for the level of programmatic information that would be needed in order to issue a COL without ITAAC for that program. Is the level of detail contained in the staff's proposal appropriate?

A specific agenda for the workshop will be developed and made available prior to the meeting. To assure a diversity of viewpoints, the NRC is inviting stakeholders from the nuclear power industry, representatives from citizens groups, and State agencies, to sit in a roundtable discussion. Although the focus of the meeting will be on the roundtable discussion, there will be opportunities for members of the audience to offer comments and ask questions. Questions related to the staff's draft proposal should be directed to Joseph Sebrosky. Questions related to the public meeting process should be directed to Mr. Chip Cameron. Mr. Sebrosky's and Mr. Cameron's contact information is provided above.

Dated at Rockville, Maryland, this 18th day of July, 2003.

For The Nuclear Regulatory Commission.

James E. Lyons,

Program Director, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18843 Filed 7–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication Method For Estimating Effective Dose Equivalent From External Radiation Sources Using Two Dosimeters

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a Regulatory Issue Summary (RIS) which approves and provides guidance on a two dosimeter monitoring method that can be used by licensees for estimating effective dose equivalent (EDE) from external radiation exposures. The NRC is seeking comment from interested parties on the clarity and utility of the guidance contained in the proposed RIS. In particular, comment is requested on the following questions:

1. Is the two dosimeter method a technically acceptable alternative to the current practice of estimating EDE from deep dose equivalent (DDE)?
2. Is the NRC use of a RIS to approve the two dosimeter method acceptable under the existing regulations?
3. Are algorithms that attempt to provide better estimates of the effective dose equivalent by using more than one dosimeter of importance to your industry?
4. Do you believe that this and similar algorithms, many of which were described in NCRP Publication 122, are sufficiently technically developed to serve as a basis for dosimetry of record?
5. Is the discussion of the issues provided in the RIS sufficiently detailed to provide a background for the reasons for approving the EPRI method generically?
6. Should different or more detailed guidance be provided in an NRC Regulatory Guide or generic communication?
7. Should the definition of the total effective dose equivalent (TEDE) in part 20 be revised to replace the deep dose equivalent with the effective dose equivalent, and make that quantity more consistent with national and international definitions?
8. To what extent should accuracy replace conservatism as the goal for personnel monitoring?

The NRC will consider the comments received in its final evaluation of the proposed RIS.

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML031980001.

DATES: Comment period expires September 22, 2003. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Sami Sherbini at (301) 415–7853 or by e-mail to *sxs2@nrc.gov,* or Roger Pedersen at (301) 415–3162 or by e-mail to *rlp1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Draft Regulatory Issue Summary Method For Estimating Effective Dose Equivalent From External Radiation Sources Using Two Dosimeters

Addressees

All U.S. Nuclear Regulatory Commission (NRC) licensees.

Intent

NRC is issuing this regulatory issue summary (RIS) to provide guidance on an approved two-dosimeter monitoring method for estimating effective dose equivalent (EDE) from external radiation exposures. This EDE can be used instead of the deep dose equivalent (DDE) in complying with NRC regulatory requirements.

Background

Total effective dose equivalent (TEDE) is used in 10 CFR part 20 (part 20) to specify dose limits for occupationally exposed workers, and for members of the public. Other requirements (in part 20 and other parts of NRC's regulations), such as the criteria for license termination, are also specified in terms of the TEDE. Since EDE cannot be directly measured, part 20 defines TEDE as ''the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).'' Part 20 goes on to specify that this DDE be measured at the part of the whole body with the highest exposure. This DDE can be directly measured with available dosimeters, and, in most exposure situations, provides a reasonable, conservative, and often the best, estimate for EDE from

external sources (EDE_{ex}). However, in non-uniform exposure situations, such as from a directional source, DDE measured at the part of the whole body with the highest exposure can be an overly conservative estimate.

The NRC recently published RIS 2003–04 to encourage licensees to use the EDE_{ex} for determining TEDE whenever the dose from external sources is calculated instead of measured with personnel dosimetry. The RIS discusses the limitations on, and the regulatory basis for, substituting the EDE_{ex} for DDE in determining compliance with TEDE based regulatory requirements. Estimating EDE_{ex} from dosimeter readings is very dependent on exposure geometry. Therefore, RIS 2003–04 also noted that methods for estimating TEDE from an EDE_{ex} determined from dosimeter readings, must be approved by the NRC. The 2003–04 RIS also noted that NRC approved the use of a two dosimeter method for estimating effective dose equivalent at Entergy sites (Reference 1).

This RIS describes the exposure situations in which NRC would regard the use of a monitoring method to estimate EDE_{ex} as appropriate and acceptable for estimating TEDE. This RIS does not affect the definition of other non-TEDE limits or criteria in part 20.

Summary of Issues

Use of Effective Dose Equivalent

The NRC has approved a method for estimating EDE_{ex} from external photon exposure situations. The guidance in this RIS is based on the review and approval of the exemption for Entergy (Reference 1).

This method uses two dosimeter readings and is based on research conducted by the Electric Power Research Institute (EPRI). The EPRI work (References 2, 3, and 4) indicates that a single dosimeter, calibrated to read DDE and worn on the chest, provides a reasonably accurate estimate of EDE_{ex} when the individual is exposed to a number of randomly distributed radiation sources during the monitoring period. This is consistent with current allowable dosimetry practices and requires no special approval. However, for nonuniform exposures, such as from directional radiation fields or point sources, EDE_{ex} can be estimated from a reading of a dosimeter worn on the front (R_{front}) of the trunk of the body, combined with the reading of a dosimeter worn on the back (R_{back}) of the trunk of the body.

Two algorithms are given by EPRI for combining the dosimeter results:

9. Mean Method:

The first algorithm is a simple, unweighted, average (MEAN) of the two dosimeter readings. The MEAN is equal to ½ (R_{front} + R_{back}).

The EPRI technical reports state that the non-weighted average does not always give a conservative result. Since no method is provided to identify when the simple average gives non-conservative results, *this algorithm is not approved for use at this time.*

10. Weighted Method:

The second algorithm, which was the subject of the Entergy exemption, is a weighted average algorithm such that:

EDE_{ex} = ½(Hi + MEAN)

Where Hi is the higher of R_{front} or R_{back}.

A mathematically simpler form of this weighted algorithm is:

EDE_{ex} = 3/4Hi + 1/4Lo

Where Hi is the higher of R_{front} or R_{back} and Lo is the lower of R_{front} or R_{back}.

The data presented in the EPRI technical reports (references 1 and 2) indicate that this weighted two-dosimeter algorithm provides a reasonably conservative estimate of EDE_{ex}. Therefore, only the weighted two-dosimeter algorithm is approved for use at this time for exposures in a non-uniform field.

As a result of NRC approving the above weighted method, monitoring the DDE at the part of the body receiving the highest exposure as provided in 10 CFR 20.1201(c) is not needed for determining compliance with TEDE based requirements when the weighted method is used subject to the limitations which are set out below. This is because Footnote 2 in the ''Organ Dose Weighting Factors'' table in 10 CFR 20.1003, permits the use of weighting factors to determine external exposures without case-by-case approvals when specific NRC guidance has been issued. This RIS constitutes such guidance for using the above weighted method for determining the external exposure from weighted dosimeters measuring direct DDE. An exemption from part 20 is not needed if the guidance in this RIS is followed for determining external exposures. However, 10 CFR 20.1201(c) still applies to the DDE required to be used in complying with the organ dose limit in 10 CFR 20.1201(a)(1)(ii).

Additional Issues and Limitations

Licensees may, subject to the following limitations, use this weighted two-dosimeter method for determining EDE_{ex}, and estimating TEDE, from external photon exposures without applying for further approval from the NRC.

Partial-body irradiations (*i.e.*, exposure geometries that preferentially shield the dosimeters) could bias the EPRI method results in the non-conservative direction. Licensees must ensure that dosimeters are worn so that at least one of the two dosimeters ''sees'' the major source, or sources, of radiation (one dosimeter will normally be shielded from a source by the body). In other words, the radiological work will be conducted and the dosimeters worn in such a way, so that no shielding material is present between the radioactive source(s) and the whole body, that would cast a shadow on the dosimeter(s) and not over other portions of the whole body.

This method for estimating EDE_{ex} from dosimeter readings, is not valid for exposure situations where the individual is immersed in a shielding material (*i.e.*, diving operations). Large dose-rate gradients resulting from such immersions over the space occupied by the body can bias the two dosimeter results.

Only dosimeters that have demonstrated angular response characteristics at least as good as those specified in Reference 5, are to be used. If the dosimeter's response decreases more rapidly than EDE_{ex}, as the angle of incident radiation increases, the resulting EDE_{ex} estimate will be biased in the non-conservative direction. In addition, the dosimeters should be calibrated to indicate DDE at the monitored location to ensure their readings reflect electronic equilibrium conditions.

This method for estimating EDE_{ex} from two dosimeter readings is not applicable to exposure situations where the sources of radiation are nearer than 12 inches (30 cm) from the surface of the body. This is the closest distance that the two-dosimeter algorithm has been demonstrated to provide conservative results for discrete (point) radiation sources.

The use of monitoring methods for estimating EDE_{ex}, from exposure to point sources (*i.e.*, hot particles) on, or near the surface of the body, is outside the scope of this approval. Tables 5 through 7, in Reference 3, provide some calculated EDE_{ex} values resulting from exposure to point sources in contact with the torso of the body. However, the information provided in these tables does not bound all of the pertinent point source exposure situations.

Licensees using the weighted methodology need to maintain sufficient records to demonstrate the above limitations were satisfied.

Conclusions

The weighted two-dosimeter algorithm, described in this RIS, provides an acceptably conservative estimate of EDE_{ex}. The TEDE based on EDE_{ex} using this algorithm in accordance with its associated limitations is acceptable.

When recording or reporting doses in situations in which the EDE_{ex} is assessed instead of the DDE, the value of the EDE_{ex} is entered in place of the DDE in recording or reporting forms, such as NRC Forms 4 or 5.

References

1. Exemption from the Requirements of 10 CFR part 20, § 20.1003 Definition of Total Effective Dose Equivalent issued to Arkansas Nuclear One, Units 1 and 2; Grand Gulf Nuclear Station; Indian Point Nuclear Station, Units 1, 2 and 3; James A. Fitzpatrick Nuclear Power Plant; Pilgrim Nuclear Power Station; River Bend Station; Vermont Yankee Nuclear Power Plant; and Waterford Steam Electric Station, Unit 3, 67 FR 58826 (September 18, 2002) (ML022550559).
2. EPRI Technical Report TR–101909, Volume 1, February 1993.
3. EPRI Technical Report TR–101909, Volume 2, June 1995.
4. EPRI Implementation Guide TR–109446, September 1998.
5. Xu, X. G.; Reese, W. D.; and Poston, J. W. , ''A Study of the Angular Dependence Problem In Effective Dose Equivalent Assessment'', Health Physics, Volume 68., No. 2, February 1995, pp. 214–224.

Backfit Discussion

This RIS does not require any action nor written response nor require any modification to plant structures, systems, components, or design; therefore, the staff did not perform a backfit analysis.

Federal Register Notice

A notice of opportunity for public comment was published in the **Federal Register**.

Paperwork Reduction Act Statement

This RIS does not require any action nor written response nor require any modification to plant structures, systems, components, or design; therefore, the staff did not perform a backfit analysis.

Paperwork Reduction Act Statement

This RIS does not request any information collection.

End of Draft Regulatory Issue Summary

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of July 2003.

For the Nuclear Regulatory Commission.

William D. Beckner,

Branch Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18688 Filed 7–23–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension:

Rule 23c–1 [17 CFR 270.23c–1], SEC File No. 270–253, OMB Control No. 3235–0260.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 23c–1 under the Investment Company Act of 1940, among other things, permits a closed-end fund to repurchase its securities for cash if in addition to the other requirements set forth in the rule: (i) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the asset coverage per unit of the security to be purchased is disclosed to the seller or his agent; and (iii) if the security is a stock, the fund has, within the preceding six months, informed stockholders of its intention to purchase stock. The Commission staff estimates that approximately 19 closed-end funds rely on rule 23c–1 annually to undertake approximately 132 repurchases of their securities. The Commission staff estimates that, on average, a fund spends approximately 2.5 hours on complying with the paperwork requirements listed above each time it undertakes a security repurchase under the rule. The total annual burden of the rule's paperwork requirements thus is estimated to be 330 hours.

In addition, the fund must file with the Commission, during the calendar month following any month in which a purchase permitted by rule 23c–1 occurs, two copies of a report of purchases made during the month, together with a copy of any written solicitation to purchase securities given by or on behalf of the fund to 10 or more persons. The burden associated with filing Form N–23C–1, the form for this report, has been addressed in the submission for that Form.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 16, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18898 Filed 7–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension:

Rule 13f–1 [17 CFR 240.13f–1], SEC File No. 270–22, OMB Control No. 3235–0006.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 13(f) [1] of the Securities Exchange Act of 1934 [2] (the ''Exchange Act'') empowers the Commission to: (1) Adopt rules that create a reporting and disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f–1 [3] under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts—having in the aggregate a fair market value of at least $100,000,000 of exchange-traded or NASDAQ-quoted equity securities—to file quarterly reports with the Commission on Form 13F.

The information collection requirements apply to institutional investment managers that meet the $100 million reporting threshold. Section 13(f)(5) of the Exchange Act defines an ''institutional investment manager'' as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Rule 13f–1(b) under the Exchange Act defines ''investment discretion'' for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

The Commission staff estimates that 2,472 respondents make approximately 9,888 responses under the rule each year. The staff estimates that on average, Form 13F filers spend 98.8 hours/year to prepare and submit the report. In addition, the staff estimates that 294 respondents file approximately 1,176 amendments each year. The staff estimates that on average, Form 13F filers spend 4 hours/year to prepare and submit amendments to Form 13F. The total annual burden of the rule's requirements for all respondents therefore is estimated to be 245,409.6 hours ((2,472 filers × 98.8 hours) + (294 filers × 4 hours)).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 16, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18899 Filed 7–23–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78m(f).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.13f–1.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0004.

Extension:

Rule 27e–1 and Form N–27E–1, SEC File No. 270–486, OMB Control No. 3235–0545.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information under the Investment Company Act of 1940 (''Act'') summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for approval.

Rule 27e–1 [17 CFR 270.27e–1] is entitled ''Requirements for Notice to be Mailed to Certain Purchasers of Periodic Payment Plan Certificates Sold Subject to Section 27(d) of the Act.'' Form N–27E–1 is entitled ''Notice to Periodic Payment Plan Certificate Holders of 18 Month Surrender Rights with Respect to Periodic Payment Plan Certificates.'' Form N–27E–1, which is prescribed by rule 27e–1 in order to implement the statutory mandate in section 27(e) of the Act, serves to notify holders of periodic payment plan certificates who have missed certain payments of their surrender rights with respect to the certificates. The Form N–27E–1 notice, which is sent directly to holders of periodic payment plan certificates, serves to alert purchasers of periodic payment plans of their rights in connection with their plan certificates.

Commission staff estimates that there are fewer than five issuers of periodic payment plan certificates affected by rule 27e–1. The frequency with which each of these issuers or their representatives must file the Form N–27E–1 notice varies with the number of periodic payment plans sold and the number of certificate holders who miss payments. The staff spoke with representatives of a number of firms in the industry that currently have periodic payment plan accounts. Based upon these conversations, the staff estimates that 3 respondents send out approximately 2,965 notices a year through completely automated processes. These estimates are based on an informal survey of representatives of several entities and are not derived from a comprehensive or necessarily even representative study of the cost of the Commission's rules and forms.

Complying with the collection of information requirements of rule 27e–1 is mandatory for issuers of periodic payment plans or their depositors or underwriters in the event holders of plan certificates miss certain payments

within eighteen months after issuance. The information provided pursuant to rule 27e–1 will be provided to third parties and, therefore, will not be kept confidential. The Commission is seeking OMB approval, because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 16, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18900 Filed 7–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27697]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 18, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 8, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 8, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

E.ON AG, et al. (70–9985)

E.ON AG (''E.ON''), E.ON—Platz 1, 40479 Dusseldorf, Germany, a registered holding company under the Act; Fidelia Corporation (''Fidelia''), 300 Delaware Avenue, Suite 544, Wilmington, Delaware 19801, an indirect, financing subsidiary of E.ON; Louisville Gas and Electric Company (''LG&E''), 220 West Main Street, Louisville, Kentucky 40402, a public utility company under the Act and an indirect subsidiary of E.ON; and Kentucky Utilities Company (''KU''), One Quality Street, Lexington, Kentucky 40507, a public utility company under the Act and an indirect subsidiary of E.ON, (collectively, ''Applicants''), have filed an application-declaration as a post-effective amendment (''Application'') to a previously filed application-declaration under sections 6(a), 7, 9, 12(b), 12(d), 32 and 33 of the Act and rules 53 and 54 under the Act.

Applicants request authority through May 31, 2005 (''Authorization Period''), for Fidelia to provide intercompany loans to LG&E and KU and for LG&E and KU to grant security for these loans.

By order dated June 14, 2002 (Holding Company Act Release No. 27539) [1] (''June Order''), the Commission authorized the acquisition of Powergen plc by E.ON and authorized terms of the financing of the E.ON holding company system as well as certain related transactions. E.ON owns LG&E Energy Corp. (''LG&E Energy''), a public utility holding company exempt by order under section 3(a)(1) of the Act, which in turn owns LG&E and KU. E.ON's interest in LG&E Energy is held indirectly through several intermediate holding companies. E.ON U.S. Investments Corp., the direct parent of LG&E Energy, also owns E.ON North America Inc. (''E.ON NA''), which in turn currently owns 74.6% of Fidelia. The remaining 25.4% of Fidelia is owned by E.ON U.S. Holding GmbH, a direct, wholly-owned subsidiary of E.ON.

In the June Order, the Commission authorized, among other things, E.ON and its subsidiaries to engage in certain financing transactions. Specifically, E.ON and E.ON NA, through Fidelia or another special purpose financing subsidiary of E.ON NA, were authorized to finance all or a portion of the capital needs of LG&E Energy and its subsidiaries, directly or through other companies in the E.ON holding company system (''E.ON Group''). The financing authority in the June Order provided that borrowings would be unsecured and would only occur if the interest rate on the loan would result in an equal or lower cost of borrowing than the LG&E Energy Group company could obtain in a loan from E.ON or in the capital markets on its own.

E.ON is currently funding, and proposes to continue to fund, the cash requirements of LG&E and KU through intercompany loans. E.ON states that its financing strategy is to raise capital at the top holding company, E.ON, and to provide those funds to subsidiary companies through intercompany loans and/or as equity contributions. E.ON states that it is able to provide funds to LG&E and KU at a cost that is at or below the external borrowing costs of LG&E and KU.

LG&E and KU, however, have provisions in their respective articles of incorporation that restrict the amount of unsecured debt that can be outstanding. When LG&E and KU approach this limit on unsecured debt, any additional debt incurred by them would have to be secured. Therefore, under the financing authority granted in the June Order, LG&E and KU will not be able to take advantage of the economic efficiencies of the intercompany loans when they have reached their unsecured debt limits. E.ON states that it is in the best interest of LG&E and KU, as well as that of the E.ON group, that the financing needs of LG&E and KU be provided through intercompany loans. Therefore, the Applicants request authority for Fidelia to provide intercompany loans to LG&E and KU on a secured basis.

The Applicants request authorization for Fidelia to provide intercompany loans to LG&E and KU upon the terms and subject to the conditions set forth in

[1] The June Order granted authority requested in S.E.C. Filing 70–9961 (''Acquisition Filing'') and 70–9985 (''Original Financing Filing''). The Original Financing Filing was amended by order dated February 21, 2003 (Holding Company Act Release No. 27654).

the June Order,[2] except that Applicants request that LG&E and KU may grant security for the intercompany loans.[3] LG&E and KU request authorization to secure intercompany loans with a subordinated lien on certain of the personal property of each company, including ''utility assets'' within the meaning of the Act. The subordination provisions will provide that the E.ON group companies cannot exercise any rights or remedies against the property of LG&E and KU unless all bonds under the borrowing company's first mortgage bond indenture have been paid in full. The aggregate outstanding principal amount of intercompany loans made to LG&E and KU on a secured basis will not exceed $275 million and $215 million, respectively. LG&E and KU commit that the aggregate principal amount of secured intercompany loans, together with the aggregate principal amount of bonds issued under their respective first mortgage bond indenture, will not exceed the limit on bonds set forth in their first mortgage bond indenture.[4] The Applicants further commit that neither LG&E nor KU will borrow any funds as secured intercompany loans under the authority granted, unless at the time of the incurrence of any secured intercompany loan, the following conditions are met:

A. E.ON and the borrowing company (LG&E or KU, as the case may be) maintain common equity[5] as a percentage of total capitalization[6] of at least 30%, as reflected in their most recent annual or semiannual report. Applicants request that the Commission reserve jurisdiction over the making of secured intercompany loans at any time that this condition is not satisfied.

B. All outstanding securities of the borrowing company that are rated are rated investment grade, and all outstanding securities of E.ON that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as defined in rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934. Applicants request that the Commission reserve jurisdiction over the making of secured intercompany loans at any time that this condition is not satisfied.

The secured intercompany loans would be in compliance with the Best Rate Method. Therefore, LG&E and KU would not pay more than they would pay in the capital markets for a similar loan had the borrower sought to finance its capital requirements with independent third parties. LG&E and KU would save the issuance expenses associated with the issuance of first mortgage bonds. These expenses would typically include legal fees, printing costs, trustees fees, rating agency fees and filing fees. In recent transactions, these expenses have aggregated approximately $300,000 per issuance.

E.ON states that its financing policy is to centralize, wherever possible, all external funding at the E.ON level. This strategy, it says, allows E.ON to ensure that all funds are raised at the lowest cost due to the greater financial strength of the holding company. Applicants state that E.ON (currently AA−, stable outlook, from Standard & Poor's, and A1, stable outlook, from Moody's) is the strongest credit in the E.ON Group. Lenders and bond investors see E.ON (and its finance companies under its guarantee) as the most creditworthy company in the E.ON Group, according to the Applicants; and E.ON receives the best margins and other terms and conditions. Therefore, according to the Applicants, E.ON (or its finance companies under guarantee of E.ON) is the preferred entity of the E.ON Group to approach the capital markets. E.ON lends the proceeds from financings in the form of intercompany loans to those subsidiaries with demand. According to the Applicants, for subsidiary companies to raise funds externally would create inefficiencies in E.ON's strategy because E.ON's creditors would be structurally subordinated to the debt of the subsidiaries. This would result in increased costs for E.ON, and consequently, all of its subsidiaries.

The articles of incorporation of LG&E and KU contain provisions for the benefit of the holders of their preferred shares that limits the amount of unsecured indebtedness which may be outstanding at any time that the company has any preferred shares outstanding. The unsecured debt limit at LG&E is 20% of the sum of (a) secured debt plus (b) total of capital and surplus. The limit at KU is 25% of the same sum. In order to exceed these limits, LG&E and KU would need to obtain the consent of the holders of a majority of the preferred shares outstanding.

Applicants state that LG&E and KU have significant projected capital and financing needs, including those related to the pending maturity of first mortgage bonds, the anticipated need to finance the installation of pollution control equipment and the planned acquisition of additional electric generation capacity in 2003. The projected capital expenditure budgets for LG&E and KU for 2003 and 2004 are approximately $340 million and $550 million, respectively. The limit on unsecured indebtedness in the Articles of Incorporation of LG&E and KU constrains the financing options available to LG&E and KU to finance these needs, Applicants state. The secured intercompany loans, as long-term debt, will provide a cost-efficient means for LG&E and KU to finance their capital needs, including payment of maturing indebtedness and financing of capital expenditures, according to the Applicants. The secured intercompany loans may also be used to finance the payments due upon termination of the accounts receivable securitization programs of LG&E and KU. The accounts receivable securitization programs, which were scheduled to terminate at the end of July 3003, are in the process of being extended.

The intercompany loans to be made by Fidelia to LG&E and KU will be made according to separate loan and security agreements between Fidelia and the borrower. The agreement documents the intercompany loan, specifying the Best Rate Method for determining the interest rate to be applicable to the loans and providing for the grant of a security interest in the specified collateral. The interest rate on the notes will be set at the time of issuance, based upon the maturity of the notes. At the time of the proposed intercompany loan, the borrowing company will obtain quotes from investment banks for a first mortgage bond issued by that company and quotes for an unsecured bond issued by E.ON. The interest rate

[2] The financing authority granted in the June Order requires that all borrowings by LG&E Energy and its subsidiary companies (the ''LG&E Energy Group'') from an associate company be at the lowest of: (i) E.ON's effective cost of capital; (ii) the lending associate's effective cost of capital (if lower than E.ON's effective cost of capital); and (iii) the borrowing LG&E Energy Group company's effective cost of capital determined by reference to the effective cost of a direct borrowing by the company from a nonassociate for a comparable term loan that could be entered into at that time (the ''Best Rate Method''). E.ON states that the Best Rate Method assures that an LG&E Energy Group company that elects to obtain debt financing from an associate company would not pay more for that financing than it would pay in the capital markets for a similar loan had the borrower sought to finance its capital requirements with independent third parties.

[3] LG&E and KU are currently participants in a utility money pool, through which each company may borrow funds on an unsecured basis. The operation of the utility money pool would not be affected by this proposal, and money pool transactions would remain unsecured.

[4] Currently, LG&E and KU have sufficient capacity under their respective first mortgage bond indenture to issue first mortgage bonds, or alternatively to incur secured intercompany loans, in the amount of the authorization requested.

[5] Common stock equity includes common stock (*i.e.,* amounts received equal to par or stated value of the common stock), additional paid in capital, retained earnings and minority interests.

[6] Common stock to total capitalization ratio is calculated as follows: common stock equity/(common stock equity + preferred stock + gross debt). Gross debt is the sum of long-term debt, short-term debt and current maturities.

applicable to the intercompany loan would be the lower of (a) the average of three quotes obtained from investment banks for an unsecured bond issued by E.ON with the applicable term of the loan and (b) the lowest of three quotes obtained by the borrowing company from investment banks for a first mortgage bond issued by a company with the applicable term of the loan. At this time, the debt of Fidelia is not rated. Therefore, the interest cost of any debt that would be issued by Fidelia to unaffiliated third parties would not be competitive with the rates available to E.ON and LG&E or KU. If in the future Fidelia is able to obtain funds in the capital markets on competitive terms, quotes will also be obtained in a similar manner for debt to be issued by Fidelia.

The collateral for the loans will consist of all of the borrower's now owned or later acquired ''equipment,'' as that term is defined in Kentucky's Uniform Commercial Code (KRS Chapter 355), excluding, however, any equipment that is not subject to the lien under the borrower's first mortgage bond indenture. Only property subject to the lien of the first mortgage bond indenture will be subject to the subordinated security interest. As set out in the definition section of the loan and security agreement, ''equipment'' has the meaning set out in the Uniform Commercial Code (''goods other than inventory, farm products, or consumer goods'') and includes all of the borrower's now owned or later acquired machinery, equipment, furniture, furnishings and all tangible personal property similar to any of the foregoing (other than inventory), together with all improvements, accessories and appurtenances of these and any proceeds of any of these, including insurance proceeds and condemnation awards and all books and records relating to the preceding. Motor vehicles and other property subject to a certificate of title law are not included as collateral. Also, assets such as cash and accounts receivable are not ''equipment'' and would not be subject to the lien.

As noted earlier, the security interest granted in the loan and security agreement is expressly subordinated to the lien of the borrower's first mortgage bond indenture. The subordination provisions provide that Fidelia cannot exercise any rights or remedies against the property of LG&E or KU unless all bonds under the company's first mortgage bond indenture have been paid in full. So long as LG&E and KU are not in default under their respective loan agreements, Fidelia will have no rights against LG&E and KU, except to receive payment of principal and interest on the loans when due, according to the Applicants. Even if a default existed under a loan agreement, Fidelia would have no right to pursue any remedies against the property of LG&E or KU, as applicable, until all of the borrower's first mortgage bonds have been paid in full. Under the existing financing agreements of E.ON, the creditors of E.ON would have no rights against LG&E or KU as a result of the proposed transactions, Applicants state. In any event, the creditors of E.ON could have no greater rights against LG&E and KU than those of Fidelia through the loan agreement, according to the Applicant. Therefore, the Applicants state, so long as LG&E or KU, as the case may be, is not in default of its obligations under the proposed loan agreement, neither Fidelia nor any creditor of E.ON would have any rights against LG&E or KU, as applicable, or their respective property.

CenterPoint Energy, Inc., et al. (70–10148)

CenterPoint Energy, Inc. (''CenterPoint''), 1111 Louisiana, Houston, TX 77002, a registered public-utility holding company, and its direct wholly owned registered holding company subsidiary, Utility Holding, LLC, 200 West Ninth Street Plaza, Suite 411, Wilmington, DE 19801 (together, ''Applicants''), have filed a declaration under sections 6(a) and 7 of the Act and rules 44 and 54 under the Act.

Applicants request authority to engage in certain refinancing transactions, as more fully described below, commencing on the effective date of an order issued under this filing and ending June 30, 2005 (''Authorization Period'').

I. Background

A. The CenterPoint System

CenterPoint is a registered public-utility holding company, created on August 31, 2002 as part of a corporate restructuring of Reliant Energy, Inc. CenterPoint has three public-utility subsidiary companies that are wholly owned (except as indicated below), that own and operate electric generation plants, electric transmission and distribution facilities, natural gas distribution facilities and natural gas pipelines.

CenterPoint Energy Houston Electric LLC (''T&D Utility'') engages in the electric transmission and distribution business in a 5,000-square mile area of the Texas Gulf Coast that includes Houston.

Texas Genco Holdings, Inc. (''Texas Genco'') is a section 3(a)(1) exempt holding company that, through Texas Genco LP, an electric utility company, owns the Texas generating plants formerly owned by the integrated electric utility that was a part of Reliant Energy, Inc.[7]

CenterPoint Energy Resources Corp. (''GasCo'') owns gas distribution systems that together form one of the United States' largest natural gas distribution operations in terms of customers served. Through unincorporated divisions, GasCo provides natural gas distribution services in Louisiana, Mississippi and Texas (Entex Division), Arkansas, Louisiana, Oklahoma and Texas (Arkla Division) and Minnesota (Minnegasco Division). Through wholly owned subsidiaries, GasCo owns two interstate natural gas pipelines and gas gathering systems and provides various ancillary services.

Utility Holding, LLC is a Delaware limited liability company and an intermediate holding company that is registered under the Act. Utility Holding, LLC directly holds approximately 81% of the outstanding common stock of Texas Genco. Utility Holding, LLC is otherwise a conduit entity formed solely to minimize tax liability.

B. Existing Financing Authority

By order dated May 28, 2003,[8] the Commission authorized CenterPoint to pledge its interest in the common stock of Texas Genco (the ''Texas Genco Stock''), in connection with the refinancing of approximately $3.85 billion of CenterPoint debt (''CenterPoint Facility''). The interest rate on borrowings under the CenterPoint Facility, currently 450 basis points over London Interbank Offered Rate, is based on CenterPoint's credit rating. Such borrowings are secured by a pledge of the Texas Genco Stock. Since February 28, 2003, CenterPoint has reduced the principal amount of the CenterPoint Facility by approximately $1 billion, from $3.85 billion to $2.846 billion.

By order dated June 30, 2003 (the ''Omnibus Financing Order''),[9] the Commission authorized CenterPoint and its subsidiaries to engage in certain financing and related transactions through June 30, 2005. Among other

[7] On January 6, 2003, CenterPoint distributed to its shareholders approximately 19% of the common stock of Texas Genco. CenterPoint indirectly owns the remaining approximately 81% of the common stock of Texas Genco.

[8] Holding Co. Act Release No. 27680.

[9] Holding Co. Act Release No. 27692.

things, the Omnibus Financing Order authorized CenterPoint to enter into transactions undertaken to extend the terms of or replace, refund or refinance existing obligations and the issuance of new obligations in exchange for existing obligations, provided in each case that the issuing entity's total capitalization is not increased as a result of such financing transaction. In the Omnibus Financing Order, CenterPoint committed that long-term debt issued by it pursuant to such authorization would be unsecured.

II. Proposed Restructuring of the CenterPoint Facility

Based on the current favorable market conditions, CenterPoint is considering the restructuring of the $2.846 billion CenterPoint Facility to reduce the principal amount and the cost of borrowing under the facility. Depending on the response of the bank lenders, CenterPoint may renegotiate or replace the CenterPoint Facility.

Although the final structure has not yet been determined, Applicants currently contemplate that CenterPoint would repay the CenterPoint Facility with a combination of borrowings and repayments of intrasystem receivables as described below:

(a) CenterPoint would enter into a new, significantly smaller bank facility currently contemplated to be approximately $1.25 billion (the ''New Facility'') that may be secured by a pledge of the Texas Genco Stock. Such secured interest would be subordinate to or *pari passu* with that of the B Loan below.

(b) CenterPoint would enter into a new three-year borrowing (the ''B Loan'') that is secured by a pledge of the Texas Genco Stock. Applicants contemplate that the amount of the B Loan would be at least $500 million and possibly greater than $1 billion, depending on the response of the capital markets.

(c) CenterPoint would issue unsecured debt under the authority in the Omnibus Financing Order; and

(d) The T&D Utility would issue up to $500 million in unsecured debt. The proceeds will be used to repay existing intercompany debt from the T&D Utility to CenterPoint, to repay borrowings from the money pool, to displace financing that might otherwise be done at the T&D Utility and/or for other general corporate purposes.[10]

The proposed financing transactions are intended to reduce the effective cost of money to the CenterPoint system, as well as to reduce dependence on the lenders under the CenterPoint Facility. Applicants state that the transactions would not increase the overall amount of debt or adversely affect the capital structure of any entity or of the CenterPoint system as a whole. Nor would the transactions involve the grant of any new or additional security. The Texas Genco Stock that is pledged as security for the CenterPoint Facility currently would be extended to a different group of lenders; there would be no increased burden on the subject asset.

III. Requested Authority

CenterPoint seeks authority to issue debt that is secured by a pledge of the Texas Genco Stock in an amount of up to $2.85 billion [11] at any one time outstanding during the Authorization Period, where the proceeds of such financing transactions would be used to extend the terms of or replace, refund or refinance existing secured obligations, provided in each case that CenterPoint's total capitalization is not increased as a result of such financing transactions. Any financings under the requested authority would be subject to the following general terms, consistent with those established in the Omnibus Financing Order:

(a) Effective Cost of Money. The effective cost of money on any long-term debt financings occurring pursuant to the authorizations granted under this declaration would not exceed the greater of (i) 700 basis points over the yield to maturity of a U.S. Treasury security having a remaining term approximately equal to the term of the subject debt, but in no event greater than the current rates under the CenterPoint Facility or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies of reasonably comparable credit quality as determined by the competitive capital markets.

(b) Maturity. The maturity of long-term indebtedness would not exceed 5 years.

(c) Issuance Expenses. The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities pursuant to this declaration would not exceed 7% of the principal or total amount of the securities being issued.

(d) Use of Proceeds. The proceeds from the sale of securities in external financing transactions would be used to refinance or acquire, retire or redeem, pursuant to rule 42 under the Act, securities previously issued by CenterPoint or its subsidiaries.

(e) Common Equity Ratio. At all times during the Authorization Period, each of the T&D Utility, GasCo, and Texas Genco, LP (the utility subsidiaries) will maintain common equity of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term debt and short-term debt) as reflected in the most recent Form 10–K or Form 10–Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date therein;[12]

(f) Investment Grade Ratings. No securities may be issued in reliance on the authority requested herein unless: (i) The security to be issued, if rated, is rated investment grade by at least one nationally recognized statistical rating organization as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Securities Exchange Act of 1934 (''NRSRO''); (ii) all outstanding rated securities of the issuer are rated investment grade by at least one NRSRO; and (iii) all outstanding rated securities of CenterPoint are rated investment grade by at least one NRSRO. Applicants request that the Commission reserve jurisdiction over the issuance of securities subject to the investment grade ratings criteria where one or more of the investment grade ratings criteria are not met.

(g) Authorization Period. No security will be issued pursuant to the authority sought herein after the last day of the Authorization Period (which is June 30, 2005), provided, however, that securities issuable or deliverable upon exercise or conversion of, or in exchange for, securities issued on or before June 30, 2005 in accordance with the terms of such authorization may be issued or delivered after such date.

[10] CenterPoint will seek authority necessary to effectuate this part of the refinancing in a post-effective amendment in SEC File No. 10128.

[11] Under the structure outlined above, CenterPoint would issue less than $2.5 billion in secured debt (in the form of the New Facility and the B Loan). The remainder of the CenterPoint Facility would be replaced with a combination of unsecured debt and T&D Utility borrowings. Because, however, the types and amounts of the constituent financings have not yet been finally determined, CenterPoint needs to preserve the ability to replace the CenterPoint Facility in its entirety with lower cost secured debt at the CenterPoint level. CenterPoint will amend the filing to reflect the ultimate form of the transactions. In no event would the overall amount of CenterPoint ssecured debt be increased as a result of the proposed transactions.

[12] Applicants state that net of securitization debt, CenterPoint's projected equity capitalization will be 30% or greater by the end of 2006.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18779 Filed 7–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 28, 2003:

Closed Meetings will be held on Tuesday, July 29, 2003 at 2 p.m. and Thursday, July 31, 2003 at 3:30 p.m., and an Open Meeting will be held on Thursday, July 31, 2003 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, July 29, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Formal orders of investigation; and

Adjudicatory matter.

The subject matter of the Open Meeting scheduled for Thursday, July 31, 2003 will be:

The Commission will hear oral argument on an appeal by Piper Capital Management, Inc. (''PCM''), formerly a registered investment adviser, Marijo A. Goldstein, Robert H. Nelson, Amy K. Johnson, Molly J. Destro (collectively, the ''Respondents''), and the Division of Enforcement from the decision of an administrative law judge.

The law judge found that PCM and Goldstein violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b–5, and Section 34(b) of the Investment Company Act of 1940 by making in various disclosure documents misrepresentations or omissions of material fact relating to the risks associated with an investment in a mutual fund PCM managed. PCM also caused that fund's violations of IC Act Section 13(a)(3) by aiding and abetting the material deviation from the fund's stated investment objective without shareholder consent. However, the law judge found that the Division failed to establish that PCM or Goldstein violated Securities Act Section 17(a) for failure to calculate the fund's net asset value on a daily basis, as required by the IC Act.

The law judge found that the Respondents violated Securities Act Section 17(a), Exchange Act Section 10(b), Exchange Act Rule 10b–5, and IC Act Section 34(b), and willfully aided and abetted and were causes of violations of IC Act Rule 22c–1, IC Act 31(a), and IC Act Rule 31a–1, by manipulating the fund's net asset value on April 4, 5, and 6, 1994.

The law judge censured Respondents and ordered each of them to cease and desist from violating or causing violations of the federal securities laws. Additionally, the law judge revoked PCM's registration as an investment adviser and assessed civil money penalties against it totaling $2,005,000.

Among the issues likely to be argued are:

1. Whether Respondents committed, aided and abetted, or were causes of the alleged violations; and

2. If so, whether sanctions should be imposed in the public interest.

For further information, please contact the Office of the Secretary at (202) 942–7070.

The subject matter of the Closed Meeting scheduled for Thursday, July 31, 2003 will be: Post-argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: July 22, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–19048 Filed 7–22–03; 3:52 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Worldwide Holdings Delaware Corporation; Order of Suspension of Trading

July 21, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Worldwide Holdings Delaware Corporation (''WWDH'') because of questions regarding, among other things: (1) The accuracy of statements made by WWDH in its Commission filings concerning the identity of its majority shareholder(s), (2) the accuracy of statements made by WWDH in its Commission filings concerning the status and amount of WWDH's liabilities, and (3) the accuracy of WWDH's Form 10KSB/A for the year ended December 31, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDST, on Monday, July 21, 2003 through 11:59 p.m. EDST, on Friday, August 1, 2003.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–18896 Filed 7–21–03; 3:21 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48196; File No. SR–NASD–2003–108]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Temporarily Increase the Non-Directed Order Maximum Response Time for Order-Delivery ECNs in Nasdaq's SuperMontage System

July 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2003, the National Association of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a ''non-controversial'' rule change under section 19(b)(3)(A)(iii) of the Act,[3] and paragraph (f)(6) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon receipt of this filing by the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to increase, from 7 seconds to 30 seconds, the maximum time allowed for Nasdaq's National Market Execution System (''NNMS'') Order-Delivery Electronic Communications Networks (''ECNs'') to respond to non-directed orders sent to them by Nasdaq's SuperMontage system (''SuperMontage''). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

(1) No Change.

(A) through (B) No Change.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferenced Order in an amount equal to the system-delivered order or execution.

(i) No Change.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within *30* [7] seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) through (iv) No Change.

(D) No Change.

(1) through (8) No Change.

(c) through (e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 24, 2003, the Commission approved a proposed rule change in which Nasdaq reduced, from 30 seconds to 7 seconds, the maximum time allowed for NNMS Order-Delivery ECNs to respond to non-directed orders sent to them by SuperMontage (''the original proposal'').[6] Under the original proposal, if an Order-Delivery ECN had failed to respond within 7 seconds, the delivered non-directed order would be canceled by SuperMontage and forwarded to the next NNMS Quoting Market Participant in queue for execution, and the ECN's quote at the price level on the side of the market to which the order was delivered would be reduced to zero.[7]

Since the approval of the original proposal, and prior to its implementation, Nasdaq has become aware of internal system processing queues that, in certain circumstances, do not allow adequate time for ECNs to receive and respond to SuperMontage non-directed orders using a 7-second standard. As a result, Nasdaq has determined to temporarily delay implementation of the 7-second maximum response time and revert back to previous 30-second maximum response time. Nasdaq represents that it is currently introducing system enhancements that are expected to eliminate the queuing problem and will submit a proposed rule change to the Commission seeking to implement a reduced ECN non-directed order response time parameter as soon as practicable.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act[8] in general, and with section 15A(b)(6) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NASD has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 48078, 68 FR 39171 (July 1, 2003) (SR–NASD–2003–72).

[7] Nasdaq represents that the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(6).

public interest) after the date of the filing, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission has decided, consistent with the protection of investors and the public interest, to waive the five-day pre-filing notice and 30-day operative date to allow Nasdaq to immediately provide for a 30-second maximum time period for Order-Delivery ECNs to respond to non-directed orders sent to them by SuperMontage.[12] The Commission believes that this should allow ECNs to continue to participate in SuperMontage without their quotes being zeroed out as a result of system queues.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Nasdaq. All submissions should refer to file number SR–NASD–2003–108, and should be submitted by August 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18901 Filed 7–23–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4356]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1 p.m. on Thursday, August 7, 2003, in Room 4438 of the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC, 20950. The primary purpose of the meeting is to prepare for the 8th Session of the International Maritime Organization (IMO) Radio Communications and Search and Rescue (COMSAR) of the Subcommittee on Safety of Life at Sea, to be held at IMO Headquarters in London, England from February 16–20, 2004.

Among the items of particular interest are:

- Maritime Safety Information for GMDSS.
- Development of a procedure for recognition of mobile satellite systems.
- Revision of performance standards for NAVTEX equipment.
- Emergency radiocommunications, including false alerts and interference.
- Large passenger ship safety.
- Emergency radiocommunications, including false alerts and interference.
- Issues related to maritime security.
- Developments in maritime radiocommunication systems and technology, including long range tracking.
- Matters concerning Search and Rescue.
- Developments in maritime radiocommunication systems and technology.
- Planning for the 8th session of COMSAR.

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, SW., Washington, DC 20593–0001; by calling: (202) 267–1389; or by sending Internet electronic mail to *rlevin@comdt.uscg.mil*.

Dated: July 16, 2003.

Margaret F. Hayes,

Director, Office of Ocean Affairs, Department of State.

[FR Doc. 03–18864 Filed 7–23–03; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Patriot Pipeline Crossing of the South Fork Holston River, Fort Patrick Henry Reservoir, Sullivan County, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Record of decision and adoption of final environmental impact statement for the Patriot Project prepared by the Federal Energy Regulatory Commission (FERC).

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 Code of Federal Regulations [CFR] Sections 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act (NEPA).

On June 17, 2003, the TVA Board of Directors decided to grant a 30-year easement over 0.3 acre of Tract No. FHR–1032 to East Tennessee Natural Gas Company (ETNG). TVA would issue the easement under terms provided in the Mineral Leasing Act (30 United States Code (U.S.C.) 185). The easement would allow the company to install a new 24-inch-diameter natural gas pipeline loop on federal land managed by TVA as part of Fort Patrick Henry Reservoir. The natural gas pipeline loop proposed across TVA land in Sullivan County is part of a pipeline expansion and new pipeline construction project known as the Patriot Project. The environmental impacts of the Patriot Project were assessed in a 2002 Environmental Impact Statement (EIS) prepared by FERC. TVA was a cooperating agency in the preparation of this EIS. TVA has independently reviewed the EIS prepared by FERC and found that the EIS adequately addresses the environmental impacts of the Patriot Project. Accordingly, pursuant to 40 CFR 1506.3(c), TVA is herewith adopting FERC's EIS for the Patriot Project. TVA has also determined that the alternatives considered in the EIS and the decision based on them will further the policies set forth in Sections 101 and 102(1) of NEPA.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Team Leader, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville,

Tennessee 37902–1499; telephone (865) 632–6889 or e-mail *hmdraper@tva.gov.*

SUPPLEMENTARY INFORMATION:

Background: On July 26, 2001, ETNG filed an application with FERC for a Certificate of Public Convenience and Necessity under the Natural Gas Act for authorization to construct and operate pipeline facilities in Tennessee, Virginia, and North Carolina. the proposed facilities would involve an expansion of ETNG's existing mainline facilities in Tennessee and Virginia and an extension of a new pipeline across southwestern Virginia and north-central North Carolina. Activities related to the mainline expansion would include compressor station construction and modifications, pipeline uprates, pipeline loop construction, and abandonment at numerous locations between Perry County, Tennessee, and Wythe County, Virginia. The Patriot Extension would involve construction of 99.7 miles of new pipeline and associated meter stations and taps in Wythe, Carroll, Floyd, Patrick, Henry, and Pittsylvania Counties in Virginia, and Rockingham County in North Carolina. The Patriot Project would provide natural gas to Duke Energy electricity generation facilities in Murray County, Georgia, and Wythe and Henry Counties, Virginia. In addition, gas would be provided to NUI Energy Brokers, Progress Energy, Public Service Company of North Carolina, and United Cities Gas Company for distribution to residential, commercial, and industrial customers in Virginia and North Carolina. The project would interconnect with the existing Transcontinental Gas Pipeline Corporation (Transco) facility in Rockingham County, North Carolina.

FERC issued a Notice of intent to prepare an EIS for the proposed Patriot Project on October 2, 2001. Meetings to inform local citizens about the project and to identify environmental issues to be addressed in the EIS were held in Stuart, Wytheville, Hillsville, and Martinsville, Virginia, and in Bristol and Chattanooga, Tennessee, in October and November 2001. TVA responded to the notice informing FERC that TVA would likely have a land use approval action related to the project. Because of its land use jurisdiction, TVA was subsequently included as a cooperating agency in the Draft EIS (DEIS). The Environmental Protection Agency (EPA) published Notice of Availability (NOA) of the DEIS in the **Federal Register** on May 3, 2002. Public meetings to receive comments on the DEIS were held in Martinsville, Stuart, and Hillsville, Virginia, and in Signal Mountain and Bristol, Tennessee, in May 2002. As a cooperating agency, TVA provided comments on the DEIS. During the DEIS public comment period, ETNG filed an amendment to the Patriot Project to add facilities previously included in a FERC certificate for another TVA project. The TVA project facilities had been previously reviewed by FERC when considering construction of a proposed TVA power plant in Franklin County, Tennessee. FERC completed an Environmental Assessment and issued a certificate for the proposed pipeline loops and other improvements needed for the TVA project on December 21, 2001. TVA completed a Final EIS (FEIS) on the proposed Franklin County Power Plant in August 2001 (EPA published NOA of the FEIS on August 31, 2001), but in 2002, decided not to proceed with construction. ETNG subsequently decided to incorporate certain previously approved facilities into its Patriot Project and to request that the previous certificate be vacated upon approval of the Patriot Project. ETNG also requested a realignment of the pipeline loop in the vicinity of the South Fork Holston River to minimize impacts to the Smith Shoals Subdivision and to provide for a shorter river crossing. This and other route variations were evaluated in more detail prior to completion of the FEIS. After considering comments on the DEIS, FERC published the FEIS in September 2002. EPA published NOA of the Patriot Project FEIS in the **Federal Register** on September 27, 2002. FERC issued its certificate on November 20, 2002, authorizing construction of facilities for the Patriot Project subject to certain conditions to minimize impacts to the environment. FERC denied all requests for rehearing on February 27, 2003.

Alternatives Considered

The EIS prepared by FERC considered use of other pipeline systems (System Alternatives), Major Route Alternatives, and Route Variations, in addition to No Action. The most likely System Alternative would involve obtaining gas to meet the project purpose and need from Transco. However, this alternative would involve extensive pipeline construction along routes similar to those required by the Patriot Project. A Mainline Expansion Route Alternative was evaluated in the Signal Mountain area, but was determined to increase impacts to forest land and would not have avoided impacts to nearby residences. The EIS evaluated 13 major route variations that could potentially deliver gas from the existing ETNG system to the area of Eden, North Carolina (Henry County Power, LLC), and Wytheville (Duke Energy North America Wythe, LLC), Virginia. None of the major route variations offered any environmental advantages over the proposed delivery system, and many of these variations augmented the length of the pipeline, increasing the potential for environmental impacts. The EIS evaluated 8 minor route variations to minimize impacts to specific sensitive resources or nearly residences. Six of these variations were not recommended due to increases in environmental impacts, but two were found to offer environmental advantages. A site variation that offered environmental advantages was the South Fork Holston River variation involving TVA land. Finally, the EIS also evaluated eight site alternatives for aboveground facilities, such as compressor stations. None of these site alternatives were found to offer environmental advantages over the proposed route.

For the proposed crossing of the South Fork Holston River (the action that requires an easement from TVA), FERC and TVA considered a route variation that would require the new loop to follow a slightly longer course than that currently followed by the existing pipeline. Since the route originally proposed would have run parallel to the existing pipeline, there would not be enough space for a drill rig and associated staging area. The route variation would allow additional space by moving the river crossing 2,000 feet downstream of the existing river crossing. The route variation is 0.58 miles longer, would increase the land affected during construction by 7.3 acres, and would increase impacts to forest lands by 3.2 acres as compared to the expansion of the existing route across TVA land. However, the variation, by avoiding the widening of the current pipeline crossing through Smith Shoals Subdivision, would cause lesser traffic and noise impacts to nearby residents. Further, drilling along the original pipeline route would also have involved crossing land managed by the Tennessee Wildlife Resources Agency and could have potentially impacted an archaeological site. Impacts to these sensitive resources would be avoided with the route variation. TVA agrees that the FERC alternatives would achieve the purposes of Sections 101 and 102(1) of NEPA because they seek to minimize impacts to important natural features and public land, while allowing energy resources to be transported to end users.

On November 20, 2002, FERC released an order issuing a certificate for the Patriot Project. The certificate issued by FERC on November 20, 2002,

authorizes ETNG to construct the pipeline along the applicant's proposed route, as modified by the South Fork Holston River and Reeds Creek Route Variations. The consultation process under Section 7 of the Endangered Species Act was completed on March 7, 2003, with the issuance of a Biological Opinion by the U.S. Fish and Wildlife Service. The consultation process under Section 106 of the National Historic Preservation Act was completed with the execution of a Programmatic Agreement (PA) between FERC and the Virginia and Tennessee State Historic Preservation Officers on April 29, 2003. FERC was the lead agency in these consultation processes. TVA was a concurring party to the PA.

Decision: TVA has decided to issue a 30-year term easement to ETNG for pipeline purposes under the Mineral Leasing Act (30 U.S.C. 185). The easement would allow ETNG to implement the South Fork Holston Route Variation and to cross 0.3 acre of TVA Tract No. FHR–1032 on Fort Patrick Henry Reservoir at South Fork Holston River Mile 16. In reaching its decision, TVA has reviewed the environmental impacts and public and agency concerns expressed for the entire pipeline project in Tennessee, Virginia, and North Carolina. TVA believes that the EIS process has enabled a thorough review of potential impacts and resulted in modifications and safeguards that would minimize adverse environmental impacts, while still allowing a needed energy supply project to proceed. The choice of the South Fork Holston River Route Variation and the use of directional drill, along with successful implementation of the 69 specific environmental safeguards contained in the November 20, 2002, FERC order, would minimize potential adverse environmental impacts of the proposal.

Environmentally Preferable Alternative

The proposed Patriot Project, as modified by the route variations and environmental protection measures approved by FERC, would avoid impacts to significant environmental resources, while accomplishing the applicant and FERC's goal of additional competitive natural gas supply for Georgia, North Carolina, and Virginia customers. Other alternatives, including the No Action Alternative, may result in greater impacts elsewhere as these energy demands are met through other energy supply system upgrades. Therefore, TVA concludes that the proposed Patriot Project route is an environmentally preferable alternative for supplying natural gas to Tennessee, Virginia, and North Carolina customers.

Environmental Consequences and Commitments

The Patriot Project would affect terrestrial and aquatic resources in a corridor stretching across parts of Tennessee, Virginia, and North Carolina. A total of 2,707 acres of land would be affected by new construction. The mainline expansion portion of the project generally would follow existing pipeline rights-of-way and would have minimal environmental impacts. However, construction would take place within 50 feet of 254 residences. A new pipeline corridor (the Patriot Extension) would be cleared for the pipeline extension and lateral lines between Wytheville, Virginia, and Eden, North Carolina. The Patriot Extension would affect an additional 28 residences. Recreational and public land would be crossed in four locations. In addition to the 0.3 acre of TVA land, the project would cross the Appalachian National Scenic Trail, New River Trail State Park, and Blue Ridge Parkway. Impacts to these properties would be minimized by time-of-year restrictions and the use of horizontal directional drill as opposed to open-trench construction. In exchange for a right-of-way easement to cross the Appalachian National Scenic Trail, the National Park Service would be provided title to 2 acres adjacent to the trail in Smyth County, Virginia. A billboard on Interstate 81, which is visible from the trail, would be removed. The crossing of the Blue Ridge Parkway in Patrick County, Virginia, would take place by horizontal directional drill that enters and exits outside National Park Service land.

About 34 percent of the proposed route is now forested and would be cleared for pipeline construction. A total of 922 acres of forested habitat would be cleared; of this, 404 acres would be permanently converted to herbaceous habitat or industrial use at compressor stations. The project would cross 367 surface water bodies. Major rivers along the route, including the South Fork Holston River, New River, and Smith River, would be crossed by horizontal directional drill to minimize impacts. Dry-crossing methods would be used for other stream crossings. A total of 71 wetland totaling 12.6 acres would be crossed. Of this, about 4.5 acres of forested wetlands would be permanently cleared. The project would not likely adversely affect the gray bat, Indiana bat small whorled pogonia, and large-flowered skullcap, but may affect the small-anthered bittercress and James spinymussel. No direct impacts to small-anthered bittercress plants are expected, and no reasonable and prudent measures (RPMs) were identified by the U.S. Fish and Wildlife Service to minimize ''incidental take.'' A number of RPMs, including time-of-year restrictions, will be implemented to minimize ''take'' of the James spinymussel. Construction activities and operation of compressor stations would have minimal air emissions. Compressor stations would be constructed in such a manner that would minimize potential noise impacts and would be limited to an average day/night level of 55 decibels (dB) on the A-weighted (dBA) scale. Three archaeological sites would likely be adversely affected by pipeline construction.

FERC has adopted mitigation measures to avoid or minimize environmental harm. TVA believes that the measures required by FERC in its November 20, 2002, order would substantially reduce the environmental impacts of this project. These include detailed construction Best Management Practices, use of environmental inspectors, compliance with Section 106 of the National Historic Preservation Act by adherence to the PA, and surveys of properties along the expansion route for the bog turtle, James spinymussel, and small-anthered bittercress. The endangered species surveys have been completed, and formal consultation under the Endangered Species Act has been concluded. The project is not likely to jeopardize the continued existence of the small-anthered bittercress and James spinymussel. Potential adverse effects to cultural resources would be resolved by treatment plans outlined in a PA with the Virginia and Tennessee State Historic Preservation Officers.

In its order issuing a certificate for the project, FERC provided 69 environmental protection-related conditions to minimize project impacts. For the South Fork Holston River crossing at Fort Patrick Henry Reservoir, FERC required (condition no. 67) that the crossing be made by horizontal directional drill. In addition, ETNG was required to submit a site-specific construction and contingency plan for the crossing. The plan was required (1) to identify how construction noise would be reduced during the directional drill, (2) to include projected daytime and nighttime noise levels at nearby residences, and (3) to provide mitigation measures that would be used to minimize noise at the residences if the noise levels would exceed an average level of 55 dBA at any residence.

TVA has reviewed the construction and contingency plan required by FERC condition No. 67. To reduce

construction noise at the directional drill entry and exit sites, ETNG would install a temporary noise barrier system at both the entry and exit points. The barrier would consist of ¾-inch-thick plywood with 2-inch-thick fiberglass duct board attached to 50 to 60 percent of the inside surface. This should provide an 8 to 12 dB reduction of the noise associated with drilling equipment.

No surface disturbance is proposed on the federal property. The property would be used for an underground pipeline to be installed by directional drill from adjacent private property. The subsurface geology of the area where the drill is proposed is limestone. The estimated directional drill success rate for this type of geology is estimated at 80 percent or greater. The three possible modes of failure are estimated to be Pilot-Hole Failure, Reaming Failure, and Pullback Failure. These failures occur when soil or rock collapses on the drilling pipe. To minimize the possibility of failure, a casing pipe will be installed during the pilot-hole operation to ensure that gravel and cobbles will not fall onto the drill string and increase the torque needed to operate the drill pipe. This casing pipe would also reduce teh chance of drilling fluids being released into the environment if a failure occurs.

If directional drill failure does occur, the crossing of the South Fork Holston River would take place by traditional open-cut pipeline construction methods. A backhoe would work off of floating barges in the river. In this contingency, TVA would require further environmental reviews, including compliance with Section 106 of the National Historic Preservation Act due to the possible presence of an archaeological site. The FERC approval contains enforceable conditions that will minimize impacts of the pipeline construction across the TVA land and across other Tennessee Valley private land. Further, the RPMs identified in the Biological Opinion of March 7, 2003, could be independently enforced by the Secretary of the Interior under the Endangered Species Act.

These conditions require:

1. ETNG to adhere to its Erosion and Sedimentation Control Plan of July 20, 2001, contained in Appendix C–1 of the FERC EIS.

2. ETNG to adhere to its Spill Prevention Control and Countermeasure Plan and Preparedness, Prevention, and Contingency Plan of May 7, 2001, contained in Appendix C of the FERC EIS.

3. ETNG to adhere to U.S. Department of Transportation Pipeline Safety Requirements.

4. ETNG to comply with the 69 measures appended to FERC's Order Denying Rehearing, Authorizing Abandonment, and Issuing Certificate of November 20, 2002 (Docket Nos. CP01–415 and CP 01–375).

TVA Commitment List

1. ETNG will install a temporary noise barrier system at both the entry and exit points of the directional drill. The barrier will consist of ¾-inch-thick plywood with 2-inch-thick fiberglass duct board attached to 50 to 60 percent fo the inside surface.

2. A casing pipe will be installed during the directional drill pilot-hole operation to ensure that gravel and cobbles will not fall onto the drill string and increase the torque needed to operate the drill pipe.

3. If directional drill failure occurs, work will stop and additional approvals will be needed from TVA for open-cut construction.

With implementation of these commitments, TVA believes that the impacts of its right-of-way approval under the Mineral Leasing Act will be minimized.

Dated: July 17, 2003.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 03–18797 Filed 7–23–03; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–43]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on this petition received must identify the petition docket number involved and must be received on or before August 13, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15528 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mike Brown, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7653.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 21, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2003–15528.

Petitioner: Honeywell.

Section of 14 CFR Affected: 14 CFR part 21.603(a) and 21.607(d).

Description of Relief Sought: To permit Honeywell, at the time of manufacture, to continue production and support of components during the Technical Standard Order Authorization (TSOA) application process. Honeywell would like this exemption to be in place for one year.

[FR Doc. 03–18902 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34369]

Morristown & Erie Railway, Inc.—Modified Rail Certificate

On June 26, 2003, Morristown & Erie Railway, Inc. (M&E), filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity,* to operate a portion of a rail line known as the Octoraro Branch (also referred to as Line 142), extending for approximately 36.50 miles between milepost 18.0 at Wawa, PA, and milepost 54.50 at the Pennsylvania/Maryland state line near Sylmar, MD.

The Octoraro Branch was previously owned by the Penn Central Transportation Company (Penn Central), and is currently owned by the Southeastern Pennsylvania Transportation Authority (SEPTA). The Octoraro Branch was not included in the final system plan at the time the Consolidated Rail Corporation was formed and, as such, was authorized to be abandoned without further regulatory approval pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94–210. SEPTA acquired the Octoraro Branch from the trustees of Penn Central after it was abandoned in 1976.

M&E states that, until recently, the line was operated by the Brandywine Valley Railroad Company (BVRR) and the purchaser of its rail assets, ISG Railways, Inc. (ISG), pursuant to a modified rail certificate issued in *Brandywine Valley Railroad Company—Modified Rail Certificate,* STB Finance Docket No. 33722 (STB served Apr. 16, 1999).[1] On April 1, 2003, BVRR filed with the Board, pursuant to 49 CFR 1150.24, a notice of intent to terminate service over the Octoraro Branch 60 days from the date of its notice. According to M&E, BVRR and ISG have terminated operations on the line. M&E states that, under an interim operating agreement between SEPTA and M&E, M&E will operate the Octoraro Branch for an interim period while SEPTA completes its procurement process to select a new railroad to provide freight service on the line. M&E also states that it will operate the line using the trade name Octoraro Railroad.

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions,* Finance Docket No. 28990F (ICC served July 16, 1981).

M&E indicates that no subsidy is involved, that there are no preconditions for shippers to meet to receive rail service, and that it has obtained liability insurance coverage.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G Street, NW, Suite 520, Washington, DC 20005.

Decided: July 16, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18577 Filed 7–23–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Pursuant to an exemption that became effective on April 29, 2003, in *ISG Railways, Inc.—Acquisition of Control Exemption—Assets of Keystone Railroad LLC d/b/a Philadelphia, Bethlehem and New England Railroad Company, Conemaugh & Black Lick Railroad Company LLC, Steelton & Highspire Railroad Company LLC, Lake Michigan & Indiana Railroad Company LLC, Brandywine Valley Railroad Company LLC, Upper Merion & Plymouth Railroad Company LLC, Patapsco & Back Rivers Railroad Company LLC, and Cambria and Indiana Railroad, Inc.,* STB Finance Docket No. 34344 (STB served May 22, 2003), ISG was authorized to acquire the rail lines and assets of BVRR.

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Treasury.

ACTION: Notice; correction.

SUMMARY: The Department of the Treasury published a document in the **Federal Register** of June 26, 2003, concerning the alteration of a Privacy Act system of records. The document added an incomplete routine use to the Privacy Act notice.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Privacy Act Officer, (202) 622–0874.

Correction

In notice document 03–16117 beginning on page 38111 in the issue of Thursday June 26, 2003, make the following correction: On page 38113, in the middle column, at the end of paragraph (17) insert the word ''function'' before the period ''.''.

Dated: July 10, 2003.

W. Earl Wright, Jr.,

Acting Chief Management and Administrative Programs Officer.

[FR Doc. 03–18846 Filed 7–23–03; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Thursday,
July 24, 2003

Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608 of the Clean Air Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7530–4]

RIN 2060–AF36

Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Through this action, EPA is amending the Refrigerant Recycling Regulations promulgated under section 608 of the Clean Air Act Amendments of 1990. On February 29, 1996, EPA published a proposed rule regarding a recycling standard under section 608 of the Clean Air Act. Today's action finalizes portions of the February 29, 1996, proposed rule and provides information concerning EPA's intention to continue consideration of the other aspects of the proposal that are not addressed in this final rule. Today's action amends the recordkeeping aspects of the section 608 technician certification program; refines aspects of the refrigerant sales restriction; adopts updated versions of ARI Standard 700 and ARI Standard 740, both of which are industry standards previously adopted by EPA; clarifies the distinction between major and minor service, maintenance, and repair of appliances; amends several definitions; and sets forth procedures for the revocation and/or suspension of approval to certify technicians and refrigerant recycling and/or recycling equipment and revocation and/or suspension procedures for certification as a refrigerant reclaimer.

Today's action also provides readers with notice that three of the items discussed in the February 29, 1996, proposal will not be completed as part of today's action (*i.e.*, the potential adoption of a more flexible method for cleaning refrigerants where the refrigerants will be transferred between appliances with different ownership; the potential adoption of a third-party certification program for reclaimers; and the potential adoption of a third-party certification program for laboratories that verify refrigerant purity or level of contaminants).

The regulatory changes promulgated through today's action will streamline and clarify portions of the existing refrigerant recycling regulations without compromising the goals of protecting public health and the environment or compliance with the requirements of the Clean Air Act Amendments of 1990.

EFFECTIVE DATE: The effective date for this action is September 22, 2003, except for certification of refrigerant recycling only equipment for which this rule becomes effective October 22, 2003.

ADDRESSES: Comments and supporting materials for this final rule are contained in Public Docket No. A–92–01; Environmental Protection Agency; 1301 Constitution Ave., NW., Washington, DC 20460 in room B–108. The docket may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Julius Banks; 202–564–9870; Stratospheric Protection Implementation Branch, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460. The Stratospheric Ozone Information Hotline can also be contacted for further information at 800–296–1996.

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I. Regulated Entities

Entities potentially regulated by this action are those that wish to recover, recycle, reclaim, sell, or distribute in interstate commerce refrigerants that contain chlorofluorocarbons (CFCs) and/or hydrochlorofluorocarbons (HCFCs) and those that service, maintain, repair, or dispose of appliances containing CFC or HCFC-refrigerants. In addition, the owners or operators of appliances containing CFC or HCFC-refrigerants may be potentially regulated. Regulated categories and entities include:

Category	Example of regulated entities
Industry	Refrigerant reclaimers Refrigerant recovery/recycling equipment manufacturers Air-conditioning and refrigeration contractors and technicians Owners and operators of air-conditioning and refrigeration equipment Certifying programs for technicians Refrigerant recovery/recycling equipment testing organizations

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should

carefully examine the applicability criteria contained in section 608 of the Clean Air Amendments of 1990 and 40 CFR part 82, subpart F, published on May 14, 1993 (59 FR 28660). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Refrigerant Recycling Regulations

Final regulations promulgated by the U.S. Environmental Protection Agency (EPA) under section 608 of the Clean Air Act Amendments of 1990 (the Act), and published on May 14, 1993 (58 FR 28660), established a recycling program for ozone-depleting refrigerants recovered during the maintenance, service, repair, and disposal of air-conditioning and refrigeration equipment. The ozone-depleting refrigerants recycling regulations are codified at 40 CFR part 82, subpart F. Section 608 of the Clean Air Act prohibits the knowing venting, release, or disposal into the environment of any class I or class II substance used as a refrigerant during the maintenance, service, repair, and disposal of appliances or industrial process refrigeration equipment. Together with this statutory prohibition, the refrigerant recycling regulations are intended to substantially reduce the emissions of ozone-depleting refrigerants. The refrigerant recycling regulations were amended in final regulations published on November 9, 1994 (59 FR 55912); March 17, 1995 (60 FR 14607); and August 8, 1995 (60 FR 40419).

As promulgated, the refrigerant recycling regulations established recovery/recycling equipment and reclamation certification requirements, developed a technician certification requirement, and established that persons servicing air-conditioning and refrigeration equipment observe certain service practices to reduce emissions. The regulations also require that ozone-depleting compounds contained in appliances be removed prior to disposal of the appliances, and that all air-conditioning and refrigeration equipment, except for small appliances, be provided with a servicing aperture to facilitate recovery of refrigerant. In addition, the regulations restrict the sale of ozone-depleting refrigerants and establish a leak repair requirement for appliances that normally hold a refrigerant charge of more than 50 pounds. Also, the refrigerant recycling regulations require that refrigerant recovered from an appliance but not returned to that appliance or another appliance with the same ownership, be reclaimed by an EPA certified reclaimer.

As promulgated at 58 FR 28712, 40 CFR 82.154(g) and (h) prohibit the sale or offer for sale of any class I or class II substance consisting of used refrigerant, unless it has been (1) reclaimed as defined at § 82.152(q) and (2) reclaimed by a person certified as a reclaimer in accordance with § 82.164. These prohibitions were effective until May 15, 1995. On March 17, 1995, EPA promulgated a final rule extending the effective date of § 82.154(g) and (h) until March 18, 1996, or until EPA could promulgate a rule to adopt new specifications for reclaimed refrigerants based on industry guidelines (60 FR 14610). On February 29, 1996, EPA promulgated a final rule extending the effective date of these recycling prohibitions until December 31, 1996, or until EPA completes a rulemaking to adopt revised specifications for reclaimed refrigerants based on industry guidelines (61 FR 7724). On December 27, 1996, EPA indefinitely extended the effective date of the reclaimed refrigerant specifications of § 82.154(g) and (h) until EPA could complete a rulemaking to adopt the revised specifications (61 FR 68508).

III. Proposed Revisions to the Refrigerant Recycling Regulations

On February 29, 1996, EPA issued a Notice of Proposed Rulemaking (NPRM) that proposed amendments to several aspects of the recycling program (61 FR 7858). The NPRM proposed to allow additional flexibility in situations where refrigerants are transferred between appliances with different ownership; to adopt a third-party certification program for reclaimers and laboratories; to amend the recordkeeping aspects of the technician certification program; and to clarify aspects of the sales restriction. In addition, EPA proposed changes for the testing of recovery/recycling equipment and proposed to adopt the 1995 version of the industry standard ARI Standard 740 (an earlier version of which had been previously adopted by EPA). Also, the proposal included clarifications regarding the distinction between major and minor repairs.

IV. Summary of Comments Received on the Notice of Proposed Rulemaking

EPA received comments from 39 respondents on the refrigerant recycling NPRM. In addition, EPA also received two non-adverse comments on the direct final rulemaking to extend the reclamation requirements that were published in that same issue of the **Federal Register** (61 FR 7724). EPA has addressed the comments and questions submitted by these respondents with the exception of comments related to the three proposed items that the Agency will not address in today's final rule, namely the potential adoption of a more flexible method for cleaning refrigerants where the refrigerants will be transferred between appliances with different ownership; the potential adoption of a third-party certification program for reclaimers; and the potential adoption of a third-party certification program for laboratories.

The majority of commenters offered support for EPA's efforts, while expressing concern on a number of specific issues. One commenter expressed support for EPA's focus on the consumer by providing greater flexibility for technicians. Four commenters stated their approval for EPA's efforts to use the Industry Recycling Guide-2 (IRG–2) as the basis for the proposal; however, these commenters noted that certain elements of IRG–2 were omitted from the proposal and expressed concern for the potential of increased contamination in the refrigerant supply that could ultimately damage the environment. Several commenters did not believe that EPA had fully considered the impact of the proposal on industrial process refrigeration equipment or on large manufacturing facilities. A commenter representing the scrap metal recycling industry, specifically noted approval for EPA's efforts to reduce costs and burdens for the industry and believes that this action will encourage compliance with EPA refrigerant regulations. Commenters supported EPA's recognition of industry advances, equipment improvements, and continued advances in the options available to meet customers' needs, and specifically expressed support for EPA's efforts to update the refrigerant recovery/recycling equipment standards by adopting ARI Standard 740–1995. One commenter, who generally expressed approval for the proposed new certification programs for laboratories and refrigerant recovery/recycling equipment, expressed concern that some elements of the proposal may cause hardships for the refrigeration and air-conditioning industry.

Several commenters did not support portions of the NPRM. One commenter stated that EPA should not be in the business of consumer protection and believed that the Agency's proposed actions run counter to the goals of environmental protection. A couple of commenters were concerned that the comment period was too short and stated concerns regarding their ability to fully consider and address all the issues related to the proposed rulemaking during a thirty-day comment period.

EPA received two requests to extend the comment period for the NPRM.

EPA contacted the commenters after receiving the request for additional time. EPA informed them that while the official comment period would remain 30 days, EPA would accept and respond to comments received after the close of the comment period as long as those comments were received within a reasonable time frame. In today's action, EPA has included consideration and discussion of all comments, including those that were received after the close of the official comment period.

EPA received comment indicating that the refrigerant purity requirements and the sales restriction are basically consumer protection requirements, and that EPA should turn the issue over to the Consumer Products Safety Commission. The commenter believes that EPA may be going beyond its enabling legislation by establishing rules that are aimed at protecting consumers, rather than the environment. Specifically, the commenter believes that the purity of resold recovered refrigerants should not be the interest of EPA since EPA is chartered to protect the ''purity of our environment.'' The commenter further stated that EPA's actions could result in ''promoting rather than eliminating refrigerant dumping into the atmosphere,'' since according to this commenter, ''most refrigerant being recovered from air-conditioning and refrigeration equipment is being vented, and the lack of refrigerant reclamation is a result of the lack of financial incentives for reclamation.'' The commenter believes that this situation is encouraged by manufacturers' associations that are sabotaging efforts to reuse refrigerants. The commenter also questioned the timing of the NPRM and the lack of an Agency requirement for sound service practices such as proper evacuation before charging appliances, installation of filter-dryers, and other proper service techniques.

EPA does not believe that the proposed requirements go beyond the Agency's statutory authority. Under section 608(a) of the Act, as amended in 1990, EPA is required (by no later than January 1, 1992) to promulgate regulations establishing standards and requirements that will maximize the recapture and recycling of refrigerants during the service, repair, or disposal of appliances and industrial process refrigeration equipment. EPA believes that the standards promulgated in the initial final rulemaking (58 FR 28660; May 14, 1993) properly implemented this statutory mandate. The NPRM was based on new developments between 1993–1996 and recognizes that today there are more options available that still maximize the recapture and recycling of refrigerants without compromising the goals of protecting human health and the environment, including the adoption of updated versions of industry specifications for refrigerants and recovery equipment certification (*i.e.*, ARI Standard 700–1995 and ARI Standard 740–1995, respectively). Furthermore, in the May 14, 1993 final rule and the February 29, 1996, direct final rule, EPA noted that the reclamation requirement encourages careful handling of refrigerant and prevents irretrievably contaminated (for instance through mixture with other refrigerants) refrigerant from being introduced into the marketplace, where it could lead to damage to equipment and eventual venting of refrigerant (58 FR 28679; May 14, 1993 and 61 FR 7725; February 29, 1996).

While some of the options discussed in the NPRM (61 FR 7859) clearly would help protect the owners and operators of the appliances (those that EPA believes the commenter has characterized as consumers), the essence of these requirements is not consumer protection, but remains protection of human health and the environment, consistent with EPA's mission. Today's final rule does not change the refrigeration sales restriction requiring that used refrigerant be reclaimed by a certified reclaimer prior to sale to a new owner; therefore, consumers will be afforded a level of protection since this rule restricts the transfer of used refrigerant. While this constitutes an ancillary consumer benefit worth noting, the primary goal of today's action is to minimize the release of ozone-depleting substances to the lowest achievable level by preventing equipment damage and subsequent refrigerant release. Without monitoring the quality of used refrigerant, substandard refrigerant may be charged into an appliance, and the consequent damage to the appliance may result in release of the ozone-depleting refrigerant.

EPA does not share the commenter's belief that today's action will result in the promotion rather than the elimination of illegal refrigerant venting. The phaseout of class I refrigerants has made these refrigerants a commodity worth recovering, and the Agency believes that the marketplace will dictate similar results as class II refrigerants are phased out. A requirement that used refrigerant meets a standard set of specifications, prior to resale, will insure that less venting occurs as a result of equipment failure caused by contaminated refrigerant that would otherwise have been transferred to a new owner without being reclaimed.

In addition, reports provided to EPA do not lead the Agency to believe that there is a lack of reclamation or economic incentives for reclamation. There are more than 50 EPA-certified reclaimers in the United States, who reported that approximately 2.0 and 6.1 million pounds of R–12 and R–22, respectively, were reclaimed during 1999. Similar reports reveal that approximately 1.7 and 7.1 million pounds of R–12 and R–22, respectively, were reclaimed during 2000. Reclamation trends lead the Agency to believe that while reclamation of class I refrigerants will decrease as stocks decrease, that future reclamation of all refrigerants will continue in the foreseeable future.

EPA agrees that sound and responsible service practices are important. EPA has a section of the regulations devoted to required practices (*i.e.*, § 82.156) and requires that technicians follow practices that are designed to reduce the emissions of ozone-depleting substances. EPA hopes that all technicians and contractors comply with reasonable service standards established and adopted by the industry, as well as standards established by EPA to ensure that the highest degree of responsible service is provided. For these reasons, EPA believes that today's action is consistent with the Agency's mandate under the Act.

EPA received comments that supported EPA's efforts while noting that EPA must consider the impact of the NPRM on the industrial process refrigeration industry as well as on other segments of the entire air-conditioning and refrigeration industry. Commenters stated that EPA may have proposed a rulemaking that addressed the concerns and needs of the commercial and residential refrigeration sectors without full consideration of the impacts and potential application of the proposed requirements to other segments of the industry and will do little to assist in the goals of introducing greater flexibility for the industrial process refrigeration industry.

EPA understands these concerns and has been careful to consider the impacts of today's action on the owners and operators of industrial process refrigeration equipment. For example, this rule allows greater flexibility by allowing the transfers of refrigerants between parent companies and their subsidiaries. The community affected by regulations promulgated under section

608 is diverse. Since promulgating the initial final rulemaking in 1993, EPA has amended the regulations several times to address the various needs of specific sectors. For example, in recognition that industrial process refrigeration equipment is custom-built, the August 8, 1995, amendments, to the leak repair requirements (60 FR 40420), provided additional time for owners and operators of industrial process refrigeration equipment to repair, retrofit, or retire equipment when replacement parts are not readily available. EPA believes that the Agency has recognized the diversity of the affected community, and, where appropriate, has tailored specific regulatory actions to address the uniqueness of the affected community.

EPA received a number of comments on the NPRM. EPA addresses many of the issues raised in comments in the preamble of this final rule. EPA also addresses comments in the corresponding *Industrial Recycling Guide-2 Comment Summary* document. This document may be found in EPA Docket Number A–92–01 VIII.

V. Final Rule

A. Contractor Reclamation and Third-Party Certification Programs

EPA proposed more flexible requirements, based on industry guidelines, for recycling refrigerants in the February 29, 1996 NPRM (61 FR 7858). EPA proposed to permit contractors to recycle refrigerants, draw a representative sample of the refrigerants, send the sample to a laboratory that would be certified by an EPA-approved certifying entity, and where the refrigerant sample met the criteria established by ARI Standard 700, to sell the refrigerant and charge the refrigerant into an appliance owned by someone other than the owner of the appliance from which the refrigerant was initially recovered. EPA stated in the NPRM that this approach, based on IRG–2, would provide greater flexibility for contractors and technicians while maintaining the integrity of the refrigerant supply. The proposed protocol relied on recordkeeping and reporting requirements concerning the custody and control of the refrigerant. This proposed protocol would have provided an alternative to the current requirements to send recovered refrigerant to a reclamation facility prior to selling and installing that refrigerant into an appliance with different ownership. Central to this approach was the proposed adoption of third-party certification programs for both laboratories and reclaimers. As proposed, EPA would rely on the technical knowledge of approved third parties to ensure the capabilities of the certified laboratories and reclaimers.

EPA received several detailed comments regarding the proposed structure of and likely participation in these third-party programs. EPA received comments both favoring and opposing contractor recycling and the two third-party certification programs for laboratories and reclaimers. Many commenters suggested changes in the proposed structure for the program and various ways to modify programmatic requirements while still ensuring that refrigerant purity is maintained. Several commenters identified specific concerns regarding the appropriateness of delegating various functions to private-sector third-parties and whether EPA may unintentionally establish a monopoly in a case where only one entity has shown interest in becoming a third party certifying organization. A few commenters opposed the proposed rulemaking, because they believed that the proposal would establish two different reclamation standards: one for contractors and another for refrigerant reclaimers, thus hurting contractors and wholesalers as well as penalizing companies that attempt to comply with the goals of the Act.

These comments have prompted EPA to more broadly explore variations on the proposed program that could meet the needs of both the regulated community and the Agency without compromising the goals of environmental protection, (as noted above, all comments submitted in response to the February 29, 1996, NPRM are contained in Air Docket A–92–01). Therefore, at this time, EPA is not prepared to promulgate final requirements for the following three provisions: (1) The potential adoption of a more flexible method for cleaning refrigerants where the refrigerants will be transferred between appliances with different owners; (2) the potential adoption of a third-party certification program for reclaimers; and (3) the potential adoption of a third-party certification program for laboratories. EPA has decided to separate these three issues from the rest of the NPRM and to complete action on these three provisions in either a separate final rule or possibly by re-proposing some or all of these three items.

This decision to separate these three items is not a signal of the Agency's agreement or disagreement with any of the comments received. EPA is merely indicating a need to further consider these comments prior to taking final action on any of these three proposed provisions. EPA believes a flexible approach to reclamation can be developed that avoids any perceived inappropriate delegations of authority and also does not preclude competition. To ensure that the public has adequate opportunity to comment, if EPA pursues a structure that varies significantly from what was discussed in the February 29, 1996, NPRM, EPA will issue a revised proposal and provide additional opportunity for comments.

Since EPA is not finalizing action on contractor reclamation or the related provisions for third-party certification of reclaimers and laboratories through today's action, EPA is not responding at this time to the comments the Agency received regarding these three items. When EPA takes additional action with regard to these provisions, EPA will respond to the comments in the accompanying notice.

While EPA clearly believes it is appropriate and necessary to delay action on these three items, it has taken steps to avoid a lapse in the current reclamation requirements. Such a lapse could result in widespread contamination of the stock of CFC and HCFC refrigerants. Such contamination could cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Release of CFC and HCFC refrigerants has been found to deplete stratospheric ozone, resulting in increased human and environmental exposure to ultraviolet radiation. Increased exposure to ultraviolet radiation in turn can lead to serious health and environmental effects. Therefore, in a separate rulemaking published in the **Federal Register** on December 27, 1996 (61 FR 68506), EPA extended the effectiveness of the current refrigerant specifications indefinitely.

B. Definition of Reclaim and Adoption of the ARI Standard 700 Specifications for Fluorocarbon and Other Refrigerants

In the NPRM, EPA included a change to the definition of ''reclaim,'' at § 82.152, that included a reference to the updated ARI Standard 700–1995. EPA proposed, in the subsequent ''substitutes'' proposed rule (63 FR 32058; June 11, 1998), to amend the definition of ''reclaim'' to reflect the update of the refrigerant specifications standards at appendix A from standards based on ARI Standard 700–1993 to standards based on ARI Standard 700–1995, and to clarify that to ''reclaim'' refrigerant means to reprocess the refrigerant to all of the specifications of the appendix. The Agency did not receive any comments specifically

addressing the proposed amendment to the definition of ''reclaim'' in either of the proposed rulemakings.

EPA believes that it is pertinent to take final action to clarify the definition of ''reclaim'' in this final rule, since the Agency has found that many in the regulated community believe that purity and/or reclamation equates to characterization of the used refrigerant with the use of a gas chromatograph, while ignoring the presence or failing to test for the presence of various contaminants as required by today's action and delineated in appendix A (*i.e.*, water, chloride, acidity, high boiling residue, particulates/solids, non-condensables, and other impurities including other refrigerants). Therefore, EPA has chosen to amend the definition in the rule being promulgated today, due to the definition's close association with IRG–2 and the importance of the clarification as it applies to refrigerant reclamation and the transfer of used refrigerant.

EPA is adopting the ARI Standard 700–1995, with modification, into regulation as appendix A of 40 CFR part 82, subpart F. At this time, EPA is not adopting the ARI Standard 700–1995 requirements for refrigerant blends that were not included as a part of the initial May 14, 1993, final rule. The adoption of refrigerant blends into appendix A of 40 CFR part 82, subpart F was proposed in the NPRM for the ''substitutes'' rule (63 FR 32064; June 11, 1998) and will be discussed in a subsequent rulemaking.

EPA has always interpreted 40 CFR 82.154(g) and 82.164 to require persons who ''reclaim'' refrigerant to reprocess the refrigerant to *all* of the specifications of appendix A (based upon the ARI Standard 700–1993 and now the 1995 version of the Standard) that are applicable to that refrigerant and to verify that the refrigerant meets those specifications using the analytical methodology prescribed in section 5 of appendix A (*i.e.*, Appendix–93 to ARI Standard 700–1993 and now Appendix–C to the 1995 version of the Standard) or alternate test methods that produce equivalent results. Therefore, EPA has amended the definition of ''reclaim'' by removing the reference to a ''purity'' standard and thereby making the definition more consistent with the full range of requirements provided in appendix A. Failure to abide by these protocols to assure that used refrigerant meets the requirements of appendix A, based upon the ARI Standard 700–1995, and may violate the prohibition against the sale of used refrigerant that has not been ''reclaimed'' (established under § 82.154(g)). This amendment to the definition of reclaim does not add additional requirements upon reclaimers, but ensures that the regulations explicitly reflect EPA's long standing interpretation of what constitutes ''reclaimed'' refrigerant.

C. Revocation and Suspension Procedures

Under 40 CFR part 82, subpart F, failure to abide by any of the provisions of subpart F may result in the revocation or suspension of EPA approval for technician certifying programs, recovery/recycling equipment testing organizations, as well as self certifications by refrigerant reclaimers. The NPRM contained specific revocation and suspension procedures for both the existing recovery and recycling equipment and the technician certification programs, as well as for the proposed third party laboratory and reclaimers programs.

In cases of revocation or suspension, EPA proposed that the Agency notify the certification program in writing regarding the action. The NPRM also specifies procedures concerning the proposed methods for a previously approved certification program to challenge a decision of revocation or suspension. In such cases, the NPRM stated that the program could request a hearing within 30 days; however, the program would have to submit in writing the program's objections and supporting data. If, after review of the request, the Agency agreed that the program had raised a substantial and factual issue, EPA would provide a hearing and assign a Presiding Officer. The Agency could direct that all arguments and presentation of evidence be concluded within a specified time of no less than 30 days from the date that the first written offer of a hearing was made and could direct that the decision of the Presiding Officer would be final. EPA proposed that the decision of the Presiding Officer would be final without further proceedings, unless there was an appeal or motion for review by the Administrator within 20 days of the decision. On appeal, EPA proposed to provide the Administrator with all the powers that he or she would have in making the initial decision, including the discretion to require or permit briefs, oral arguments, the taking of additional evidence, or the remanding to the Presiding Officer for additional proceedings. EPA requested comments on these procedures.

EPA proposed that these procedures would apply to section 608 technician certifying programs, equipment testing organizations, the proposed laboratory certification program, and the certification of reclaimers. However, since EPA is not promulgating third-party certification programs for either laboratories or reclaimers at this time, EPA is not establishing revocation procedures for these programs through today's action.

EPA received comment indicating that the revocation procedures should provide for the consideration of legal as well as factual issues. The final procedures state that EPA will give notice of the basis for the revocation or suspension in advance, and that the program will have an opportunity to demonstrate or achieve compliance with the provisions of subpart F. The program may raise legal issues in responding to EPA's notice.

EPA received comment indicating that the provisions should specify minimum qualifications for, and impartiality of, presiding officers. The commenter states that the presiding officer should be an attorney, preferably an administrative law judge, and should be independent of EPA's enforcement branch or the Department of Justice.

EPA understands this commenter's concerns; however, EPA disagrees with the need to include these criteria. EPA does not believe that it is necessary to specify prerequisites that the Administrator should use for determining who is an appropriate presiding officer. EPA believes that the Administrator will use her best judgement to ensure that a presiding officer is someone who can effectively act in an impartial manner and possesses appropriate knowledge to carry out all necessary duties.

The same commenter also indicated that the procedures for appealing adverse decisions are evidence that the regulations are too detailed. The commenter believes the regulations should be scaled back to impose only those requirements that the commenter believes protect the environment. However, the commenter further noted that the procedures seem fair and appropriate. The commenter states that this is the only program, established under the Clean Air Act, that specifies revocation procedures.

EPA first notes that there are other programs established under authority of the Clean Air Act that specify revocation procedures (*e.g.*, the mobile source regulations at 40 CFR 86.094–30(c)(1)–(5), referencing the hearing procedures at 40 CFR 86.078–6). When drafting the procedures applicable to subpart F of part 82, EPA reviewed where and how similar procedures have been used. Moreover, EPA believes that these regulations, taken in their entirety, serve to protect human health and the

environment, and that providing regulatory text consistent with current practices does not alter that degree of protection. The Agency's ability to suspend or revoke programs based upon their noncompliance with EPA regulations further safeguards the environment.

Through today's action, EPA is promulgating procedures to revoke approval, of third-party certification programs for technician certifying programs and equipment testing organizations and self-certification by refrigerant reclaimers, based on failure to comply with the provisions of 40 CFR part 82 subpart F. Revocation procedures are established for approved equipment testing organizations, technician certifying programs, and reclaimer self certifications by amending 40 CFR 82.160(d), 82.161(e), and 82.164(g). In developing this final rule, EPA decided to apply the procedures to the revocation or suspension of self-certification of reclaimers, as well as the existing third-party certification programs for technician certifying programs and testing organizations for refrigerant recovery/recycling equipment. Accordingly, today's action includes procedures for the revocation and/or suspension of programs approved to certify technicians, programs approved to certify recovery and/or recycling equipment, and self-certification of refrigerant reclaimers. EPA believes that this broader approach will safeguard the environment by establishing greater oversight of reclaimers and third-party certifying programs.

D. Technician Certification and the Sales Restriction

EPA received comments concerning technician certification and the sales restriction that were beyond the issues presented in the NPRM. Comments concerning exemption of the technician certification requirements and the applicability of refrigerants under the Significant New Alternatives Policy (SNAP) will not be addressed in this final rule, but are addressed in the accompanying *Industrial Recycling Guide-2 Comment Summary* contained in EPA Docket Number A–92–01 VIII. All comments that address aspects of the proposed regulatory changes are discussed below.

1. Recordkeeping

EPA stated in the NPRM that the Agency is concerned with the maintenance of records [1] by approved certifying programs for technicians that no longer administer the section 608 certification test. Currently, there are more than 90 EPA-approved technician certification programs that provide testing in accordance with § 82.161 and appendix D to subpart F. These programs administer and grade tests, maintain records, issue certification credentials, and submit reports to EPA twice per calendar year. It has come to the Agency's attention that since the bulk of existing technicians has become certified, and the certification market now focuses on those first entering this field, some EPA-approved certification programs may choose to discontinue providing this service. EPA believes that the likelihood of programs withdrawing will increase over time. EPA stated in the NPRM that if a technician's certification credentials are lost and the program no longer exists, it may not be possible for the technician to receive duplicate credentials, thus denying the technician the ability to purchase class I or class II refrigerants or to legally perform aspects of his or her job.

Currently, programs that have been approved to administer the test must maintain records for at least three years (40 CFR part 82, subpart F, appendix D; 58 FR 28734). However, EPA does not believe that a mechanism exists that would effectively ensure that these records are maintained and are made available to EPA if a program goes out of business. Furthermore, even if the program does continue to maintain the records, access to the records may be difficult if the program itself no longer exists. Therefore, EPA proposed options aimed at ensuring that technicians can receive replacement credentials in instances where their certifying program is no longer in business or in instances where the request for the records exceeds the three-year minimum recordkeeping provision.

EPA discussed several options in the NPRM and requested comment. The first two proposed options would require maintenance of records by EPA. First, EPA could require programs leaving the certification business to forward their records to EPA, and thus the Agency would be responsible for maintaining those records. In the NPRM, EPA noted that the Agency may not have adequate resources for maintaining these records effectively. A second option would be to have the programs send the records to EPA and have the Agency choose a suitable existing certification program to maintain the records and forward the records to that program. EPA stated in the NPRM that the Agency is uncertain as to what criteria should be used for choosing the appropriate program. With more than 90 existing programs, all approved based on the same criteria, EPA would have difficulty in selecting a single program.

A third option would be to have the program that intends to cease operation identify an active program that is willing to accept the records and notify EPA. In this scenario, all pertinent information, including the records relating to the technicians and the testing information would be forwarded to another program. The program discontinuing certification activities would notify EPA of the identity of the certification program that it had identified as the new repository of its records, and the recipient of the records would notify EPA upon receipt of the records. EPA stated in the NPRM that the third option represented the most equitable approach. Therefore, EPA proposed to promulgate the third option. In addition, EPA requested comments regarding whether EPA should extend the minimum length of time that records must be maintained beyond the three-year minimum requirement.

The Agency received several comments supporting option one, but none specifically addressing whether or not EPA should select an appropriate program for the transfer of the records, as detailed in the second proposed option. In response to the first proposed option, one commenter stated that EPA's unwillingness to store certification records is evidence that third party certification of technicians should not be required.

EPA certainly supports the maintenance of records stating which certifying programs have certified which technicians, but EPA is reluctant to have information regarding each individual technician and their test scores maintained by the Agency. In addition, EPA does not believe the Federal government should develop a central registry or database for certified technicians. EPA's reluctance to maintain such a database is based in part on a discussion held during a meeting on April 3, 1995. That meeting was a forum for the EPA-approved section 608 technician certification programs to discuss concerns with EPA regarding the section 608 technician certification program. At that meeting, several representatives of approved technician certification programs expressed their desire to have the programs maintain information rather

[1] Certifying programs must maintain records that include, but are not limited to, the names and addresses of all individuals taking the tests, the scores of all certification tests administered, and the dates and locations of all testing administered.

than EPA. The concept of a national database was discussed and rejected by those directly involved in the certification process. Many of the programs were in operation prior to the 1993 EPA mandate for technician certification; hence, they had maintained such records and representatives felt that the continuing maintenance of such records should remain in the hands of certifying programs. Memoranda concerning the meeting can be found in Air Docket A–92–01.

In response to the third proposed option, one commenter stated that EPA should not impose a recordkeeping burden it is not willing to assume itself. EPA believes that the maintenance of technician certification records would be more efficiently managed by an existing technician certifying program. EPA's decision to propose the third option was consistent with the belief that those that already maintain such records may have data storage and retrieval mechanisms in place that would allow them to efficiently manage record maintenance, as well as the personnel required to handle the volume of inquiries and production of duplicate certification credentials.

Another commenter stated that if EPA would not keep the records, then they have relatively little value. The commenter suggested instead that the technician or their employers make a photocopy of the documents and put it in a file. The commenter believes that EPA should rely on the technicians and their employers to maintain whatever records are necessary.

As to the value of the records, EPA uses the aggregate data submitted by each approved program to monitor the effectiveness of the certification program and to compile information for subsequent changes to the section 608 technician certification test bank. The test bank is maintained by the Agency and is provided to testing organizations in order for the programs to formulate and test technicians in accordance with appendix D of 40 CFR part 82, subpart F.

EPA would like to clarify that the NPRM addressed possible changes to the maintenance of records by certifying programs that no longer offer section 608 certification testing not to the technician's requirement to maintain technician certification cards at the technician's place of business, as required by § 82.166(l). EPA agrees that the technician and, where appropriate, the employer should maintain copies of the credentials themselves to prevent difficulties resulting from lost or misplaced cards. The Agency recognizes that the potential exists for documentation to be lost; however, the recordkeeping requirement at § 82.166(l) does not offer a mechanism to replace lost credentials. EPA believes that it is prudent to have a mechanism to replace the cards so that the technician does not incur the burden of repeating the certification test. EPA also believes that requiring the entity that issues the credentials to also maintain supporting records on technicians that they certify will provide such a mechanism.

EPA also received several comments supporting the third proposed option to allow the records transfer and the subsequent maintenance of records by other EPA-approved certification programs rather than by EPA directly. Two commenters supporting this procedure raised concerns about notification of how to access transferred records. The first stated that the proposed requirement was necessary to ensure the reasonable availability of backup records for technicians requiring duplicate credentials by putting the onus on the discontinued program to see that the records are maintained. The commenter also stated that a mechanism to notify technicians would be necessary. Another commenter raised concerns regarding notification. The commenter stated that it is critical that programs no longer in operation notify EPA and technicians who they have certified.

EPA agrees that programs no longer in operation must notify EPA and is adding this requirement to appendix D in subpart F under the Recordkeeping and Reporting Requirements. This notification requirement will make it easier for the community and regulators to obtain this information directly from the Agency instead of trying to locate each individual technician. EPA hopes that both programs that no longer offer certification and those that voluntarily receive records choose to contact technicians certified under their programs. However, EPA questions the effectiveness of requiring those that are exiting the business to notify technicians. For example, if a previously approved program declares bankruptcy, it would be difficult to enforce such a requirement. Therefore, through today's action, EPA is encouraging programs exiting the certification business to inform technicians about where and how to receive duplicate credentials. In addition, EPA will continue to provide information on defunct programs on its factsheets and websites.

One commenter asked what would happen if no other program wished to accept the records of a program that no longer offered the certification test. EPA communications with the section 608 technician certification programs and comments received on this action indicate that several of the approved programs are willing to accept the responsibility for maintaining this information, but if such a scenario arose, the program would be required to submit the records to EPA where they would be maintained by the Agency until such a time that the Agency could identify a program that would be willing to accept the responsibility and maintenance of such records.

EPA received a few comments regarding extension of the recordkeeping provision beyond three years for technician certification programs. One commenter requested that the Agency require maintenance of the records for at least seven years or preferably indefinitely. Another commenter stated that the Agency should not require a longer retention than the current three-year requirement, especially if the Agency is not willing to retain the records on behalf of programs no longer offering technician certification.

It should be noted that prior to today's final rule, the recordkeeping requirement of appendix D of 40 CFR part 82, subpart F calls for a minimum record retention time frame of three years. In the Agency's day-to-day dealings with the technician certifying organizations, EPA has yet to find a testing organization that does not maintain records on a permanent basis, which for most programs well exceeds the minimum three year period. In response to voluminous requests for programs to assist technicians who have lost their credentials, the Agency has found that operating programs, and especially the more senior programs that existed prior to EPA regulation in 1993, have been able to produce records that date back to their inception. Since the permanent maintenance of certification records appears to be standard operating procedure for section 608 certifying programs, EPA does not believe that an additional significant burden would be placed on certifying programs for technicians by requiring that records be maintained for longer than three years minimum.

Through today's action, EPA is requiring that organizations no longer offering the section 608 technician certification exam notify EPA of their intent to cease operation. The Agency is also establishing a process for the transfer of records for programs exiting the section 608 technician certification business. Such programs will be required to forward records to another

approved program and notify EPA as to which program the records have been given. Programs receiving records from a defunct program will also notify EPA. If no other program is willing to take those records on behalf of the defunct program, the program must forward the records to EPA. In these instances EPA will maintain this information and make it available to technicians as appropriate, until such a time when EPA can locate a program that is willing to accept responsibility and maintenance of the records. EPA is also extending the recordkeeping requirement of appendix D for certifying programs beyond the current three year period by requiring these programs to maintain records for as long as they are in business.

2. Sales Restriction on Refrigerants Approved for Use With Motor Vehicle Air Conditioners (MVACs)

In the NPRM, EPA stated that the Agency was concerned with the ability of technicians certified under a section 609 technician certification program, in accordance with § 82.40, to purchase any ozone-depleting refrigerant in any size container. EPA is concerned with reports that technicians with section 609 certifications are purchasing refrigerants that are not acceptable for use in MVACs, and that such refrigerants are either being improperly installed in MVACs or used by those technicians to service other appliances in violation of the regulations promulgated under Section 608. At the time that the sales restriction was drafted and promulgated in 1993 (58 FR 28714; May 14, 1993), EPA was aware that potential substitutes for R–12 for use in MVACs could include HCFC refrigerants or a refrigerant blend with an HCFC component. Therefore, EPA did not restrict the types of refrigerants that could be purchased by those with section 609 certification. Since that time, EPA has promulgated regulations—the Significant New Alternatives Policy (SNAP)—regarding acceptable and unacceptable alternatives to class I and class II refrigerants in specific refrigeration and air-conditioning end uses, under section 612 of the Act. Since SNAP now clearly delineates which refrigerants are acceptable for use as substitutes to R–12 in MVACs, EPA proposed that the sales restriction should employ a similar provision.

EPA received one comment asking that the Agency review the statutory provision (section 609(e)) barring the sale of small containers of R–12 (and other class I and class II substances suitable for use in MVACs) to anyone other than a technician who has been properly trained and certified under section 609. The commenter requested that EPA lift the restriction on sales of small containers.

EPA has no authority to promulgate regulations that are inconsistent with the statutory language. Therefore, the sales of small containers of class I and/or class II refrigerants must remain restricted pursuant to Section 609(e) of the Act.

EPA received one comment requesting that EPA clarify that SNAP acceptability is not the criterion to decide which substitute refrigerants may be purchased by technicians certified under section 609. The commenter stated that EPA had proposed to specify that MVAC technicians may purchase only those substitute refrigerants that are used in MVACs whether or not the refrigerants have been approved under SNAP.

The Agency proposed to amend the sales restriction to specify that section 609 certified technicians may only purchase CFC–12 (R–12) or SNAP-approved substitutes containing ozone-depleting refrigerants that have been found suitable for use in MVACs. EPA proposed (61 FR 7873) to modify the sales restriction, found at § 82.154(m)(3), to restrict the sale or distribution or the offer for sale or distribution of class I and class II refrigerants to technicians certified by a program approved under § 82.40 and certified in accordance with § 82.34 (*i.e.*, 609 technicians). The modification limits refrigerant purchases, by section 609 technicians, to R–12 and substitute refrigerants, containing a class I or class II substance, that are listed as acceptable for use in MVACs in accordance with all regulations promulgated under section 612 of the Act.

EPA received several comments supporting the proposed change to the sales restriction. Commenters stated that it was appropriate to distinguish between refrigerants used by technicians certified by a section 609 certification program and those certified in accordance with the requirements promulgated under section 608. One commenter stated that the result of EPA's proposed modification would be that the sales restriction would not apply to any refrigerant listed as acceptable under SNAP that did not consist in whole or in part of a class I or class II substance, such as the HFC refrigerant R–134a.

EPA would like to clarify that the sales of refrigerants (including HFC refrigerants such as R–134a) are not currently regulated under the sales restriction unless the refrigerant consists in whole or in part of a class I or class II substance (such as the case with several SNAP-acceptable refrigerant blends). EPA proposed a sales restriction on substitute refrigerants on June 11, 1998 (63 FR 32044), and the sales restriction for substitute refrigerants will be addressed in the final version of that proposed rule.

Therefore, through today's action EPA is amending the refrigerant sales restriction by amending § 82.154(m). EPA is further restricting the sale or distribution or the offer for sale or distribution of class I and class II refrigerants, that are suitable for use in MVACs, to technicians certified by a program approved under § 82.40 and certified in accordance with § 82.34 (*i.e.*, section 609 certified technicians). In accordance with 40 CFR 82.34(b), this modification limits refrigerant purchases, by such section 609 technicians, to CFC–12 (*i.e.*, R–12) and substitute refrigerants, containing a class I or class II substance, that are listed as acceptable for use in MVACs in accordance with all regulations promulgated under section 612 of the Act. Furthermore, only technicians certified under section 609 are allowed to purchase such ozone-depleting refrigerants in containers containing less than 20 pounds of such refrigerant, in accordance with § 82.34(b).

3. Transfers Between Subsidiaries

EPA proposed to permit transfers of used refrigerant between wholly-owned subsidiaries, without requiring refrigerant reclamation prior to such a transfer. As discussed in the NPRM, this proposal arose from specific requests for such relief that EPA had received from several entities that are organized as holding companies with wholly-owned subsidiaries. After considering such requests, EPA stated that the relationship between two subsidiaries should provide sufficient means to ensure that transfers between the subsidiaries would be ''akin to transfers within one company.'' Therefore, EPA proposed to provide an exception to the sales restriction for the transfers of refrigerant between two wholly-owned subsidiaries of the same holding company.

EPA also received requests to permit the transfer of unreclaimed used refrigerant between subsidiaries that are not wholly-owned by the same holding company. As discussed in the NPRM, given that these types of subsidiaries would involve other investors who might have less of a commitment to each of the subsidiaries involved in the transactions, EPA did not believe that transfers between these types of

subsidiaries would be ''akin to those within one organization.'' Therefore, EPA limited the proposed exception to wholly-owned subsidiaries.

EPA received comments regarding the proposal to allow the transfer of unreclaimed used refrigerant between two wholly-owned subsidiaries of the same holding company. One commenter noted that a holding company is a company that exists solely to control a partial or complete interest in other companies. The commenter delineated the type of company classified as a holding company from those considered to be a parent company by noting that by comparison, ''a parent company generally has a business purpose beyond merely holding a partial or complete controlling interest in other companies.'' The commenter did not believe that there is any environmental benefit that could occur by limiting the exception exclusively to holding companies or their subsidiaries. Another commenter distinguished between holding companies and chemical manufacturers making a similar point with regard to their business interests.

EPA received several comments questioning why EPA believes it is necessary to limit transfers to wholly-owned subsidiaries. One commenter, stated that EPA's concerns regarding the transfers of refrigerant are inapplicable in the case of subsidiaries that are majority-owned and/or controlled by a parent corporation. For the purposes of refrigerant transfers, the commenter stated that the ownership dynamic in the case of two majority-owned and/or majority-controlled subsidiaries is no different from that of two wholly-owned subsidiaries. The commenter suggested that EPA revise the regulatory text to permit the transfers of unreclaimed refrigerant between majority-owned and/or controlled entities.

Another commenter, provided a lengthy discussion and several examples of transfers that would not be permitted if the provisions were adopted as proposed. Some of these scenarios included transfers involving the parent company, transfers involving a combined batch of refrigerant that mixes refrigerant drawn from equipment with various ownership within the corporate family, and transfers amongst various majority-owned subsidiaries.[2] The commenter noted that even though it owns less than 100% of some of its subsidiaries, the company has a strong interest in not damaging the refrigeration appliances, particularly those that are located at the parent facility and operated by the parent company personnel. The commenter stated that in order to use its supply of R–12 efficiently, it would like to store the recovered refrigerant together, regardless of whether it comes from an appliance owned by the parent or owned by a subsidiary. The parent would then be able to transfer the refrigerant to another plant owned either by the parent or by a subsidiary. The commenter indicated that what is important is that the knowledge of the refrigerant quality is transferred with the refrigerant, and therefore EPA should draft language that states that transfers between and amongst parent companies, wholly-owned subsidiaries and majority-owned subsidiaries, should be permitted.

The intended effect of EPA's proposal was to create an exception from the sales restriction for transfers that were ''akin to those within one organization.'' EPA agrees with the commenters that transfers between a parent company[3] and its subsidiaries and amongst the subsidiaries of the same parent company should be permitted regardless of whether the parent company is a holding company. EPA believes that transfers between subsidiaries having the same ownership as well as transfers between a subsidiary and the parent company are indeed akin to those within one organization. The owner, being the parent company, has a financial investment and incentive to protect the well being of their air-conditioning and refrigeration equipment, regardless of which subsidiary holds and operates the equipment. Therefore, through this action, EPA has modified the regulatory language at § 82.154(g) to permit transfers between a parent company and one of its subsidiaries or between subsidiaries having the same parent company. Similarly, EPA has added a definition of the term ''parent company'' at § 82.152.

In light of the points made, the Agency has decided that it would be more consistent with the Agency's intent, to broaden the exception to the sales restriction for the transfers of refrigerant. In doing so, majority-owned and majority-controlled subsidiaries will be treated the same as wholly-owned subsidiaries. EPA's rationale for this decision is based on common financial interests of majority owned and majority controlled subsidiaries. EPA agrees with the commenters and believes that transfers among these subsidiaries are ''akin to transfers within one company.'' These subsidiaries have a strong economic interest in not damaging the appliances owned by another subsidiary. EPA agrees with the commenters that majority-owned and majority-controlled subsidiaries should be treated the same as wholly-owned subsidiaries for the purposes of refrigerant transfers. Therefore, through today's action, EPA is making the necessary changes to the regulatory text at § 82.154(g) and § 82.152 to ensure that such transfers can legally occur without prior reclamation of the refrigerant.

4. Transfers Between Federal Facilities

While EPA proposed to permit the transfer of unreclaimed refrigerant between subsidiaries, the Agency did not address the transfer of refrigerants between different Federal facilities owned by the same Federal agency. EPA received comment from the Department of Energy (DOE) requesting that the sales restriction exemption for the transfer of refrigerant between subsidiaries be extended to transfers between government-owned facilities including government-owned contractor-operated facilities. DOE stated that the majority of their facilities are operated by contractors, and the transfers between these entities are akin to transfers between subsidiaries of a parent company.

EPA believes that it is reasonable to consider the transfer of refrigerant between federally-owned facilities as akin to transfers between subsidiaries of a parent company. Therefore EPA has added an exemption to the prohibition at § 82.154(h)(4) to allow for the transfer of refrigerant between facilities owned by the same Federal agency or department. This exemption will hold as long as the facilities involved in the transfer of used refrigerant are owned by the same Federal agency or department. The facilities need not be operated by employees of the Federal facility or department, as long as such facilities are ultimately under the control of the same Federal agency or department.

[2] EPA has responded fully to the scenarios identified in these comments. However, due to the length of the comments, EPA does not believe it is practical to provide a detailed summary of each scenario described by the commenter in this preamble. A complete copy of the comments identified by docket number VIII–I–13 as well as the accompanying ''Response to Comments Document'' is located in the EPA Air Docket: A–92–01.

[3] For purposes of the refrigerant sales restriction at § 82.154(g), the following definition apply: a ''parent company'' means an individual, corporation, partnership, association, joint-stock company, or an unincorporated organization that can direct or cause the direction of management and policies of another entity, through the ownership of shares or otherwise.

5. Other Comments and Amendments to the Refrigerant Sales Restriction

EPA requested comments on the appropriateness of modifying the sales restriction to limit the types of refrigerants available to technicians certified to service and maintain MVACs under section 609. EPA received one comment regarding § 82.154(m)(2) and (8). The commenter stated that EPA intended to reference § 82.154(n) not (m) and that the two provisions would expire prior to promulgation and should therefore not be promulgated.

EPA would like to clarify that the Agency was correct in referencing § 82.154(m). In the May 14, 1993, final rulemaking, EPA promulgated the prohibition against the sale and distribution of class I or class II substances for use as a refrigerant at § 82.154(n). Subsequent amendments to the regulations resulted in the removal of the prohibition against the sale and distribution of class I or class II substances for use as a refrigerant from §§ 82.154(n) through 82.154(m)(2) and (8) (*see* regulatory text amendments at 59 FR 55912; November 9, 1994).

In today's action, EPA is amending the sales restriction regulatory text at § 82.154(m), by deleting the two expired subparagraphs ((m)(2) and (m)(8)) and by adding two subparagraphs at (m)(2) and (m)(4). Former subparagraphs (m)(2) and (m)(8) permitted ''grandfathered'' technicians to purchase refrigerant until May 15, 1995. Since these subparagraphs have expired, this deletion makes no substantive change to the regulations. The subparagraphs that EPA is adding contain exceptions to the sales restriction for persons who employ certified technicians and who comply with the recordkeeping requirement at § 82.166(b). Such persons may purchase refrigerants or have designated representatives purchase refrigerants. As proposed, EPA is providing an exemption to the refrigerant sales restriction for persons who employ at least one section 609 certified technician, provided that the refrigerant is either R–12 or a SNAP-approved substitute for MVACs.

EPA received comments indicating that the prohibitions, at § 82.154(g) and (h), on the sale of used refrigerant that has not been reclaimed by an EPA-certified reclaimer are nearly identical and should be combined. EPA also received one comment requesting that the Agency clarify that refrigerant distributed from salvage facilities be subject to the reclamation requirements for the sale of used refrigerants at § 82.154(g) and (h).

EPA believes that the revised definition of reclaim warrants the combination of paragraphs (g) and (h). Therefore, EPA has combined § 82.154(g) and (h) accordingly. In addition, EPA has always intended the sales restriction on used refrigerant to apply to the sale or distribution or the offer for sale or distribution as specified at § 82.154(m). Therefore, as a point of clarification, EPA has amended § 82.154(g) to specifically include the prohibition to the distribution or offer to distribute used refrigerant. EPA believes that this amendment of § 82.154 simplifies the prohibition.

EPA is also amending § 82.154(m) to include a reference to the § 82.166(b) exception for persons who employ at least one section 608 certified technician. Although the NPRM did not include the reference to § 82.166(b) in proposed § 82.154(m), EPA has included it here in order to enhance the utility of the regulations and make them easier to use by the regulated community. This amendment only references currently existing regulatory language, and does not alter in any way the rights or obligations of any regulated party; therefore, it constitutes a minor technical change.

E. Motor Vehicle Air Conditioner (MVAC)–Like Appliances

MVAC-like appliances are essentially identical to motor vehicle air conditioners (MVACs), which are subject to regulations promulgated under section 609 of the Act. However, because MVAC-like appliances are contained in off-road vehicles, they are not regulated under section 609. Rather, they are subject to regulations promulgated under section 608 of the Act. EPA believes that if the appliance is similar to an MVAC in all relevant respects, it should be treated similarly to an MVAC. Hence, EPA proposed to modify the definition of MVAC-like appliance. Currently, § 82.152 states that, *MVAC-like appliance* means mechanical vapor compression, open-drive compressor appliances used to cool the driver's or passenger's compartment of an off-road motor vehicle. This includes the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R–22 refrigerant. (58 FR 28713).

Commenters sought clarification on what types of appliances the Agency considers as ''MVAC-like.'' The Agency received comments questioning whether § 82.152 can be interpreted to include air-conditioners on mowing, quarrying, and heavy-duty off-road vehicles; planes; boats; and trolleys. Currently the definition of ''MVAC-like appliance'' specifically includes agricultural or construction equipment that does not use HCFC–22 refrigerant. EPA believes that mowing and quarrying appliances, planes, boats, and trolleys, that operate with open-drive compressors that are used to cool the driver's or passenger's compartments, and do not use HCFC–22 refrigerant, are similar to MVACs in all relevant respects and should be treated similarly to an MVAC appliance.

EPA believes, however, that the definition of MVAC-like should include an upper limit on the amount of refrigerant contained in the appliance. Without an upper limit, the definition could be construed to include appliances that are not similar to an MVAC in all relevant respects. For example, a chiller located on a marine vessel could be mistakenly considered MVAC-like. EPA believes that an upper limit would prevent any possible confusion. To ensure consistency between what is an ''MVAC'' and what is ''MVAC-like,'' the refrigerant limit for MVAC-like appliances must be consistent with the largest amount of refrigerant contained in most MVACs. EPA discussed in the NPRM that EPA believes that all MVACs contain less than 20 pounds of refrigerant. Therefore, the adoption of a 20-pound limit for MVAC-like appliances should not exclude any appliance that reasonably should be considered MVAC-like. EPA further stated that placing a charge limit into the definition would provide clarity to those who are unsure about whether a particular appliance qualifies as MVAC-like, specifically where the charge is larger than that of the average automobile air conditioner, yet smaller than that of the average bus air conditioner. Therefore, EPA proposed to add a 20-pound ceiling to the definition of MVAC-like appliance.

EPA requested comment on amending the definition of MVAC-like appliances and whether a ceiling of 20 pounds represents an appropriate cutoff. EPA did not receive any comments or concerns indicating that the 20-pound limit was inappropriate based on the existence of appliances that should meet this definition and contain a larger refrigerant charge. Therefore, through this action, EPA is adding a 20-pound limit to the definition of MVAC-like appliances.

F. Changes to the ARI Standard 740 Test Procedure for Refrigerant Recycling and Recovery Equipment

As proposed, EPA is adopting several changes to the current test procedure for refrigerant recycling equipment found

in 40 CFR part 82, subpart F appendix B, which was based on the Air-Conditioning and Refrigeration Institute's 1993 standard for refrigerant recycling and recovery equipment (*i.e.*, ARI Standard 740–1993) and will now be based upon ARI Standard 740–1995. These changes, all of which have already been adopted by industry into the ARI Standard 740–1995, include: Adoption of a new and more representative method for measuring the equipment's refrigerant recovery rate; measurements of the equipment's recovery rate and final vacuum at high temperatures; a limit on the total quantity of refrigerant that may be released from equipment during non-condensable purging, oil draining, and equipment clearing; a measurement of the quantity of refrigerant left in the condenser of equipment after clearing has occurred; standards for external hose permeability; and a requirement that equipment be tested with recovery cylinders that are representative of those used with the equipment in the field.

In addition, EPA is requiring that equipment that is advertised as ''recycling equipment'' be capable of recycling refrigerants to the contamination levels (except that for ''Other Refrigerants'') set forth in the IRG–2 table of Maximum Contaminant Levels of Recycled Refrigerants in Same Owner's Equipment. As discussed in more detail below, EPA is adopting these changes to help ensure that recycling of refrigerant is maximized and that emissions of refrigerant from refrigerant recovery and recycling equipment are minimized.

EPA received many supportive comments on its proposed adoption of the above requirements. Comments recommending changes to the proposed requirements or requesting more information on their implementation are discussed in more detail below.

1. Measurement of Vapor Recovery Rates

As proposed, EPA is requiring a more representative measurement of recovery equipment's vapor recovery rate. As discussed in the proposal, the ARI Standard 740–1993 was adopted by EPA in the May 14, 1993 final rulemaking as appendix A. Appendix A required measurement of the maximum vapor recovery rate, but two pieces of equipment with identical maximum recovery rates can have very different average recovery rates. This is because equipment characteristics that are not important to vapor recovery rates at the beginning of recovery, such as compressor clearance, become increasingly important as recovery progresses. Although EPA has not established minimum vapor or liquid recovery rates, the Agency believes that the best possible information on these rates should be available to technicians to ensure that they purchase recycling and recovery equipment that best suits their needs. EPA also believes that technicians with adequate recovery equipment are less likely than technicians with slow equipment to interrupt the recovery procedure before it is complete. Thus, EPA is adopting the more recent version of the ARI Standard 740 (*i.e.*, ARI Standard 740–1995), which includes a measure of the average recovery rate.

The new test measures the change in mass and time elapsed as the pressure of the test chamber is lowered from the saturation pressure of the refrigerant at 24°C (75°F) (or from atmospheric pressure, if the refrigerant boils at a temperature above 75°F) to the lower of atmospheric pressure or 10% of the initial pressure. EPA specifically requested comment on adopting ARI Standard 740–1995 as the method of measuring the average recovery rate of recycling and recovery appliances, and on whether there was any reason to retain ARI Standard 740–1993 as the basis for appendix B of 40 CFR part 82, subpart F. EPA received no comments opposing or recommending changes to the more representative method of measuring the vapor recovery rate of equipment.

2. High-Temperature Testing

EPA is adopting the proposed requirement that the vapor recovery rate and final recovery vacuum of recovery and recycling equipment be measured at 40°C (104°F), in addition to 24°C (75°F), for recovery and recycling equipment intended for use with high-pressure refrigerants. As discussed in the NPRM, recovery and recycling equipment used in the field are likely to have to function at temperatures considerably higher than 75°F (61 FR 7866). The performance of recovery and recycling equipment is likely to be affected by such high temperatures. High temperatures raise the saturation pressure of the refrigerant in the recovery tank, thus raising the compression ratio against which the compressor in the recovery device must work to evacuate the refrigerant from an appliance. This can both slow recovery and prevent the equipment from achieving vacuums that it can achieve at 75°F. In some cases, equipment can actually stop running at high temperatures, because pressures rise too high or because the motor overheats or draws too much current in its attempt to recover the refrigerant, tripping safety switches. Underwriters Laboratories (UL) reported that more than 50 percent of refrigerant recovery and recycling units initially failed to operate continuously during high temperature testing that is required as part of UL's safety testing (Air Docket A–92–01, Category: VI–B7–14; 2/22/96 letter to Deborah Ottinger/USEPA, from Glenn Woo and Steve Leva/UL regarding Equipment Construction features affecting certification testing).[4]

EPA believes that the high-temperature tests included in the revised ARI Standard 740 provide useful information on equipment's ability and quickness to draw vacuums at high temperatures. At the same time, these tests are likely to reveal many of the problems that might occur in equipment operated at high temperatures in the field (as has UL's safety test at 104°F), such as thermal or electrical overloading of motors. The test requires that the mixing chamber, a container with a minimum volume of three cubic feet, be filled with refrigerant vapor (but no liquid) at the refrigerant's saturation pressure at 104°F. As in the 75°F test, this vapor is then recovered until the final recovery vacuum is reached. Also as in the 75°F test, the vapor recovery rate is measured while the pressure in the mixing chamber is reduced to 10% of the initial pressure. Because repeating the test with all of the refrigerants for which the equipment is rated would considerably raise the costs of certification, the high-temperature test is performed with one refrigerant, R–22. If the recycling or recovery equipment is not rated for R–22, then equipment is tested with the refrigerant with the lowest boiling point, and therefore the highest saturation pressure for which it is rated. If the equipment is not rated for refrigerants with boiling points in the range of −50° to 10°C, the high-temperature test is not performed.

EPA received two comments concerning the proposed adoption of the high-temperature testing requirement (as part of ARI Standard 740–1995), one in opposition and the other expressing concern that it would be the first of many requirements to test equipment at a variety of temperatures. The commenter, while stating that EPA had set forth a ''convincing explanation why additional testing [at higher temperatures] was necessary,'' expressed concern that EPA ''will have to issue more, and more, and more specifications [regarding testing at

[4] The equipment was redesigned to operate at elevated temperatures before it was UL listed.

different temperatures] as time passes.'' This commenter stated that EPA might now attempt to issue requirements for testing at colder temperatures and could ultimately require testing at ''two-degree increments over a range of 200 degrees.'' The commenter further stated that before the regulations ever required certification, that the commenter was capable of successfully manufacturing its own recycling/recovery equipment. Finally, the commenter concluded that ''EPA is being trapped into specifying ever-greater detail, where no detail is really needed.''

EPA disagrees with this conclusion. First, both the physics of refrigerant recovery and the results of UL's testing show that useful new information about equipment performance is gained through high-temperature testing. While some manufacturers may have caught and corrected performance problems at high temperatures without testing by third parties, others clearly have not. Thus, this ''detail'' is indeed ''needed.'' Second, EPA does not believe that it has been ''trapped into specifying ever-greater detail'' in its equipment certification program. In general, EPA considers both the costs and the benefits of potential changes to its equipment certification standards. In some cases, the additional information that could be gained justifies the cost of additional testing; in others, it does not. For instance, the Agency believes that the additional information that could be gained through requiring a more representative measure of the vapor recovery rate justifies its cost; however, as discussed below, EPA has concluded that the additional information that could be gained through durability testing does not justify the additional cost. Thus, while certification requirements will clearly need to be amended as the industry changes and acquires more experience with recovery technologies, EPA does not anticipate that these amendments will be overly burdensome or unwieldy.

In this case, the high-temperature testing requirement is part of the only set of amendments to the test procedure for recycling and recovery equipment made so far, and reflects a change to this procedure that has already been made by industry. At one time, EPA had contemplated a requirement for low-temperature testing, but the Agency decided not to propose this because (1) performance problems at low temperatures were not as serious as those at high temperatures, and (2) recovery at low temperatures takes place less frequently than recovery at high temperatures, and hence venting of refrigerants is more likely to occur at higher temperatures. Of course, if new information arose indicating widespread equipment failure at low temperatures and subsequent venting of refrigerants, EPA might reconsider imposing a requirement for low-temperature testing. However, since equipment performance can be interpolated reasonably well between measurements at temperature means and extremes, it is very unlikely that EPA would require measurements of equipment performance at two-degree intervals.

3. Use of Representative Recovery Cylinders

As proposed, EPA is adopting the ARI Standard 740–1995 into appendix B2. To further ensure that equipment testing is representative of likely performance in the field, appendix B2 specifies that recovery cylinders used in testing (1) be the same size as those sold with the equipment and (2) be held at the saturation pressure of the refrigerant when testing begins. Use of oversize or evacuated cylinders can yield artificially high recovery rates and artificially deep recovery vacuums, because the recovery compressor does not have to work as hard to move refrigerant into oversize or evacuated cylinders as it does to move refrigerant into normal size cylinders at the saturation pressure of the refrigerant. Both of these requirements codify procedures that are being followed voluntarily by both of the EPA-approved equipment testing organizations.

One commenter expressed concern that this requirement would be inappropriately applied to equipment that is not sold with recovery cylinders, such as equipment that is designed to recover large charges into rail cars or tank trucks. According to ARI and UL, the two approved equipment testing organizations, most manufacturers whose equipment they have certified offer recovery cylinders with their equipment. UL actually requires manufacturers to provide recovery cylinders with the equipment. When equipment is not offered with recovery cylinders, ARI tests the equipment with the size cylinder specified in the manufacturer's instructions. EPA considers the latter approach as reasonable and is modifying appendix B2 (based on ARI Standard 740–1995) to add the phrase ''or specified in the instructions'' to the relevant requirement in section 7.4.1 to clarify that it is permissible. The modified requirement reads, ''Recovery cylinder shall be the same size as normally furnished or specified in the instructions by the equipment manufacturer.''

The same commenter argued that EPA should not object to the use of oversize recovery cylinders in testing, but only to the use of undersize cylinders, because oversized cylinders do not affect the results of certification testing. As described both in the proposal and above, oversize recovery cylinders can distort the results of certification testing. Therefore, EPA is promulgating the requirement that cylinders used in testing be the same size as those sold or specified for use with the equipment.

4. Limiting Emissions from Condenser Clearing, Oil Draining, Purging, and External Hoses

ARI Standard 740–1995 addresses three potential sources of refrigerant emissions that ARI 740–1993 did not address: condenser clearing, oil draining, and emissions from external hoses. As discussed in the NPRM substantial quantities of refrigerant may remain in the condensers of recycling and recovery equipment after refrigerant has been transferred to a recovery tank or back into an appliance. Unless this refrigerant is properly removed, it will either contaminate subsequent batches of refrigerant, a serious concern when switching refrigerants (*e.g.*, from R–12 to R–22), or be released to the atmosphere. There are a number of methods to remove this refrigerant properly; however, some of these methods are more complicated and time-consuming than others. One of the most important factors in the speed and effectiveness of the refrigerant clearing process is the design of the recovery or recycling equipment itself.

To help ensure that the design of recovery equipment minimizes the amount of residual refrigerant that either escapes to the atmosphere or contaminates subsequent batches, ARI Standard 740–1995 includes measurements both of the mass of refrigerant that is released during clearing and of the mass of refrigerant that remains in the equipment after clearing is complete. The mass of refrigerant released during clearing is added to the masses released during the purging of noncondensables and oil draining (see below); this total cannot exceed 3% of the total mass of refrigerant processed through the equipment. The mass of refrigerant that remains in the equipment is not limited, but is reported in the equipment ratings so that prospective buyers can use the information in their purchasing decisions.

To help ensure that the clearing procedure is not excessively complicated or time-consuming, the ARI Standard 740–1995 also requires that

the manufacturer provide methods and instructions that accomplish connections and clearing within 15 minutes. Any special equipment required for clearing, other than a vacuum pump or manifold gauge, must be provided by the manufacturer along with the recovery or recycling equipment, and the clearing procedure cannot rely upon a storage cylinder below the saturated pressure of the refrigerant. In setting up these constraints, ARI recognized that procedures requiring exotic equipment or excessive time are less likely to be followed than procedures that are simple and fast.

Another source of potential emissions is oil draining. Refrigerant oils are designed to mix well with refrigerants so that they flow easily within the refrigeration system. A drawback to this characteristic is that significant quantities of refrigerant can remain entrained in oil that is withdrawn from appliances. Because several system contaminants tend to concentrate in the oil, many recycling and recovery machines include an oil separator that must be periodically emptied. To ensure that oil draining does not result in excessive refrigerant emissions, the ARI Standard 740–1995 procedure measures the mass of refrigerant that is released from oil after its removal from the recovery or recycling equipment. As noted above, the sum of the masses of this refrigerant, the refrigerant emitted during condenser clearing, and the refrigerant emitted during noncondensables purging cannot exceed 3% of the mass of refrigerant processed by the equipment.

One commenter stated that while the 3% limit was appropriate for recycling equipment, it was too loose a standard for recovery only equipment, which does not purge noncondensables and therefore does not lose any refrigerant during this process. The commenter requested a 1% limit instead of 3%. EPA does not conclude that establishment of a 1% limit is warranted at this time; therefore, EPA is today establishing in appendix B2 a 3% limit for both recovery equipment and recycling equipment. In the future, however, EPA may consider lowering this limit for recovery equipment.

The third source of emissions addressed by ARI Standard 740–1995 is external hose assemblies. Although ARI 740–1993 includes a permeability limit for internal hoses of 5.8 g/cm^2/yr, it does not include such a limit for external hoses. ARI Standard 740–1995 establishes a limit of 3.9 g/cm^2/yr at 48.8°C (120°F) for all hose assemblies, to be tested under the conditions of UL 1963. EPA received no comments opposing this limit and is therefore incorporating it into appendix B2.

5. Durability Testing

As discussed in the NPRM, EPA does not believe that it would be useful to require long-term durability testing of recovery and recycling equipment. Factors militating against such a requirement include: (1) EPA does not believe that equipment durability has any effect on refrigerant emissions; (2) durability issues likely will be adequately addressed by free market forces; (3) equipment durability is not likely to be a concern due to technological advances in recovery technology; (4) notwithstanding factor (3), recovery equipment that is likely to experience durability problems is likely to be identified by ARI 740–1995; and (5) requiring durability testing would not be cost-effective, when compared to the relative benefits versus the substantial increased testing costs that would result. EPA received two comments opposing durability testing (61 FR 7869). One commenter ''vigorously oppose[d]'' durability testing. No commenters supported it. For the reasons discussed in the proposal, EPA is not requiring durability testing of recovery and recycling equipment.

6. Clarification of Labeling Requirements for Recovery/Recycling Equipment

EPA is clarifying that manufacturers of refrigerant recovery and recycling equipment must label their equipment in accordance with § 82.158(h) in addition to the labeling requirements established under section 11 of both Appendices B1 and B2 (based upon section 11 of the ARI Standard 740–1993 and 1995, respectively).

The EPA labeling requirement was promulgated as a part of the May 14, 1993, final rule, (58 FR 28682). The labeling requirement states that manufacturers and importers of recovery and recycling equipment certified under 40 CFR 82.158(b) and (d) must place a label on each piece of equipment stating the following: *This Equipment Has Been Certified by [Approved Equipment Testing Organization] to Meet EPA's Minimum Requirements For Recycling or Recovery Equipment Intended For Use With [Appropriate Category of Appliance].*[5] The label shall also show the date of manufacture and the serial number (if applicable) of the equipment. The label shall be affixed in a readily visible or accessible location, be made of a material expected to last the lifetime of the equipment, present required information in a manner so that it is likely to remain legible for the lifetime of the equipment, and be affixed in such a manner that it cannot be removed from the equipment without damage to the label.

Since 1993, EPA has adopted into appendix B, and now Appendices B1 and B2, the requirements of ARI Standard 740 (58 FR 28686). Section 11 of the standard, ''Marking and Nameplate Data,'' specifies that the nameplate shall display the manufacturer's name, model designation, type of equipment, designated refrigerants, capacities and electrical characteristics where applicable. Section 11.2 -Data for Designated Refrigerants, states that for each refrigerant designated, the manufacturer shall include liquid recovery rate, vapor recovery rate, high temperature vapor recovery rate, final recovery vacuum, recycle flow rate, residual trapped refrigerant, and the quantity of refrigerant recycled as applicable.

EPA is clarifying that since the Agency has adopted the ARI Standard 740–1995 into appendix B2 and the ARI Standard 740–1993 into appendix B1, that the nameplate data of section 11 of Appendices B1 and B2 are also required. EPA reiterates that this is not a new requirement, and places emphasis on the labeling requirement by editing section 11 of both Appendices B1 and B2 to reference the labeling requirement at § 82.158(h). Adherence to only the nameplate data requirements of the ARI Standard 740 does not satisfy the labeling requirement of § 82.158(h) or section 11 of Appendices B1 and B2. Furthermore, the Agency is clarifying that the nameplate data and the labeling requirements established at § 82.158(h) are both the responsibilities of the importer or manufacturer of the equipment and not that of the equipment testing organization. Failure of the manufacturer to abide by these requirements is considered a violation of the prohibitions established at 40 CFR 82.154(c).

7. Effective Date of New Standards and Grandfathering of Equipment

EPA did not propose an effective date for the new equipment certification standard. However, several commenters pointed out that equipment testing organizations will require a significant amount of time to finish testing equipment to the new standard.

[5] Appropriate category of appliance is considered as low-, high-, and/or very high-pressure appliances as defined at § 82.152.

Commenters requested that EPA clarify whether equipment manufactured and certified under the old standards before the effective date of the new standard will be grandfathered.

ARI and UL indicated in their comments that it will take approximately one year for the equipment certification organizations to complete the recertification process. However, those comments were written and received in 1996. Since that time, the two equipment testing organizations (*i.e.*, UL and ARI) have independently begun to test to the ARI Standard 740–1995, while continuing to test to the 1993 version of the standard in order to satisfy the certification requirement of § 82.158. Therefore, EPA will not provide a one year period for the transition as proposed, but will ease the financial burden on equipment manufacturers by making the requirement to certify to the 1995 version of the standard effective 60 days after this final rule is published in the **Federal Register**.

However, EPA is ''grandfathering'' existing equipment by maintaining the reference to the 1993 version of the standard as it applies to equipment previously certified to the ARI Standard 740–1993. This is being accomplished by amending § 82.158(b)(1) to reference new appendix B1 (based on ARI Standard 740–1993), such that equipment manufactured on or after November 15, 1993 and before September 22, 2003, must be certified to appendix B1 based on the 1993 edition of the standard. In addition, EPA is maintaining the certification of equipment manufactured before November 15, 1993, that meets the applicable performance standards as set forth at § 82.158(c). Therefore, ''grandfathered equipment'' will include both (1) equipment manufactured on or after November 15, 1993 but before September 22, 2003, that was certified to ARI Standard 740–1993 by an EPA-approved equipment testing organization and (2) equipment manufactured before November 15, 1993 that meets the applicable performance standards as set forth at § 82.158(c). Equipment manufactured on or after September 22, 2003, must be certified to the new standard set forth at § 82.158(b)(2) and appendix B2 (based upon ARI Standard 740–1995).

While EPA is not requiring recertification of equipment previously certified under the conditions of the ARI Standard 740–1993, EPA is requiring that the three-year retest of certified equipment and inspections of equipment at manufacturing facilities conducted in accordance with § 82.158(j) subparagraphs (1) and (2) be done to the standard by which the equipment was originally certified in accordance with § 82.158(a).

8. Requirements for Equipment Advertised as ''Recycling Equipment''

As proposed, EPA is requiring that equipment that is marketed as ''recycling'' equipment be able to recycle the sample of dirty refrigerant to the maximum contaminant levels (except for ''Other Refrigerants'') listed in the table in IRG–2 when tested under the conditions of ARI 740. As noted in the proposal, EPA believes that technicians and contractors should have some assurance that equipment that is marketed as ''recycling equipment'' is capable of recycling used refrigerant to some minimum level. This assurance would be especially useful to contractors who recycle refrigerant for reuse into their customers' equipment. IRG–2 states that recycling equipment that is certified to ARI Standard 740 and capable of consistently recycling refrigerant to the contaminant levels (as detailed in the maximum contaminant level table) should be used. The refrigerant sample used in ARI Standard 740 is representative of a contaminated system, so equipment that can recycle the refrigerant in this test to the contaminant levels of IRG–2 is considered to have acceptable recycling capabilities.

In the proposal, EPA reprinted the IRG–2 table entitled ''Maximum Contaminant Levels of Recycled Refrigerants in Same Owner's Equipment.'' EPA received two comments on this table and its use as a standard for equipment advertised as ''recycling'' equipment. One of the comments noted that it was not appropriate to list maximum contamination by other refrigerants in a standard for recycling equipment, because recycling equipment is not capable of removing contamination by other refrigerants.

EPA agrees and has edited the table accordingly by removing the last row from the chart. The chart in IRG–2 included maximum levels for other refrigerants because its original purpose was to establish a general standard for the level of impurities, including other refrigerants, for refrigerant that is intended to be reused in the same owner's equipment. Thus, it included maximum levels for all the common contaminants of refrigerant, including other refrigerants. EPA has also edited the column labeled Low-pressure systems to reference the refrigerants used by low-pressure appliances for which the recycling equipment is intended.

One commenter asked why the limit for moisture in Table 1 was set at 20 ppm, while the limit for moisture in the ARI 700 standard is set at 10 ppm. The ARI 700 standard establishes a moisture limit of 10 ppm for high-pressure refrigerants and a limit of 20 ppm for low-pressure refrigerants. Table 1 sets a moisture limit of 10 ppm for R–12, and a limit of 20 ppm for other refrigerants.

The moisture limits are set in consideration of both the technical limits of recycling equipment and the tolerance of different types of refrigerants for moisture. The moisture limits in the IRG–2 standard (from which Table 1 is drawn) for most high-pressure refrigerants are slightly higher than those in the ARI Standard 700 in recognition of the fact that even high-quality recycling equipment may not be able to lower moisture levels to those in the Standard. A lower limit was established for R–12 in the IRG–2 Standard from which Table 1 is drawn because water is significantly less soluble in R–12 at its typical operating temperatures than in other refrigerants at their typical operating temperatures. For instance, at 20 degrees F (well within the range of typical evaporator temperatures for both R–12 and R–22 systems), the solubility of water in R–12 is just 16.6 ppm, while the solubility of water in R–22 is 472 ppm. This means that free (undissolved) water forms at much lower moisture levels in systems using R–12 than in systems using other types of refrigerants, and free water can damage or interfere with the functioning of air-conditioning and refrigeration systems by corroding system components or by restricting or even stopping the flow of refrigerant through the system. Thus, it is critical to keep moisture levels well below those where free water can form.

As proposed, EPA is making this change for certification of recycling only equipment effective 90 days after publication of this final rule, in order to give manufacturers the opportunity to change their advertising and marketing materials. Recycling only equipment that is manufactured on or after October 22, 2003, must be certified to appendix B2 (based on ARI Standard 740–1995) and must be able to recycle the dirty refrigerant sample under the conditions of appendix B2 to the levels stated in the following table.

MAXIMUM LEVELS OF CONTAMINANTS PERMISSIBLE IN REFRIGERANT PROCESSED THROUGH EQUIPMENT ADVERTISED AS ''RECYCLING'' EQUIPMENT

Contaminants	Low-pressure (R–11, R–123, R–113) systems	R–12 systems	All other systems
Acid Content (by wt.)	1.0 PPM	1.0 PPM	1.0 PPM.
Moisture (by wt.)	20 PPM	10 PPM	20 PPM.
Noncondensable Gas (by vol.)	N/A	2.0%	2.0%.
High Boiling Residues (by vol.)	1.0%	0.02%	0.02%.
Chlorides by Silver Nitrate Test	No turbidity	No turbidity	No turbidity.
Particulates	Visually clean	Visually clean	Visually clean.

9. Procedure for Updating Approval of Certification Organizations

EPA will continue to recognize the approval of the two existing testing organizations (*i.e.*, UL and ARI) to certify recovery/recycling equipment to the old standards at § 82.158(b)(1) and appendix B1 (based on ARI Standard 740–1993) until September 22, 2003.

The two equipment testing organizations that have been approved by EPA to certify equipment under the old standard at § 82.158(b)(1) are required to submit their intentions to certify equipment under the new standard at § 82.158(b)(2) in writing no later than 60 days after this final rule is published in the **Federal Register**. However, these organizations need not resubmit the information on their test facilities, equipment testing expertise, long-term performance verification programs, knowledge of the standards, and objectivity that they submitted to become approved to certify under § 82.158(b)(1). Instead, they only need state their intention to test equipment under the new conditions of § 82.158 and submit information in those areas where their original application to certify equipment under § 82.158(b)(1) and appendix B1 (based on ARI Standard 740–1993) differs from the requirements at § 82.158(b)(2) and appendix B2 (based on ARI Standard 740–1995).

Upon receipt of the written notification, EPA will continue to recognize the approval of the two existing testing organizations to certify to the new standard at § 82.158(b)(2) and appendix B2 (based on ARI Standard 740–1995) without interruption.

EPA has also amended § 82.160 ''Approved equipment testing organizations,'' by deleting the paragraph that essentially grandfathered recovery/recycling equipment tested by UL and ARI prior to their approval as equipment testing organizations. The paragraph has become obsolete since UL and ARI are the only two programs that were approved by EPA to certify equipment under the conditions of § 82.158.

10. Other Issues Raised by Commenters

One commenter argued that EPA should require that recovery cylinders sold with recycling equipment be supplied with fill-limiting devices to prevent overfilling of cylinders and the injury that can result. EPA decided not to require fill-limiting devices in the final rule published in May 1993, citing several technical problems then involved with their use. However, EPA recognizes that some of these problems may have been resolved; therefore, EPA may consider requesting comment on this issue in a future notice.

The same commenter suggested that the rule include test procedures for evaluating recovery and recycling equipment for use with the new blends entering the marketplace. EPA agrees that this is an important consideration in equipment certification, and the Agency therefore plans to address this issue in the section 608 rulemaking covering recycling of substitutes for CFC and HCFCs.

EPA received a comment stating that paragraph 12 of appendix B inappropriately indicates that the refrigerant recovery/recycling equipment standard is voluntary. Paragraph 12 inadvertently includes the paragraph on voluntary conformance from the ARI Standard 740; therefore, EPA has deleted this paragraph in Appendices B1 and B2, and wishes to clarify that the ARI standards referenced in 40 CFR part 82, subpart F are included into regulation by their adoption into the appendices of subpart F. The ARI standards are not Federal regulations, but the Agency has used them as the basis for Appendices A, B1, and B2. Therefore, the regulated community is required to adhere to the regulations contained in 40 CFR part 82, subpart F (including all applicable appendices), not the ARI standards themselves. This distinction is extremely pertinent for issues such as the previously discussed labeling requirements for certified recovery and recycling equipment, where voluntary conformance to the marking and nameplate data of the ARI Standard 740–1995 does not satisfy the required labeling requirements of 40 CFR 82.158(h).

G. Major and Minor Maintenance, Service, or Repair

Effective July 13, 1993, technicians were required to evacuate air-conditioning and refrigeration equipment to established vacuum levels as stated in Table 1 of § 82.156. EPA also granted an exception to these evacuation requirements for non-major maintenance, service, or repair that did not include the removal of any major components and was not followed by the evacuation of the appliance to the environment, § 82.156(a)(1)(i). EPA believed that such repairs would result in very little release of refrigerant to the environment. EPA did not explicitly define ''*non-major*'' maintenance, service, or repair; instead EPA defined ''*major*'' maintenance, service, or repair as involving removal of the compressor, condenser, evaporator, or auxiliary heat exchanger coil. EPA specified removal of major equipment components, because at that time, EPA intended non-major maintenance, service, or repairs to include procedures that involve uncovering only a small opening in the appliance and that take place in a matter of minutes. After promulgation of the final rule, EPA received several requests for the Agency to expand and clarify the definition of ''major maintenance, service, or repair'' and explicitly define ''non-major maintenance, service, or repair.'' The requesters believed that the definition of major maintenance, service, or repair was too narrow, excluding some types of repairs that result in considerable refrigerant release.

EPA agreed with the requesters that major maintenance, service, or repair had been defined too narrowly; therefore, EPA proposed in the NPRM to add definitions for ''major repairs of

low-pressure chillers'' and ''non-major repair of low pressure chillers.'' EPA requested comments on the proposed definitions; on whether the definitions were specific enough; whether other types of repairs should be considered; and whether the definitions were consistent with industry practices and/or terminology.

EPA received comments that questioned whether the proposed definitions of ''major repairs of low-pressure chillers'' and ''non-major repair of low pressure chillers'' were intended to apply to high-pressure and very high-pressure appliances. The commenters stated that emphasis should be placed on opening of the appliance during maintenance, service, or repair and not just repair of chillers. EPA also received several comments stating that, as proposed, the definitions would only affect repairs while ignoring maintenance and service of appliances. The commenters noted concern over the continued use of the word ''repair'' in the NPRM as it pertains to chillers instead of low-pressure appliances.

In the May 14, 1993, rulemaking, EPA made no distinctions between low-pressure, high-pressure, or very high-pressure appliances in defining major maintenance, service, or repair. The intent of the proposed definition of ''major'' and ''non-major repairs of low-pressure chillers'' was to provide clarity to the definition of major maintenance, service, or repair (at § 82.152) as it pertains to low-pressure chillers. EPA believes that while the intent of the NPRM was met by proposing two definitions, that this approach causes potential confusion by defining ''major'' and ''non-major repairs of low-pressure chillers,'' while only referencing major in the evacuation exemption of § 82.156(a)(1)(i); therefore, EPA is revising the definition of major maintenance, service, and repair without adding new definitions for non-major maintenance, service, and repair of different appliance pressure groups nor is the Agency singling out low-pressure chillers in defining major maintenance, service, or repair.

While EPA proposed changes that specifically addressed low-pressure chillers, the Agency received several comments requesting clarification of the definition of major and non-major repairs of high-pressure and very high-pressure appliances as they relate to the evacuation exemption as described in § 82.156(a)(1) and (a)(2). Several commenters noted that non-major maintenance, service, or repair of high-pressure and very high-pressure appliances currently can be performed at atmospheric pressure without having to draw a deep vacuum and urged EPA to continue to allow this practice. EPA also received requests for clarification on whether or not the proposed changes affect the exceptions to the evacuation requirements for minor repairs that are not followed by evacuation of the appliance to the atmosphere. The commenters stated that the Agency's proposal to add a definition for major repair of low-pressure chillers invalidates the exceptions for high- and very high-pressure appliances and has also prohibited oil changes on high-or very high-pressure appliances without first evacuating the appliance to the levels established in Table 1 of § 82.156.

The revisions to the proposed definition of ''major'' and the deletion of the proposed definition of ''non-major repair of low-pressure chillers'' reflect the initial intent of the NPRM to provide clarity as to what the Agency considers ''major'' and do not affect the evacuation exceptions for persons opening appliances (except for small appliances, MVACs, and MVAC-like appliances) established under the subparagraphs of § 82.156(a)(1) and (a)(2). The required practices established at § 82.156 require that refrigerant be evacuated (to the levels of Table 1) from the appliance prior to opening the appliance, by properly using EPA-certified recovery and/or recycling equipment, except for instances where evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair and such action is not considered ''major'' (§ 82.156(a)(1)(i)). The required vacuum levels vary depending on the type of appliance and the date of manufacture of the certified recovery/recycling equipment, as stated in § 82.156 Table 1. These evacuation requirements still hold true for all types of appliances, including HCFC–22, other high-pressure, and very high-pressure appliances.

Five commenters stated that the proposal to limit the opening requirement to a two-inch diameter for non-major repairs of low-pressure chillers is too restrictive. Several other commenters claimed that some openings in fact may be oval, rectangular, some other shape, or three or more inches wide. Additionally, there can be a difference between the nominal diameter and the actual diameter depending on what ''schedule'' of pipe is used thus determining the thickness of pipe walls.

EPA agrees with these commenters that a two-inch diameter is too restrictive. In response, the Agency has determined that opening requirements should be expressed in square inches of ''flow area'' instead of an external circular diameter. Due to the fact that not all openings are circular, pipes are often fitted with gaskets with a variety of opening shapes. Therefore, the opening requirement for non-major maintenance, service, or repair of low-pressure appliances is not to exceed a ''flow area'' of four (4) square inches. The ''flow area'' should be interpreted to mean the most restricted opening through which refrigerant passes, therefore eliminating any confusion as to whether the definition applies to the nominal or actual pipe diameter or measurements. EPA is using the 4 in 2 as a criterion for designating a repair as ''major maintenance, service, or repair'' while not explicitly defining non-major or restricting the definition to low-pressure chillers as proposed.

One commenter stated that the language requiring technicians to cap or isolate openings during ''non-major'' repairs (of low-pressure chillers) should be revised. The commenter stated that a gas-tight cap may pose a safety risk in the case of pressure build-ups and that technicians should not be required to cap when it may be better to use a cover or plug. Additionally, this commenter believed that technicians should not be restricted to ''isolation valves'' when it may be better to use a blank for cases where openings cannot be covered at all times or instances when the appliance is not in use.

The Agency agrees that the proposed regulations were too prescriptive. The intent of the proposed provisions was to prevent unintentional refrigerant loss during maintenance, service, and repair procedures. However, EPA agrees that technicians must have discretion to select the safest alternative during any service procedure when no isolation valves are present. Since the regulations already allow for the isolation of appliance parts that are to be serviced, EPA has rescinded the proposed definition of non-major repair of low pressure chillers. This allows greater flexibility to technicians who service, maintain, and repair appliances, while maintaining the intent of the NPRM to reduce emissions during such service, maintenance, and repair.

EPA received comments concerning the proposed 15 minute time frame for defining non-major repair. One commenter stated that 15 minutes is too long, since a significant refrigerant loss can occur even when a technician is attempting to maintain atmospheric pressure. The commenter noted that a shorter time period would result in only ''*de minimis*'' releases of refrigerant. Another commenter requested

clarification of whether repairs are still considered non-major if they take more than 15 minutes and the opening is less than two inches and can be capped or isolated.

EPA is setting the 15 minute maximum in its revised definition of ''major maintenance, service, or repair'' as a means of differentiating between major and non-major activities, while not explicitly defining ''non-major'' or limiting the definition to low-pressure chillers. The designation of the maintenance, service, or repair as ''major'' establishes whether or not an exemption to the evacuation required practice is allowed under § 82.156(a). EPA is not establishing or suggesting a time limit for any particular maintenance, service, or repair activity on an appliance. However, maintenance, service, or repair involving the uncovering of a small opening of more than four square inches of flow area for more than 15 minutes will be considered ''major,'' and the exemption to the evacuation required practice will not be allowed. This designation should not be interpreted as an EPA mandate on how much time is required to perform any specific maintenance, service, or repair. In addition, EPA is reiterating that the venting prohibition of the Act exempts ''*de minimis*'' releases associated with good faith attempts to recapture and recycle or safely dispose of class I and class II refrigerants. The circumstances under which releases may be considered *de minimis* are set forth at 40 CFR 82.154(a).

Two commenters stated that technicians should be allowed to hold low-pressure appliances at or below 0 psig, not exactly at 0 psig as the proposal requires. Two other commenters stated that EPA should not require non-major repairs to be performed at 0 psig for the entire appliance if isolation of the portion of the appliance requiring service, maintenance, or repair is possible.

The intent of the proposed rule was to minimize the risk of emission due to diffusion of refrigerant into the atmosphere and air into the system. EPA did not propose to lower the evacuation level for low-pressure appliances when evacuation of the appliance to the atmosphere is not to be performed as required by § 82.156(a)(2)(i)(B). Since the regulatory structure already allows for the evacuation of high- or very high-pressure appliances to no higher than 0 psig and at 0 psig before a low-pressure appliance is opened (§ 82.156(a)(2)(i)(A) and (B) respectively), EPA is rescinding the proposed definition of non-major repair for low-pressure chillers and has revised the proposed definition of major repairs of low-pressure chillers without the condition that such repairs be performed at 0 psig for the entire appliance or the isolated portion of the appliance.

One commenter urged EPA to clarify that the chart of examples of major and non-major repairs contained in the preamble to the February 29, 1996, NPRM is not part of the rule and may not necessarily be correct.

EPA is clarifying that this chart was submitted by a commenter and was included in the proposal only to present a hypothetical classification of certain service procedures and repairs. The chart was included in the NPRM to provide a non-comprehensive list of examples of common repair functions that technicians routinely encounter. It was not intended to represent a definitive compilation and should not be relied upon for categorizing repairs as major or non-major.

One commenter claimed that EPA has no justification to impose stringent new restrictions on non-major repairs in the absence of a cost/benefit analysis and that the Agency's action seems to go against Executive Order 12866. Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Executive Order 12866 defines ''significant'' regulatory action as one that is likely to lead to 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It was determined by OMB and EPA that the proposal to amend the final rule was not a ''significant regulatory action'' under the terms of Executive Order 12866. EPA submitted this final rule to OMB. OMB determined that this rule is acceptable and did not recommend any changes.

In response to commenters' issues discussed above, EPA is rescinding the proposed definitions of ''major'' and ''non-major repair of low-pressure chillers,'' while revising the definition of ''major maintenance, service, or repair'' based on the comments received in response to the NPRM. Major maintenance, service, or repair means any maintenance, service, or repair that involves the removal of any or all of the following appliance components: compressor, condenser, evaporator, or auxiliary heat exchange coil or any maintenance, service; or repair that involves uncovering an opening of more than four (4) square inches of ''flow area'' for more than 15 minutes. Non-major maintenance, service, or repair is considered, but not defined at § 82.152, as any such action that does not fall within the definition of major maintenance, service, or repair.

H. Definition of Small Appliances

As discussed in the NPRM, EPA proposed a definition for small appliances prior to the May 14, 1993, rulemaking that included air-conditioning or refrigeration equipment containing less than one pound of refrigerant charge during normal operation. EPA received a number of comments on that proposal stating that the definition was too restrictive. In response, in the May 14, 1993, rule EPA expanded the definition to a more extensive list of products that were fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of refrigerant. After the promulgation of the final rule, EPA received requests that the Agency expand the definition of small appliance to include units that met the criteria for small appliance but were not specifically listed in the definition. In response to these requests, EPA proposed in the NPRM to add appliances such as refrigerators and freezers that are built for medical or industrial research, as well as those used for commercial purposes, and are hermetically sealed at the factory and contain less than five (5) pounds of charge, to the definition of small appliance. In addition, EPA proposed to make the revised list of small appliances illustrative rather than restrictive in order to include in the definition appliances that meet the criteria but are not specifically listed.

EPA received comments that the proposed definition of ''small appliance'' would make the evacuation requirements more restrictive for some medical small appliances that consist of cascade refrigeration systems utilizing very high-pressure refrigerants. The commenters believed that the more stringent requirements would lead to increased operational costs.

EPA did not propose to change the evacuation requirements for small appliances. As proposed, EPA is amending the definition of ''small appliance'' at § 82.152, but this change merely clarifies that the list of small appliances used in the definition is illustrative rather than restrictive. Furthermore, the evacuation requirements for small appliances as established at § 82.156(a)(4) have not changed. EPA requires persons opening small appliances for maintenance, service, or repair to: (1) Recover 80% of the refrigerant in the small appliance when using recycling and recovery equipment manufactured before November 15, 1993; or (2) recover 90% of the refrigerant in the appliance when the compressor in the appliance is operating, or 80% of the refrigerant in the appliance when the compressor in the appliance is not operating, when using recycling or recovery equipment manufactured on or after November 15, 1993; or (3) evacuate the small appliance to four inches of mercury vacuum.

As an additional point of clarification, appliances that use any class I or class II refrigerant and meet the definition of ''small appliance'' must follow the evacuation requirements described above. For example, if an appliance meets the definition of small appliance and uses a refrigerant typically associated with a very high-pressure appliance, such as R–13, the technician opening that small appliance would have to adhere to the evacuation requirements for small appliances established at § 82.156(a)(4) not the evacuation requirements established for very high-pressure appliances (*i.e.*, 0″ Hg vacuum).

One commenter requested that the Agency further expand the proposed definition of small appliances and include a list of all known appliances that meet the current definition. This commenter believes that the inclusion of a list of these items will remove any confusion regarding which appliances meet the definition but are not included in the proposed revised definition.

EPA believes that an illustrative list provides the most inclusive option for the definition of small appliances and that a restrictive list may further omit several appliances that meet both the spirit and the criteria of the definition. EPA does not want to make the definition excessively long or overly difficult to read. Therefore, EPA has decided not to include an exhaustive list of appliances that meet the definition for small appliances.

Additionally, the commenter stated that a list of appliances would enable technician certification programs, employers, technicians, sales and service companies and other business owners to better determine the type of technician certification that is necessary to properly service these appliances. Other commenters also expressed concern that the proposed definition of small appliance may require technicians to obtain both Type I and Type II certification in order to maintain small appliances.

EPA has not changed the technician certification requirements for persons servicing, maintaining, or repairing small appliances. Under § 82.161(a)(1), technicians who maintain, service, or repair ''small appliances'' as defined in § 82.152 must have a Type I certification. Technicians do not need Type II certification in order to maintain, service, or repair small appliances. In fact, § 82.161(a)(2) specifically states that Type II certification is not required to service, maintain, or repair small appliances.

One commenter noted an irregularity in § 82.161. The Agency is making an editorial correction to § 82.161(a)(2) so that it will refer to § 82.152 rather than § 82.152(x). Section 82.152 is the Definitions section and does not contain paragraphs designated by letters.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether this proposed regulatory action is ''Significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that 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 entitlement, 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.

EPA submitted this final rule to OMB. OMB determined that this rule is acceptable and did not recommend any changes.

B. Paperwork Reduction Act

The information collection requirements in this rule were submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1626.07, and OMB Control number: 2060–0256) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460; by email at *farmer.sandy@epa.gov*; or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *www.epa.gov/icr.*

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0256.

EPA is concerned with the maintenance of records for approved certifying programs for technicians that no longer administer the section 608 technician certification test. These programs administer and grade tests, maintain records, issue certification credentials, and submit reports to EPA twice a year. EPA expects that programs withdrawing will increase over time and there is a concern that if a technician's certification credentials are lost and the program no longer exists, it may not be possible to receive duplicate credentials.

This rule is an amendment to the recycling standards under section 608 of the Clean Air Act. It amends the recordkeeping provisions by requiring programs that no longer offer section 608 technician certification programs to notify the agency. EPA does not expect cost associated with the withdrawal procedures to be a significant burden, since programs were previously required to maintain records for a minimum of three years, especially since this provision will only involve a notification of withdrawal and transfer of these records. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and

disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. EPA does not expect this rule to be a burden on time or financial resources.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that has fewer than 500 employees for most manufacturing and mining industries or 100 employees for all wholesale trade industries; assets of less than $5 million for most retail and service industries, $27.5 million for most general and heavy construction industries, $11.5 million for all special trade contractors, or $0.75 million for most agricultural industries; (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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

This rule affects those entities that recover, recycle, reclaim, and sell CFC and HCFC refrigerants. This rule also affects entities that maintain, service, repair, or dispose of appliances containing CFC or HCFC refrigerants. Entities affected by this action are refrigeration and air-conditioning contractors, refrigerated transport service dealers, scrap metal recyclers, and automobile dismantlers and recyclers. Additional entities affected include EPA-authorized Section 608 Technician Certification Programs and equipment testing organizations, refrigerant wholesalers and purchasers, refrigerant reclaimers, and other establishments that maintain, service, repair, or dispose of appliances containing ozone-depleting refrigerants.

After considering the economic impacts of today's final rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that today's rulemaking could potentially affect approximately 71,150 small entities. These small entities may experience compliance costs ranging from 0.001 percent to 0.13 percent based on their estimated annual sales and revenues.

EPA performed a detailed screening analysis in 1992 of the impact of the section 608 refrigerant recycling regulations on small entities. The methodology of this analysis is discussed at length in the May 14, 1993, regulation (58 FR 28710), and its associated Information Collection Request (ICR) No. 1626.07/OMB No. 2060–0256.

In support of today's rule, EPA has prepared a Small Business Screening Analysis. This analysis assesses the economic impacts on small entities that are anticipated to result from this amendment to the section 608 refrigerant regulations. The screening analysis is not meant to estimate the total burden for compliance with the section 608 refrigerant regulations, but rather any additional burden that might result from today's action amending the section 608 regulations. The table below summarizes the number of small entities potentially affected by today's rule, according to North American Industry Classification System (NAICS) code, and shows the estimated economic impact due to the rule on an average firm within each NAICS code.

NAICS sector	Industry description	Number of small entities	Number of potentially affected small entities	Estimated average annual sales and revenues (based on average value of shipments per affected small entitiy)	Average economic impact (percent)
81131	Commercial Industrial	16,890	16,890	$681,264	0.10
811412	Appliance Repair and Maintenance	5,075	5,075	488,399	0.13
42193	Recyclable Material Wholesalers (Metal scrap and waste)	2,338	503	4,149,229	0.02
541380	Environmental Test Laboratories/Services	NA	<100	NA	NA
443111	Household Appliance Stores	10,484	8,842	713,426	0.09
23511	Plumbing, Heating, Air Conditioning Contractors	84,876	24,767	1,041,843	0.06
42111	Automobile and Other Motor Vehicle Wholesalers	737	362	109,314,837	0.001
42114	Motor Vehicle Suppliers and New Parts Wholesalers	2,393	2,148	763,965	0.09
44131	Automotive Parts and Accessories Stores	14,320	12,560	896,028	0.07

This table illustrates that while there is additional impact on the regulated community, there is no significant economic impact on a substantial number of small entities. EPA has estimated the number of small entities according to their NAICS, and projected the number of those entities that might be affected by today's action. The additional burden of today's action was then estimated for an average firm within each industrial sector, from which the economic impact to the average firm in the given sector could be determined as a ratio of the additional burden and the estimated average annual sales and revenues.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has attempted to reduce the impact of this rule on small entities. This rule grants greater flexibility to small businesses working with refrigerants. For instance, this rule permits persons servicing small appliances and owners of refrigeration and air-conditioning equipment to transfer refrigerant on a wider basis than previously allowed. Today's final rule allows the transfer of refrigerant to different equipment as long as the equipment is owned by the same parent company. Prior to today's action, such refrigerant transfer was limited to equipment owned by one entity unless the refrigerant was first

reclaimed by an EPA-certified reclaimer. In essence today's final rule allows transfer of used refrigerant anywhere in the country, where the two pieces of equipment, have the same parent company (*i.e.*, they are subsidiaries of the parent company) without the additional cost of refrigerant reclamation.

This rule also eases the economic impact on refrigerant recovery equipment manufacturers by reducing the number of performance standards from two to one. Prior to this rulemaking refrigerant recovery/recycling equipment manufacturers were mandated to certify their equipment to the 1993 version of the ARI Standard 740, but many also certified to the 1995 version of the standard to maintain the marketability of their products. This rulemaking will reduce the extra burden on this segment of the regulated community by eliminating the requirement to comply with the outmoded 1993 ARI Standard 740, and mandating the use of the 1995 version of the standard for newly manufactured refrigerant recovery/recycling equipment.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government Agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule amends the section 608 refrigerant recycling standards to ensure that certain service practices are conducted, that reduce emissions, establish equipment and reclamation certification requirements. These standards are amendments to the recycling standards under section 608 of the Clean Air Act. Many of these standards involve reporting requirements and are not expected to be a high cost issue. In some situations, this rule provides greater flexibility and cost savings, such as the transfer of refrigerants between a parent company and its subsidiaries, the new definition of small appliances, and the establishment of a non-major maintenance, service, or repair of appliances. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the reasons outlined above, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255; August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The regulations promulgated under today's action are done so under title VI of the Act which does not grant delegation rights to the States. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, 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.''

This final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

The requirements in this final rule are directed to economic entities that either recover, recycle, reclaim, sell, or distribute in interstate commerce refrigerants that contain CFCs and/or HCFCs, and those that service, maintain, repair, or dispose of appliances containing CFC or HCFC-refrigerants.

G. 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 EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those ''economically significant'' regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045, because it is not based on health or safety risks. The purpose of this rule is to protect human health and the environment from increased amounts of UV radiation by amending the recycling standards for CFC and HCFC

refrigerants. While the proposed version of today's rule was not determined to be ''economically significant,'' EPA has submitted today's final rule to OMB for review. OMB classified this final rule as ''consistent without change.''

H. Executive Order 13211: Actions 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. Further, we have concluded that this rule is not likely to have any adverse energy effects, since it addresses the means by which CFC and HCFC refrigerants are recovered, recycled, reclaimed, sold, or distributed in interstate commerce.

I. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires Federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a Federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the Agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This rule is rule is an amendment to the recycling standards under section 608 of the Clean Air Act. This rule adopts an updated version of the industry standard for refrigerant recovery/recycling equipment (*i.e.*, ARI Standard 740–1995) into regulation as appendix B2 of 40 CFR part 82, subpart F. This standard, as well as the 1993 version of the standard that was adopted into regulation, was developed by the Air Conditioning and Refrigeration Institute (ARI). ARI is the national trade association representing manufacturers of more than 90 percent of U.S. produced central air-conditioning and commercial refrigeration equipment.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 22, 2003.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential products.

Dated: June 20, 2003.

Christine Todd Whitman,

Administrator.

■ Part 82, chapter I, title 40, of the Code of Federal Regulations, is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Section 82.152 is amended by revising the definition for ''Certified refrigerant recovery or recycling equipment,'' ''Major maintenance, service or repair,'' ''MVAC-like appliance,'' ''Reclaim,'' and ''Small appliance,'' and by adding a new definition for ''Parent company'' in alphabetical order to read as follows:

§ 82.152 Definitions.

* * * * *

Certified refrigerant recovery or recycling equipment means equipment manufactured before November 15, 1993, that meets the standards in § 82.158(c), (e), or (g); equipment certified by an approved equipment testing organization to meet the standards in § 82.158(b), (d), or (f); or equipment certified pursuant to § 82.36(a).

* * * * *

Major maintenance, service, or repair means any maintenance, service, or repair that involves the removal of any or all of the following appliance components: compressor, condenser, evaporator, or auxiliary heat exchange coil; or any maintenance, service, or repair that involves uncovering an opening of more than four (4) square inches of ''flow area'' for more than 15 minutes.

* * * * *

MVAC-like appliance means mechanical vapor compression, open-drive compressor appliances with a normal charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of an off-road motor vehicle. This includes the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R–22 refrigerant.

* * * * *

Parent company means an individual, corporation, partnership, association, joint-stock company, or an unincorporated organization that can direct or cause the direction of management and policies of another entity, through the ownership of shares or otherwise.

* * * * *

Reclaim refrigerant means to reprocess refrigerant to all of the specifications in appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700–1995, Specification for Fluorocarbons and Other Refrigerants) that are applicable to that refrigerant and to verify that the refrigerant meets these specifications using the analytical methodology prescribed in section 5 of appendix A of 40 CFR part 82, subpart F.

* * * * *

Small appliance means any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

* * * * *

■ 3. Section 82.154 is amended by:

■ a. Revising paragraph (g);

■ b. Removing and reserving paragraph (h);
■ c. Revising introductory text of paragraph (m);
■ d. Revising paragraphs (m)(2) through (m)(8); and
■ e. Designating paragraph (m)(9) as new paragraph

(o) To read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) No person may sell, distribute, or offer for sale or distribution for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined in § 82.152 by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance and recycled in accordance with § 82.34(d);

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance;

(4) The class I or class II substance is being transferred between or among a parent company and one or more of its subsidiaries, or between or among subsidiaries having the same parent company; or

(5) The class I or class II substance is being transferred between or among a Federal agency or department and a facility or facilities owned by the same Federal agency or department.

(h) [reserved]

* * * * *

(m) No person may sell or distribute, or offer for sale or distribution, any substance that consists in whole or in part of a class I or class II substance for use as a refrigerant to any person unless:

* * * * *

(2) The buyer complies with § 82.166(b) and employs at least one technician who is certified as a Type I, Type II, Type III, or Universal technician in accordance with § 82.161;

(3) The buyer has been certified in accordance with 40 CFR part 82, subpart B and the refrigerant is either R–12 or an approved substitute consisting wholly or in part of a class I or class II substance for use in motor vehicle air conditioners in accordance with 40 CFR part 82, subpart G;

(4) The buyer complies with § 82.166 (b) and employs at least one technician who is certified in accordance with 40 CFR part 82, subpart B, and the refrigerant is either R–12 or an approved substitute consisting wholly or in part of a class I or class II substance for use in motor vehicle air conditioners pursuant to 40 CFR part 82, subpart G. Nothing in this provision shall be construed to relieve persons of the requirements of § 82.34(b) or § 82.42 (b);

(5) The refrigerant is sold only for eventual resale to certified technicians or to appliance manufacturers (*e.g.*, sold by a manufacturer to a wholesaler, sold by a technician to a reclaimer);

(6) The refrigerant is sold to an appliance manufacturer;

(7) The refrigerant is contained in an appliance with a fully assembled refrigerant circuit; or

(8) The refrigerant is charged into an appliance by a certified technician or an apprentice during maintenance, service, or repair of the appliance.

* * * * *

(o) Rules stayed for consideration. Not withstanding any other provisions of this subpart, the effectiveness of 40 CFR 82.154(m), only as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits, is stayed from April 27, 1995, until EPA takes final action on its reconsideration of these provisions. EPA will publish any such final action in the **Federal Register**.

* * * * *

■ 4. Section 82.156 is amended by revising paragraphs (a)(1)(i), introductory text of (a)(2)(i) and (a)(2)(i)(B) to read as follows:

§ 82.156 Required practices.

(a) * * *

(1) * * *

(i) Evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair, and the maintenance, service, or repair is not major as defined at § 82.152; or

* * * * *

(2)(i) If evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair, and if the maintenance, service, or repair is not major as defined at § 82.152, the appliance must:

* * * * *

(B) Be pressurized to a pressure no higher than 0 psig before it is opened if it is a low-pressure appliance. Persons must cover openings when isolation is not possible. Persons pressurizing low-pressure appliances that use refrigerants with boiling points at or below 85 degrees Fahrenheit at 29.9 inches of mercury (standard atmospheric pressure), (*e.g.* R–11 and R–123), must not use methods such as nitrogen, that require subsequent purging. Persons pressurizing low-pressure appliances that use refrigerants with boiling points above 85 degrees Fahrenheit at 29.9 inches of mercury, *e.g.*, R–113, must use heat to raise the internal pressure of the appliance as much as possible, but may use nitrogen to raise the internal pressure of the appliance from the level attainable through use of heat to atmospheric pressure; or

* * * * *

■ 5. Section 82.158 is amended by:
■ a. Revising paragraph (a);
■ b. Revising introductory text of paragraphs (b) and (b)(1) introductory text;
■ c. Designating paragraphs (b)(2) through (b)(6) as (b)(3) through (b)(7);
■ d. Revising the introductory text of newly designated paragraph (b)(3);
■ e. Revising newly designated paragraphs (b)(4), (b)(5), and (b)(7);
■ f. Adding new paragraph (b)(2);
■ g. Revising the introductory text of paragraph (d);
■ h. Revising paragraph (d)(2);
■ i. Adding paragraph (d)(3); and
■ j. Revising paragraph (j)(1); and
■ k. Adding paragraph (n) to read as follows:

§ 82.158 Standards for recycling and recovery equipment.

(a) Effective September 22, 2003, all manufacturers and importers of recycling and recovery equipment intended for use during the maintenance, service, or repair of appliances except MVACs and MVAC-like appliances or during the disposal of appliances except small appliances, MVACs, and MVAC-like appliances, shall have had such equipment certified by an approved equipment testing organization to meet the applicable requirements in paragraph (b)(1), (b)(2), or (d) of this section. All manufacturers and importers of recycling and recovery equipment intended for use during the maintenance, service, or repair of MVAC-like appliances shall have had such equipment certified pursuant to § 82.36(a).

* * * * *

(b) Equipment manufactured or imported on or after November 15, 1993 and before September 22, 2003, for use during the maintenance, service, or repair of appliances except small appliances, MVACs, and MVAC-like appliances or during the disposal of appliances except small appliances, MVACs, and MVAC-like appliances must be certified by an approved equipment testing organization to meet the requirements of paragraph (b)(1) of this section and the following requirements below. Equipment

manufactured or imported on or after September 22, 2003, for use during the maintenance, service, or repair of appliances except small appliances, MVACs, and MVAC-like appliances or during the disposal of appliances except small appliances, MVACs, and MVAC-like appliances must be certified by an approved equipment testing organization to meet the requirements of paragraph (b)(2) of this section and the following requirements.

(1) In order to be certified, the equipment must be capable of achieving the level of evacuation specified in Table 2 of this section under the conditions of appendix B1 of this subpart (based upon the ARI Standard 740–1993, Performance of Refrigerant Recovery, Recycling and/or Reclaim Equipment):

* * * * *

(2) In order to be certified, the equipment must be capable of achieving the level of evacuation specified in Table 2 of paragraph (b)(1) of this section under the conditions of appendix B2 of this subpart (based upon the ARI Standard 740–1995, Performance of Refrigerant Recovery, Recycling and/or Reclaim Equipment).

(3) Recovery or recycling equipment whose recovery efficiency cannot be tested according to the procedures in appendix B1 or B2 of this subpart as applicable may be certified if an approved third-party testing organization adopts and performs a test that demonstrates, to the satisfaction of the Administrator, that the recovery efficiency of that equipment is equal to or better than that of equipment that:

* * * * *

(4) The equipment must meet the minimum requirements for certification under appendix B1 or B2 of this subpart as applicable.

(5) If the equipment is equipped with a noncondensables purge device, the equipment must not release more than three (3) percent of the quantity of refrigerant being recycled through noncondensables purging under the conditions of appendix B1 and B2 of this subpart as applicable.

* * * * *

(7) The equipment must have its liquid recovery rate and its vapor recovery rate measured under the conditions of appendix B1 or B2 as applicable, unless the equipment has no inherent liquid or vapor recovery rate.

* * * * *

(d) Equipment manufactured or imported on or after November 15, 1993 and before September 22, 2003, for use during the maintenance, service, or repair of small appliances must be certified by an approved equipment testing organization to be capable of achieving the requirements described in either paragraph (d)(1) or (d)(2) of this section. Equipment manufactured or imported on or after September 22, 2003, for use during the maintenance, service, or repair of small appliances must be certified by an approved equipment testing organization to be capable of either paragraph (d)(1) or (d)(3) of this section:

* * * * *

(2) Achieving a four-inch vacuum under the conditions of appendix B1 of this subpart, based upon ARI Standard 740–1993; or

(3) Achieving a four-inch vacuum under the conditions of appendix B2 of this subpart, based upon ARI Standard 740–1995.

* * * * *

(j) * * *

(1) Retests of certified recycling or recovery equipment in accordance with paragraph (a) of this section or

* * * * *

(n) Effective October 22, 2003, equipment that is advertised or marketed as ''recycling equipment'' must be capable of recycling the standard contaminated refrigerant sample of appendix B2 of this subpart (based upon ARI Standard 740–1995), section 5, to the levels in the following table when tested under the conditions of appendix B2 of this subpart:

MAXIMUM LEVELS OF CONTAMINANTS PERMISSIBLE IN REFRIGERANT PROCESSED THROUGH EQUIPMENT ADVERTISED AS ''RECYCLING'' EQUIPMENT

Contaminants	Low-pressure (R–11, R–123, R–113) systems	R–12 systems	All other systems
Acid Content (by wt.)	1.0 PPM	1.0 PPM	1.0 PPM.
Moisture (by wt.)	20 PPM	10 PPM	20 PPM.
Noncondensable Gas (by vol.)	N/A	2.0%	2.0%.
High Boiling Residues (by vol.)	1.0%	0.02%	0.02%.
Chlorides by Silver Nitrate Test	No turbidity	No turbidity	No turbidity.
Particulates	Visually clean	Visually clean	Visually clean.

■ 6. Section § 82.160 is amended by revising paragraphs (a) and (b)(3), revising paragraph (d), and removing paragraph (e) to read as follows:

§ 82.160 Approved equipment testing organizations.

(a) Any equipment testing organization may apply for approval by the Administrator to certify equipment pursuant to the standards in § 82.158 and appendices B2 or C of this subpart. The application shall be mailed to: Section 608 Recycling Program Manager; Global Programs Division; Mail Code: 6205J; U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460.

(b) * * *

(3) Thorough knowledge of the standards and recordkeeping and reporting requirements as they appear in §§ 82.158 and 82.166 and Appendices B2 and/or C (as applicable) of this subpart.

* * * * *

(d) If at any time an approved testing organization is found to be conducting certification tests for the purposes of this subpart in a manner not consistent with the representations made in its application for approval under this section, the Administrator reserves the right to revoke approval in accordance with § 82.169. In such cases, the Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination.

■ 7. Section 82.161 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 82.161 Technician certification.

(a) * * *

(1) Technicians, as defined in § 82.152, who maintain, service, or repair small appliances must be properly certified as Type I technicians.

* * * * *

(e) If at any time an approved program violates any of the above requirements, the Administrator reserves the right to revoke approval in accordance with § 82.169. In such cases, the

Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination.

* * * * *

■ 8. Section 82.164 is amended by revising paragraph (g) to read as follows:

§ 82.164 Reclaimer certification.

* * * * *

(g) Failure to abide by any of the provisions of this subpart may result in revocation or suspension of the certification of the reclaimer in accordance with § 82.169. In such cases, the Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination.

■ 9. Section 82.169 is added to subpart F to read as follows:

§ 82.169 Suspension and revocation procedures.

(a) Failure to abide by any of the provisions of this subpart may result in the revocation or suspension of the approval to certify technicians (under § 82.161), approval to act as a recovery/recycling equipment testing organization (under § 82.160), or reclaimer certification (under § 82.164), hereafter referred to as the ''organization.'' In such cases, the Administrator or her or his designated representative shall give notice of an impending suspension to the person or organization setting forth the facts or conduct that provide the basis for the revocation or suspension.

(b) Any organization that has received notice of an impending suspension or revocation may choose to request a hearing and must file that request in writing within 30 days of the date of the Agency's notice at the address listed in § 82.160 and shall set forth their objections to the revocation or suspension and data to support the objections.

(c) If the Agency does not receive a written request for a hearing within 30 days of the date of the Agency's notice, the revocation will become effective upon the date specified in the notice of an impending suspension.

(d) If after review of the request and supporting data, the Administrator or her or his designated representative finds that the request raises a substantial factual issue, she or he shall provide the organization with a hearing.

(e) After granting a request for a hearing the Administrator or her or his designated representative shall designate a Presiding Officer for the hearing.

(f) The hearing shall be held as soon as practicable at a time and place determined by the Administrator, the designated representative, or the Presiding Officer.

(g) The Administrator or her or his designated representative may, at his or her discretion, direct that all argument and presentation of evidence be concluded within a specified period established by the Administrator or her or his designated representative. Said period may be no less than 30 days from the date that the first written offer of a hearing is made to the applicant. To expedite proceedings, the Administrator or her or his designated representative may direct that the decision of the Presiding Officer (who need not be the Administrator) shall be the final EPA decision.

(h) Upon appointment pursuant to paragraph (e) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the following:

(1) The notice issued by the Administrator under § 82.169(a);

(2) the request for a hearing and the supporting data submitted therewith;

(3) all documents relating to the request for certification and all documents submitted therewith; and

(4) correspondence and other data material to the hearing.

(i) The hearing file will be available for inspection by the petitioner at the office of the Presiding Officer.

(j) An applicant may appear in person or may be represented by counsel or by any other duly authorized representative.

(k) The Presiding Officer, upon the request of any party or at his or her discretion, may arrange for a pre-hearing conference at a time and place he or she specifies. Such pre-hearing conferences will consider the following:

(1) Simplification of the issues;

(2) Stipulations, admissions of fact, and the introduction of documents;

(3) Limitation of the number of expert witnesses;

(4) Possibility of agreement disposing of any or all of the issues in dispute; and

(5) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(l) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(m) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial, and repetitious evidence.

(n) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of 18 U.S.C. 1001, which imposes penalties for knowingly making false statements or representations or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(o) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(p) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the petitioner from the reporter.

(q) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(r) Oral argument may be permitted at the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by the Presiding Officer.

(s) The Presiding Officer shall make an initial decision that shall include written findings and conclusions and the reasons or basis regarding all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings, unless there is an appeal to the Administrator or motion for review by the Administrator within 20 days of the date the initial decision was filed.

(t) On appeal from or review of the initial decision, the Administrator or her or his designated representative shall have all the powers which he or she would have in making the initial decision, including the discretion to require or allow briefs, oral argument, the taking of additional evidence, or a remand to the Presiding Officer for additional proceedings. The decision by the Administrator or her or his designated representative shall include written findings and conclusions and the reasons or basis therefore on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

■ 10. Appendix A to subpart F is revised to read as follows:

Appendix A to Subpart F of Part 82—Specifications for Fluorocarbon Refrigerants

This appendix is based on Air-Conditioning and Refrigeration Institute Standard 700–1995:

Section 1. Purpose

1.1 *Purpose.* The purpose of this standard is to evaluate and accept/reject refrigerants regardless of source (*i.e.*, new, reclaimed and/or repackaged) for use in new and existing refrigeration and air-conditioning products as required under 40 CFR part 82, subpart F.

1.1.1 *Intent.* This standard is intended for the guidance of the industry including manufacturers, refrigerant reclaimers, repackagers, distributors, installers, servicemen, contractors and for consumers.

1.1.2 *Review and Amendment.* This standard is subject to review and amendment as the technology advances.

Section 2. Scope

2.1 *Scope.* This standard specifies acceptable levels of contaminants (purity requirements) for various fluorocarbon and other refrigerants regardless of source and lists acceptable test methods. These refrigerants are R–11; R–12; R–13; R–22; R–113; R–114; R–123; R–124; R–500; R–502; and R–503; as referenced in the ANSI/ASHRAE Standard 34–1992. (American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc., Standard 34–1992). Copies may be obtained from ASHRAE Publications Sales, 1791 Tullie Circle, NE, Atlanta, GA 30329. Copies may also be inspected at Public Docket No. A–92–01, Environmental Protection Agency, 1301 Constitution Ave., NW., Washington, DC in room B–108.

Section 3. Definitions

3.1 *Shall, Should, Recommended, or It Is Recommended.* ''Shall,'' ''should,'' ''recommended,'' or ''it is recommended'' shall be interpreted as follows:

3.1.1 *Shall.* Where ''shall'' or ''shall not'' is used for a provision specified, that provision is mandatory if compliance with the standard is claimed.

3.1.2 *Should, Recommended,* or *It is Recommended.* ''Should,'' ''recommended,'' or ''it is recommended'' is used to indicate provisions which are not mandatory but which are desirable as good practice.

Section 4. Characterization of Refrigerants and Contaminants

4.1 *Characterization.* Characterization of refrigerants and contaminants addressed are listed in the following general classifications:

4.1.1 *Characterization*
- a. Gas Chromatography
- b. Boiling point and boiling point range

4.1.2 *Contaminants*
- a. Water
- b. Chloride
- c. Acidity
- d. High boiling residue
- e. Particulates/solids
- f. Non-condensables
- g. Impurities including other refrigerants

Section 5. Sampling, Summary of Test Methods and Maximum Permissible Contaminant Levels

5.1 *Referee Test.* The referee test methods for the various contaminants are summarized in the following paragraphs. Detailed test procedures are included in *Appendix—C to ARI Standard 700–1995: Analytical Procedures for ARI Standard 700–1995,* 1995, Air-Conditioning and Refrigeration Institute. *Appendix C to ARI Standard* 700–1995 is incorporated by reference. [This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, Virginia 22203. Copies may also be inspected at Public Docket No. A–92–01, Environmental Protection Agency, 1301 Constitution Ave., NW., Washington, DC, in room B–108 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC]. If alternative test methods are employed, the user must be able to demonstrate that they produce results equivalent to the specified referee method.

5.2 *Refrigerant Sampling.*

5.2.1 *Sampling Precautions.* Special precautions should be taken to assure that representative samples are obtained for analysis. Sampling shall be done by trained laboratory personnel following accepted sampling and safety procedures.

5.2.2 *Gas Phase Sample.* A gas phase sample shall be obtained for determining the non-condensables. Since non-condensable gases, if present, will concentrate in the vapor phase of the refrigerant, care must be exercised to eliminate introduction of air during the sample transfer. Purging is not an acceptable procedure for a gas phase sample since it may introduce a foreign product. Since R–11, R–113, and R–123 have normal boiling points at or above room temperature, non-condensable determination is not required for these refrigerants.

5.2.2.1 *Connection.* The sample cylinder shall be connected to an evacuated gas sampling bulb by means of a manifold. The manifold should have a valve arrangement that facilitates evacuation of all connecting tubing leading to the sampling bulb.

5.2.2.2 *Equalizing Pressures.* After the manifold has been evacuated, close the valve to the pump and open the valve on the system. Allow the pressure to equilibrate and close valves.

5.2.3 *Liquid Phase Sample.* A liquid phase sample is required for all tests listed in this standard except the test for non-condensables.

5.2.3.1 *Preparation.* Place a clean, empty sample cylinder with the valve open in an oven at 110°C (230°F) for one hour. Remove it from the oven while hot, immediately connect to an evacuation system and evacuate to less than 1 mm mercury (1000 microns). Close the valve and allow it to cool. Weigh the empty cylinder.

5.2.3.2 *Manifolding.* The valve and lines from the unit to be sampled shall be clean and dry. The cylinder shall be connected to an evacuated gas sampling cylinder by means of a manifold. The manifold should have a valve arrangement that facilitates evacuation of all connecting tubing leading to the sampling cylinder.

5.2.3.3 *Liquid Sampling.* After the manifold has been evacuated, close the valve to the pump and open the valve on the system. Take the sample as a liquid by chilling the sample cylinder slightly. Accurate analysis requires that the sample container be filled to at least 60% by volume, however under no circumstances should the cylinder be filled to more than 80% by volume. This can be accomplished by weighing the empty cylinder and then the cylinder with refrigerant. When the desired amount of refrigerant has been collected, close the valve(s) and disconnect the sample cylinder immediately.

5.2.3.4 *Record Weight.* Check the sample cylinder for leaks and record the gross weight.

5.3 *Refrigerant Characterization.*

5.3.1 *Primary Method.* The primary method shall be gas chromatography (GC) as described in Appendix-C to ARI Standard 700–1995. The chromatogram of the sample shall be compared to known standards.

5.3.2 *Alternative Method.* Determination of the boiling point and boiling point range is an acceptable alternative test method which can be used to characterize refrigerants. The test method shall be that described in the Federal Specification for ''Fluorocarbon Refrigerants,'' BB-F–1421 B, dated March 5, 1982, section 4.4.3.

5.3.3 *Required Values.* The required values for boiling point and boiling point range are given in Table 1A, *Physical Properties of Single Component Refrigerants;* Table 1B, *Physical Properties of Zeotropic Blends (400 Series Refrigerants);* and Table 1C, *Physical Properties of Azeotropic Blends (500 Series Refrigerants).*

5.4 *Water Content.*

5.4.1 *Method.* The Coulometric Karl Fischer Titration shall be the primary test method for determining the water content of refrigerants. This method is described in *Appendix-C to ARI Standard 700–1995.* This method can be used for refrigerants that are either a liquid or a gas at room temperature, including refrigerants 11, 113, and 123. For all refrigerants, the sample for water analysis shall be taken from the liquid phase of the container to be tested. Proper operation of the analytical method requires special equipment and an experienced operator. The precision of the results is excellent if proper sampling and handling procedures are followed. Refrigerants containing a colored dye can be successfully analyzed for water using this method.

5.4.2 *Limits.* The value for water content shall be expressed as parts per million by weight and shall not exceed the maximum specified (*see* Tables 1A, 1B, and 1C).

5.5 *Chloride.* The refrigerant shall be tested for chloride as an indication of the presence of hydrochloric acid and/or metal chlorides. The recommended procedure is intended for use with new or reclaimed refrigerants. Significant amounts of oil may interfere with the results by indicating a failure in the absence of chloride.

5.5.1 *Method.* The test method shall be that described in *Appendix-C to ARI*

Standard 700–1995. The test will show noticeable turbidity at chloride levels of about 3 ppm by weight or higher.

5.5.2 *Turbidity*. The results of the test shall not exhibit any sign of turbidity. Report the results as ''pass'' or ''fail.''

5.6 *Acidity*.

5.6.1 *Method*. The acidity test uses the titration principle to detect any compound that is highly soluble in water and ionizes as an acid. The test method shall be that described in *Appendix—C to ARI Standard 700–1995*. This test may not be suitable for determination of high molecular weight organic acids; however, these acids will be found in the high boiling residue test outlined in 5.7. The test requires a 100 to 120 gram sample and has a detection limit of 0.1 ppm by weight calculated as HCl.

5.6.2 *Limits*. The maximum permissible acidity is 1 ppm by weight as HCl.

5.7 *High Boiling Residue*.

5.7.1 *Method*. High boiling residue shall be determined by measuring the residue of a standard volume of refrigerant after evaporation. The refrigerant sample shall be evaporated at room temperature or at a temperature 45°C (115°F) for all refrigerants, except R–113 which shall be evaporated at 60°C (140°F), using a Goetz bulb as specified in *Appendix—C to ARI Standard 700–1995*. Oils and/or organic acids will be captured by this method.

5.7.2 *Limits*. The value for high boiling residue shall be expressed as a percentage by volume and shall not exceed the maximum percent specified (*see* Tables 1A, 1B, and 1C). An alternative gravimetric method is described in Appendix—C to *ARI Standard 700–1995*.

5.8 *Method of Tests for Particulates and Solids*.

5.8.1 *Method*. A measured amount of sample is evaporated from a Goetz bulb under controlled temperature conditions. The particulates/solids shall be determined by visual examination of the Goetz bulb prior to the evaporation of refrigerant. Presence of dirt, rust or other particulate contamination is reported as ''fail.'' For details of this test method, refer to Part 3 of *Appendix—C to ARI Standard 700–1995*.

5.9 *Non-Condensables*.

5.9.1 *Sample*. A vapor phase sample shall be used for determination of non-condensables. Non-condensable gases consist primarily of air accumulated in the vapor phase of refrigerants. The solubility of air in the refrigerant's liquid phase is extremely low and air is not significant as a liquid phase contaminant. The presence of non-condensable gases may reflect poor quality control in transferring refrigerants to storage tanks and cylinders.

5.9.2 *Method*. The test method shall be gas chromatography with a thermal conductivity detector as described in *Appendix—C to ARI Standard 700–1995*.

5.9.3 *Limit*. The maximum level of non-condensables in the vapor phase of a refrigerant in a container shall not exceed 1.5% by volume (*see* Tables 1A, 1B, and 1C).

5.10 *Impurities, including Other Refrigerants*.

5.10.1 *Method*. The amount of other impurities including other refrigerants in the subject refrigerant shall be determined by gas chromatography as described in *Appendix—C to ARI Standard 700–1995*.

5.10.2 *Limit*. The subject refrigerant shall not contain more than 0.5% by weight of impurities including other refrigerants (*see* Tables 1A, 1B, and 1C).

Section 6. Reporting Procedure

6.1 *Reporting Procedure*. The source (manufacturer, reclaimer or repackager) of the packaged refrigerant shall be identified. The refrigerant shall be identified by its accepted refrigerant number and/or its chemical name. Maximum permissible levels of contaminants are shown in Tables 1A, 1B, and 1C. Test results shall be tabulated in a like manner.

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Table 1A. Physical Properties of Single Component Refrigerants

	Reporting Units	Reference (Subclause)	R-11	R-12	R-13	R-22	R-113	R-114	R-123	R-124
CHARACTERISTICS:*										
Boiling Point*	°F @ 1.00 atm	---	74.9	-21.6	-114.6	-41.4	117.6	38.8	82.6	12.2
	°C @ 1.00 atm	---	23.8	-29.8	-81.4	-40.8	47.6	3.8	27.9	-11.0
Boiling Point Range*	K	---	0.3	0.3	0.5	0.3	0.3	0.3	0.3	0.3
Typical Isomer Content	by weight	---					0-1% R-113a	0-30% R-114a	0-8% R-123a	0-5% R-124a
VAPOR PHASE CONTAMINANTS:										
Air and other non-condensables	% by volume @ 25°C	5.9	N/A**	1.5	1.5	1.5	N/A**	1.5	N/A**	1.5
LIQUID PHASE CONTAMINANTS:										
Water	ppm by weight	5.4	20	10	10	10	20	10	20	10
All other impurities including refrigerants	% by weight	5.1	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50
High boiling residue	% by volume	5.7	0.01	0.01	0.05	0.01	0.03	0.01	0.01	0.01
Particulates/solids	Visually clean to pass	5.8	pass	pass	pass	pass	pass	pass	pass	pass
Acidity	ppm by weight	5.6	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Chlorides***	No visible turbidity	5.5	pass	pass	pass	pass	pass	pass	pass	pass

* Boiling points and boiling point ranges, although not required, are provided for informational purposes.

** Since R-11, R-13, and R-123 have normal boiling points at or above room temperature, non-condensable determinations are not required for these refrigerants.

*** Recognized chloride level for pass/fail is 3ppm.

Table 1B. Physical Properties of Zeotropic Blends (400 Series Refrigerants)

	Reporting Units	Reference (Subclause)	R-401A	R-401B	R-402A	R-402B
*CHARACTERISTICS**:						
Refrigerant Components			R-22/152a/124	R-22/152a/124	R-125/290/22	R-125/290/22
Nominal Comp, weight%			53/13/34	61/11/28	60/2/38	38/2/60
Allowable Comp, weight%			51-54/11.5-13.5/33-35	59-63/9.5-11.5/27-29	58-62/1-3/36-40	36-40/1-3/58-62
Boiling Point*	°F @ 1.00 atm	---	-27.7 to -18.1	-30.4 to -21.2	-54.8 to -53.9	-53.3 to -49.0
	°C @ 1.00 atm	---	-33.2 to -27.8	-34.7 to -29.6	-48.2 to -47.7	-47.4 to -45.0
Boiling Point Range*	K	---	5.4	5.1	0.5	2.4
VAPOR PHASE CONTAMINANTS:						
Air and other non-condensables	% by volume @ 25°C	5.9	1.5	1.5	1.5	1.5
LIQUID PHASE CONTAMINANTS:						
Water	ppm by weight	5.4	10	10	10	10
All other impurities including refrigerants	% by weight	5.1	0.50	0.50	0.50	0.50
High boiling residue	% by volume	5.7	0.01	0.01	0.01	0.01
Particulates/solids	Visually clean to pass	5.8	pass	pass	pass	pass
Acidity	ppm by weight	5.6	1.0	1.0	1.0	1.0
Chlorides**	No visible turbidity	5.5	pass	pass	pass	pass

* Boiling points and boiling point ranges, although not required, are provided for informational purposes.

** Recognized chloride level for pass/fail is 3ppm.

Table 1C. Physical Properties of Azeotropic Blends (500 Series Refrigerants)

	Reporting Units	Reference (Subclause)	R500	R502	R503
CHARACTERISTICS:*					
Refrigerant Components			R12/152a	R22/115	R23/13
Nominal Comp, weight%			73.8/26.2	48.8/51.2	40.1/59.9
Allowable Comp, weight%			72.8-74.8/ 25.2-27.2	44.8-52.8/ 47.2-55.2	39-41/ 59-61
Boiling Point*	°F @ 1.00 atm	---	-28.1	-49.7	-127.7
	°C @ 1.00 atm	---	-33.4	-45.4	-88.7
Boiling Point Range*	K	---	0.5	0.5	0.5
VAPOR PHASE CONTAMINANTS:					
Air and other non-condensables	% by volume @ 25°C	5.9	1.5	1.5	1.5
LIQUID PHASE CONTAMINANTS:					
Water	ppm by weight	5.4	10	10	10
All other impurities including refrigerants	% by weight	5.1	0.50	0.50	0.50
High boiling residue	% by volume	5.7	0.05	0.01	0.01
Particulates/solids	Visually clean to pass	5.8	pass	pass	pass
Acidity	ppm by weight	5.6	1.0	1.0	1.0
Chlorides**	No visible turbidity	5.5	pass	pass	pass

* Boiling points and boiling point ranges, although not required, are provided for informational purposes.

** Recognized chloride level for pass/fail is 3ppm.

BILLING CODE 6560–50–C

References

Listed here are all standards, handbooks, and other publications essential to the formation and implementation of the standard. All references in this Appendix are considered as part of this standard.

ASHRAE Terminology of Heating, Ventilating, Air Conditioning and Refrigeration, American Society of Heating Refrigeration and Air-Conditioning Engineers, 1992, 1791 Tullie Circle NE., Atlanta, GA 30329–2305; U.S.A.

ASHRAE Standard 34–1992, *Number Designation and Safety Classification of Refrigerants*, American Society of Heating Refrigeration and Air-Conditioning Engineers, 1992, 1791 Tullie Circle NE., Atlanta, GA 30329–2305; U.S.A.

Appendix C to ARI Standard 700–1995: Analytical Procedures to ARI Standard 700–1995, Specifications for Fluorocarbon and Other Refrigerants, Air-Conditioning and Refrigeration Institute, 1995, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203; U.S.A.

Federal Specification for *Fluorocarbon Refrigerants, BB–F–1421–B,* dated March 5, 1992, Office of the Federal Register, National Archives and Records Administration, 1992, 800 North Capitol Street, NW., Washington, DC 20402; U.S.A.

■ 11. Appendix B to subpart F is amended by:

■ a. Designating appendix B as appendix B1;

■ b. Revising the introductory text of appendix B and sections 3.2 through 3.4;

■ c. Adding paragraph 11.3;

■ d. Removing section 12; and

■ e. Adding appendix B2 to read as follows:

Appendix B1 to Subpart F of Part 82—Performance of Refrigerant Recovery, Recycling, and/or Reclaim Equipment

This appendix is based on the Air-Conditioning and Refrigeration Institute Standard 740–1993.

* * * * *

Section 3. Definitions

* * * * *

3.2 Recover. Reference 40 CFR 82.152.

3.3 Recycle. Reference 40 CFR 82.152.

3.4 Reclaim. Reference 40 CFR 82.152.

* * * * *

11.3 The nameplate shall also conform to the labeling requirements established for certified recycling and recovery equipment established at 40 CFR 82.158(h).

* * * * *

Appendix B2 to Subpart F of Part 82—Performance of Refrigerant Recovery, Recycling, and/or Reclaim Equipment

This appendix is based on the Air-Conditioning and Refrigeration Institute Standard 740–1995.

Section 1

Purpose 1.1 *Purpose*. The purpose of this standard is to establish methods of testing for rating and evaluating the performance of refrigerant recovery, and/or recycling equipment and general equipment requirements (herein referred to as ''equipment'') for contaminant or purity levels, capacity, speed and purge loss to minimize emission into the atmosphere of designated refrigerants.

Section 2

Scope 2.1 *Scope*. This standard applies to equipment for recovering and/or recycling single refrigerants, azeotropics, zeotropic blends, and their normal contaminants from refrigerant systems. This standard defines the test apparatus, test gas mixtures, sampling procedures and analytical techniques that will be used to determine the performance of refrigerant recovery and/or recycling equipment (hereinafter, ''equipment'').

Section 3. Definitions

3.1 *Definitions*. All terms in this appendix will follow the definitions in § 82.152 unless otherwise defined in this appendix.

3.2 *Clearing Refrigerant*. Procedures used to remove trapped refrigerant from equipment before switching from one refrigerant to another.

3.3 *High Temperature Vapor Recovery Rate*. For equipment having at least one designated refrigerant (see 11.2) with a boiling point in the range of −50 to +10°C, the rate will be measured for R–22, or the lowest boiling point refrigerant if R–22 is not a designated refrigerant.

3.4 *Published Ratings*. A statement of the assigned values of those performance characteristics, under stated rating conditions, by which a unit may be chosen to fit its application. These values apply to all units of like nominal size and type (identification) produced by the same manufacturer. As used herein, the term ''published rating'' includes the rating of all performance characteristics shown on the unit or published in specifications, advertising or other literature controlled by the manufacturer, at stated rating conditions.

3.5 *Push/Pull Method*. The push/pull refrigerant recovery method is defined as the process of transferring liquid refrigerant from a refrigeration system to a receiving vessel by lowering the pressure in the vessel and raising the pressure in the system, and by connecting a separate line between the system liquid port and the receiving vessel.

3.6 *Recycle Flow Rate*. The amount of refrigerant processed divided by the time elapsed in the recycling mode. For equipment which uses a separate recycling sequence, the recycle rate does not include the recovery rate (or elapsed time). For equipment which does not use a separate recycling sequence, the recycle rate is a rate based solely on the higher of the liquid or vapor recovery rate, by which the contaminant levels were measured.

3.7 *Residual Trapped Refrigerant*. Refrigerant remaining in equipment after clearing.

3.8 *Shall, Should, Recommended* or *It Is Recommended* shall be interpreted as follows:

3.8.1 *Shall*. Where ''shall'' or ''shall not'' is used for a provision specified, that provision is mandatory if compliance with this appendix is claimed.

3.8.2 *Should, Recommended* or *It Is Recommended* is used to indicate provisions which are not mandatory but which are desirable as good practice.

3.9 Standard Contaminated Refrigerant Sample. A mixture of new or reclaimed refrigerant and specified quantities of identified contaminants which constitute the mixture to be processed by the equipment under test. These contaminant levels are expected only from severe service conditions.

3.10 *Trapped Refrigerant*. The amount of refrigerant remaining in the equipment after the recovery or recovery/recycling operation but before clearing.

3.11 *Vapor Recovery Rate*. The average rate that refrigerant is withdrawn from the mixing chamber between two pressures as vapor recovery rate is changing pressure and temperature starting at saturated conditions either 24°C or at the boiling point 100 kPa (abs), whichever is higher. The final pressure condition is 10% of the initial pressure, but not lower than the equipment final recovery vacuum and not higher than 100 kPa (abs).

Section 4. General Equipment Requirements

4.1 *Equipment Information*. The equipment manufacturer shall provide operating instructions, necessary maintenance procedures and source information for replacement parts and repair.

4.2 *Filter Replacement*. The equipment shall indicate when any filter/drier(s) needs replacement. This requirement can be met by use of a moisture transducer and indicator light, by use of a sight glass/moisture indicator or by some measurement of the amount of refrigerant processed such as a flow meter or hour meter. Written instructions such as ''to change the filter every 181 kg, or every 30 days'' shall not be acceptable except for equipment in large systems where the liquid recovery rate is greater than 11.3 kg/min where the filter/drier(s) would be changed for every job.

4.3 *Purge of Non-Condensable*. If non-condensables are purged, the equipment shall either automatically purge non-condensables or provide indicating means to guide the purge process.

4.4 *Purge Loss*. The total refrigerant loss due to purging non-condensables, draining oil and clearing refrigerant (*see* 9.5) shall be less than 3% (by weight) of total processed refrigerant.

4.5 *Permeation Rate*. High pressure hose assemblies ⅝ in. [16 mm] nominal and smaller shall not exceed a permeation rate of 3.9 g/cm²/yr (internal surface) at a temperature of 48.8°C. Hose assemblies that UL recognized as having passed ANSI/UL 1963 requirements shall be accepted without testing. See 7.1.4.

4.6 *Clearing Trapped Refrigerant*. For equipment rated for more than one refrigerant, the manufacturer shall provide a method and instructions which will accomplish connections and clearing within 15 minutes. Special equipment, other than a vacuum pump or manifold gauge set shall be furnished. The clearing procedure shall not rely upon the storage cylinder below saturated pressure conditions at ambient temperature.

4.7 *Temperature.* The equipment shall be evaluated at 24°C with additional limited evaluation at 40°C. Normal operating conditions range from 10°C to 40°C.

4.8 *Exemptions.* Equipment intended for recovery only shall be exempt from 4.2 and 4.3.

Section 5. Contaminated Refrigerants

5.1 *Sample Characteristics.* The standard contaminated refrigerant sample shall have the characteristics specified in Table 1, except as provided in 5.2.

5.2 *Recovery-Only Testing.* Recovery equipment not rated for any specific contaminant shall be tested with new or reclaimed refrigerant.

Section 6. Test Apparatus

6.1 *General Recommendations.* The recommended test apparatus is described in the following paragraphs. If alternate test apparatus are employed, the user shall be able to demonstrate that they produce results equivalent to the specified referee apparatus.

6.2 *Self-Contained Equipment Test Apparatus.* The apparatus, shown in Figure 1, shall consist of:

6.2.1 *Mixing Chamber.* A mixing chamber consisting of a tank with a conical-shaped bottom, a bottom port and piping for delivering refrigerant to the equipment, various ports and valves for adding refrigerant to the chamber and stirring means for mixing.

6.2.2 *Filling Storage Cylinder.* The storage cylinder to be filled by the refrigerant transferred shall be cleaned and at the pressure of the recovered refrigerant at the beginning of the test. It will not be filled over 80%, by volume.

6.2.3 *Vapor Feed.* Vapor refrigerant feed consisting of evaporator, control valves and piping to create a 3.0°C superheat condition at an evaporating temperature of 21°C ±2K.

6.2.4 *Alternative Vapor Feed.* An alternative method for vapor feed shall be to pass the refrigerant through a boiler and then through an automatic pressure regulating valve set at different saturation pressures, moving from saturated pressure at 24°C to final pressure of recovery.

6.2.5 *Liquid Feed.* Liquid refrigerant feed consisting of control valves, sampling port and piping.

6.2.6 *Instrumentation.* Instrumentation capable of measuring weight, temperature, pressure and refrigerant loss, as required.

TABLE 1.—STANDARD CONTAMINATED REFRIGERANT SAMPLES

	R11	R12	R13	R22	R113	R114	R123	R134a	R500	R502	R503
Moisture Content: ppm by Weight of Pure refrigerant	100	80	30	200	100	85	200	200	200	200	30
Particulate Content: ppm by Weight of Pure Refrigerant Characterized by [1]	80	80	NA	80	80	80	80	80	80	80	NA
Acid Content: ppm by Weight of Pure Refrigerant—(mg KOH per kg Refrigerant) Characterized by [2]	500	100	NA	500	400	200	500	100	100	100	NA
Mineral Oil Content:											
% by Weight of Pure Refrigerant	20	5	NA	5	20	20	20	5	5	5	NA
Viscosity (SUS)	300	150	.....	300	300	300	300	150 [3]	150	150	.....
Non-Condensable Gases (Air Content): % by Volume	NA	3	3	3	NA	3	NA	3	3	3	3

[1] Particulate content shall consist of inert materials and shall comply with particulate requirements in appendix B.
[2] Acid consists of 60% oleic acid and 40% hydrochloric acid on a total number basis.
[3] Synthetic ester-based oil.

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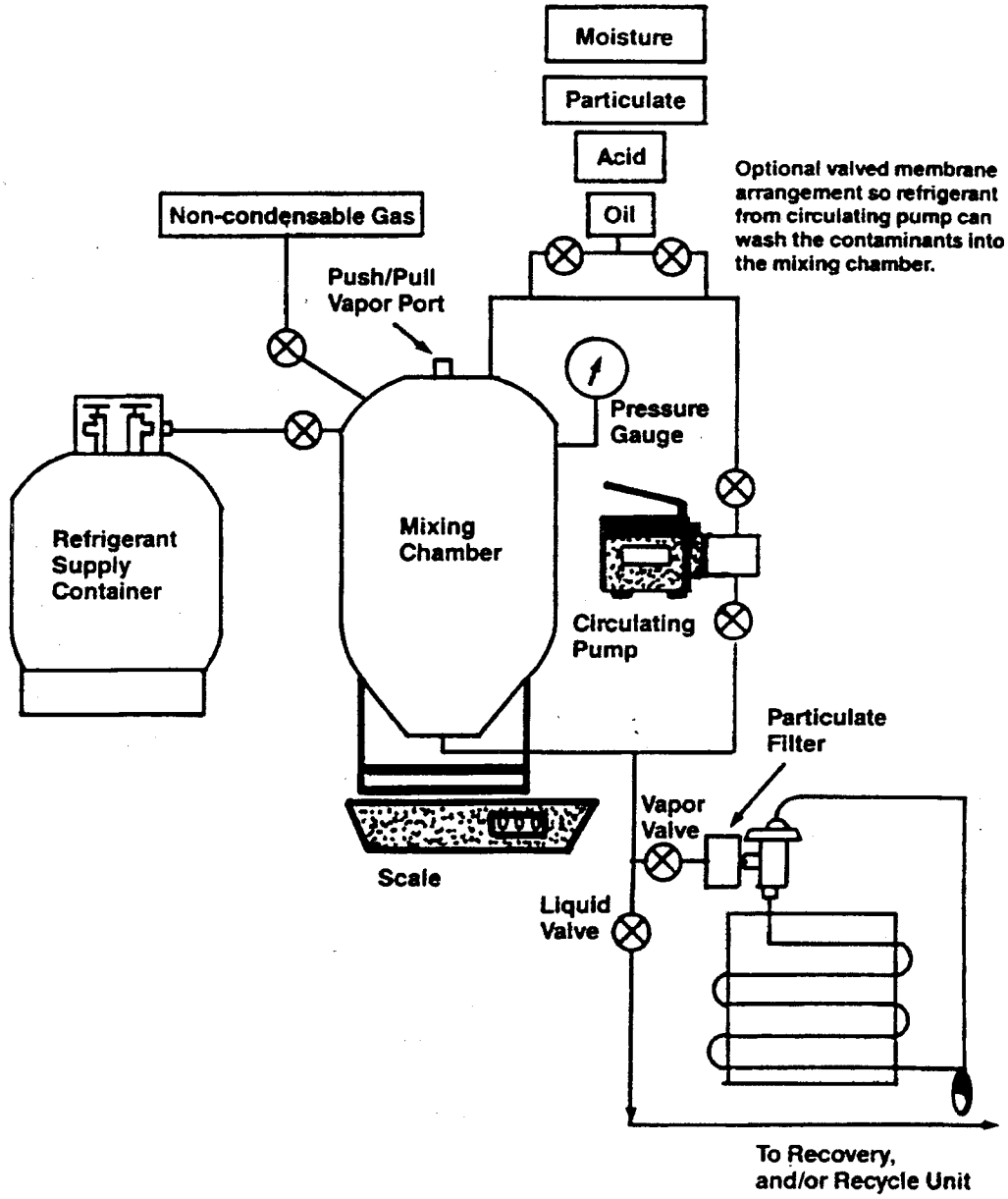
Figure 1. Test Apparatus for Self-Contained Equipment



BILLING CODE 6560–50–C

6.3 *Size.* The size of the mixing chamber shall be a minimum of .09 m^3. The bottom port and the refrigerant feed shall depend on the size of the equipment. Typically, the mixing valves and piping shall be 9.5 mm. For large equipment to be used on chillers, the minimum inside diameter of ports, valves and pipings shall be the smaller of the manufacturer's recommendation or 37 mm.

6.4 *System Dependent Equipment Test Apparatus.* This test apparatus is to be used

for final recovery vacuum rating of all system dependent equipment.

6.4.1 *Test Setup.* The test apparatus shown in Figure 2 consists of a complete refrigeration system. The manufacturer shall identify the refrigerants to be tested. The test apparatus can be modified to facilitate operation or testing of the system dependent equipment if the modifications to the apparatus are specifically described within the manufacturer's literature. (*See* Figure 2.) A 6.3 mm balance line shall be connected across the test apparatus between the high and low-pressure sides, with an isolation valve located at the connection to the compressor high side. A 6.3 mm access port with a valve core shall be located in the balance line for the purpose of measuring final recovery vacuum at the conclusion of the test.

Section 7. Performance Testing

7.1 *General Testing.*

7.1.1 *Temperatures.* Testing shall be conducted at an ambient temperature of 24°C ±1K except high temperature vapor recovery shall be at 40°C ±1K. The evaporator conditions of 6.2.3 shall be maintained as long as liquid refrigerant remains in the mixing chamber.

7.1.2 *Refrigerants.* The equipment shall be tested for all designated refrigerants (*see* 11.2). All tests in Section 7 shall be completed for each refrigerant before starting tests with the next refrigerant.

7.1.3 *Selected Tests.* Tests shall be as appropriate for the equipment type and ratings parameters selected (*see* 9.9, 11.1 and 11.2).

7.1.4 *Hose Assemblies.* For the purpose of limiting refrigerant emissions to the atmosphere, hose assemblies shall be tested for permeation according to ANSI/UL Standard 1963, Section 40.10.

7.2 *Equipment Preparation and Operation.* The equipment shall be prepared and operated per the operating instructions.

7.3 *Test Batch.* The test batch consisting of refrigerant sample (*see* Section 5) of the test refrigerant shall be prepared and thoroughly mixed. Continued mixing or stirring shall be required during the test while liquid refrigerant remains in the mixing chamber. The mixing chamber shall be filled to 80% level by volume.

7.3.1 *Control Test Batch.* Prior to starting the test for the first batch for each refrigerant, a liquid sample will be drawn from the mixing chamber and analyzed per Section 8 to assure that contaminant levels match Table 1 within ±10 ppm for moisture, ±20 ppm for particulate, ±20 ppm for oleic acid and ±0.5% for oil.

7.4 *Recovery Tests (Recovery and Recovery/Recycle Equipment).*

7.4.1 *Determining Recovery Rates.* The liquid and vapor refrigerant recovery rates shall be measured during the first test batch for each refrigerant (*see* 9.1, 9.2 and 9.4). Equipment preparation and recovery cylinder changeover shall not be included in elapsed time measurements for determining vapor recovery rate and liquid refrigerant recovery rate. Operations such as subcooling the recovery cylinder shall be included. Recovery cylinder shall be the same size as normally furnished or specified in the instructions by the equipment manufacturer. Oversized tanks shall not be permitted.

7.4.1.1 *Liquid Refrigerant Recovery Rate.* If elected, the recovery rate using the liquid refrigerant feed means (*see* 6.2.5) shall be determined. After the equipment reaches stabilized conditions of condensing temperature and/or recovery cylinder pressure, the recovery process shall be stopped and an initial weight shall be taken of the mixing chamber (*see* 9.2). The recovery process shall be continued for a period of time sufficient to achieve the accuracy in 9.4. The recovery process shall be stopped and a final weight shall be taken of the mixing chamber.

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Configuration of standard air conditioning or refrigeration system for use as a test apparatus

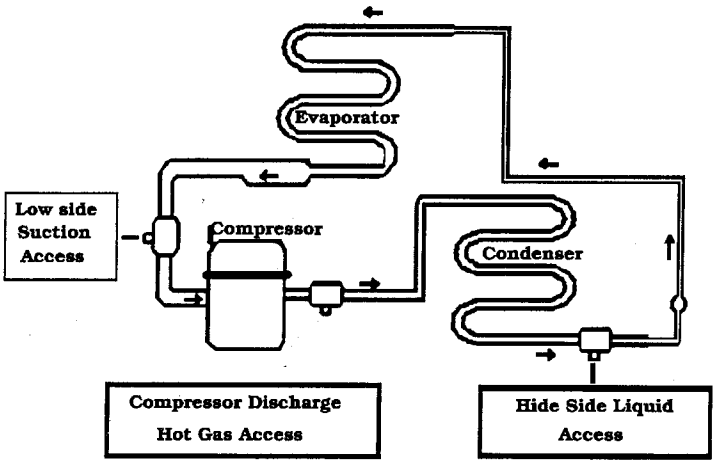

Figure 2. System Dependent Equipment Test Apparutus

BILLING CODE 6560–50–C

7.4.1.2 *Vapor Refrigerant Recovery Rate.* If elected, the average vapor flow rate shall be measured to accuracy requirements in clause 9.4 under conditions with no liquid refrigerant in the mixing chamber. The liquid recovery feed means shall be used. At initial conditions of saturated vapor at the higher of 24°C or the boiling temperature (100 kPa absolute pressure), the weight of the mixing chamber and the pressure shall be recorded. At final conditions representing pressure in the mixing chamber of 10% of the initial condition, but not less than the final recovery vacuum (*see* 9.6) nor more than 100 kPa, measure the weight of the mixing chamber and the elapsed time.

7.4.1.3 *High Temperature Vapor Recovery Rate.* Applicable for equipment having at least one designated refrigerant (*see* 11.2) with a boiling point between −50°C and +10°C. Measure the rate for R–22, or the refrigerant with the lowest boiling point if R–22 is not a designated refrigerant. Repeat the test in 7.4.1.2 at saturated conditions at 40°C and continue to operate equipment to assure it will achieve the final recovery vacuum (*see* 7.4.3).

7.4.2 *Recovery Operation.* This test is for determining the final recovery vacuum and the ability to remove contaminants as appropriate. If equipment is rated for liquid recovery (*see* 7.4.1.3), liquid recovery feed means described in 6.2.5 shall be used. If not, vapor recovery means described in 6.2.3 or 6.2.4 shall be used. Continue recovery operation until all liquid is removed from the test apparatus and vapor is removed to the point where equipment shuts down by automatic means or is manually shut off per operating instructions.

7.4.2.1 *Oil Draining.* Capture oil from the equipment at intervals as required in the instructions. Record the weight of the container. Completely remove refrigerant from oil by evacuation or other appropriate means. The weight difference shall be used in 9.5.2.

7.4.3 *Final Recovery Vacuum.* At the end of the first test batch for each refrigerant, the liquid valve and vapor valve of the apparatus shall be closed. After waiting 1 minute, the mixing chamber pressure shall be recorded (*see* 9.6).

7.4.4 *Residual Refrigerant.* This test will measure the mass of remaining refrigerant in the equipment after clearing and therefore the potential for mixing refrigerants (*see* 4.6).

7.4.4.1 *Initial Conditions.* At the end of the last test for each batch for each refrigerant, the equipment shall be disconnected from the test apparatus (Figure 1). Recycle per 7.5, if appropriate. Perform refrigerant clearing operations as called for in the instruction manual. Capture and record the weight of any refrigerant which would have been emitted to the atmosphere during the clearing process for use in 9.5. If two loops are used for recycling, trapped refrigerant shall be measured for both.

7.4.4.2 *Residual Trapped Refrigerant.* Evacuate an empty test cylinder to 1.0 kPa absolute. Record the empty weight of the test cylinder. Open all valves to the equipment so as to provide access to all trapped refrigerant. Connect the equipment to the test cylinder and operate valves to recover the residual refrigerant. Record the weight of the test cylinder using a recovery cylinder pressure no less than specified in 6.2.2. Place the test cylinder in liquid nitrogen for a period of 30 minutes or until a vacuum of 1000 microns is reached, whichever occurs first.

7.5 *Recycling Tests (Recovery/Recycle Equipment).*

7.5.1 *Recycling Operation.* As each recovery cylinder is filled in 7.4.2, recycle according to operating instructions. There will not necessarily be a separate recycling sequence. Note non-condensable purge measurement in 9.5.

7.5.1.1 *Recycle Flow Rate.* While recycling the first recovery cylinder for each refrigerant, determine the recycling flow rate by appropriate means (*see* 9.3) to achieve the accuracy required in 9.4.

7.5.2 *Non-Condensable Sample.* After completing 7.4.3, prepare a second test batch (7.3). Recover per 7.4.2 until the current recovery cylinder is filled to 80% level by volume. Recycle per 7.5.1. Mark this cylinder and set aside for taking the vapor sample. For equipment having both an internal tank of at least 3 kg refrigerant capacity and an external recovery cylinder, two recovery cylinders shall be marked and set aside. The first is the cylinder described above. The second cylinder is the final recovery cylinder after filling it to 80% level by volume and recycling.

7.5.3 *Liquid Sample for Analysis.* Repeat steps 7.3, 7.4.2 and 7.5.1 with further test batches until indication means in 4.2 show the filter/drier(s) need replacing.

7.5.3.1 *Multiple Pass.* For equipment with a separate recycling circuit (multiple pass), set aside the current cylinder and draw the liquid sample (*see* 7.4) from the previous cylinder.

7.5.3.2 *Single Pass.* For equipment with the single pass recycling circuit, draw the liquid sample (*see* 7.4) from the current cylinder.

7.6 *Measuring Refrigerant Loss.* Refrigerant loss due to non-condensables shall be determined by appropriate means (*see* 9.5.1). The loss could occur in 7.4.1, 7.4.2 and 7.5.1.

Section 8. Sampling and Chemical Analysis Methods

8.1 *Chemical Analysis.* Chemical analysis methods shall be specified in appropriate standards such as ARI 700–95 and Appendix C to ARI Standard 700–95.

8.2 *Refrigerant Sampling.*

8.2.1 *Water Content.* The water content in refrigerant shall be measured by the Karl Fischer Analytical Method or by the Karl Fischer Coulometric techniques. Report the moisture level in parts per million by weight.

8.2.2 *Chloride Ions.* Chloride ions shall be measured by turbidity tests. At this time, quantitative results have not been defined. Report chloride content as ''pass'' or ''fail.'' In the future, when quantitative results are possible, report chloride content as parts per million by weight.

8.2.3 *Acidity.* The acidity test uses the titration principle. Report the acidity in parts per million by weight (mg KOH/kg) of sample.

8.2.4 *High Boiling Residue.* High boiling residues shall use measurement of the volume of residue after evaporating a standard volume of refrigerant. Using weight measurement and converting to volumetric units is acceptable. Report high boiling residues as percent by volume.

8.2.5 *Particulates/Solids.* The particulates/solids measurement employs visual examination. Report results as ''pass'' or ''fail.''

8.2.6 *Non-condensables.* The level of contamination by non-condensable gases in the base refrigerant being recycled shall be determined by gas chromatography. Report results as percent by volume.

Section 9. Performance Calculation and Rating

9.1 *Vapor Refrigerant Recovery Rate.* This rate shall be measured by weight change of the mixing chamber divided by elapsed time (*see* 7.4.1.2). The units shall be kg/min and the accuracy shall be per 9.4.

9.1.1 *High Temperature Vapor Recovery Rate.*

9.2 *Liquid Refrigerant Recovery Rate.* This rate shall be measured by weight change of the mixing chamber divided by elapsed time (*see* 7.4.1.3). The units shall be kg/min and the accuracy shall be per 9.4.

9.3 *Recycle Flow Rate.* The recycle flow rate shall be as defined in 3.10, expressed in kg/min, and the accuracy shall be per 9.4.

9.3.1 For equipment using multi-pass recycling or a separate sequence, the recycle rate shall be determined by dividing the net weight W of the refrigerant to be recycled by the actual time T required to recycle. Any set-up or operator interruptions shall not be included in the time T.

9.3.2 If no separate recycling sequence is used, the recycle rate shall be the higher of the vapor refrigerant recovery rate or the liquid refrigerant recovery rate. The recycle rate shall match a process which leads to contaminant levels in 9.9. Specifically, a recovery rate determined from bypassing a contaminant removal device cannot be used as a recycle rate when the contaminant levels in 9.9 are determined by passing the refrigerant through the contaminant removal device.

9.4 *Accuracy of Flow Rates.* The accuracy of test measurements in 9.1, 9.2 and 9.3 shall be ±008 kg/min or flow rates up to .42 kg/min and ±2.0% for flow rates larger than .42 kg/min. Ratings shall be expressed to the nearest .02 kg/min.

9.5 *Refrigerant Loss.* This calculation will be based upon the net loss of refrigerant which would have been eliminated in the non-condensable purge process (*see* 7.5.1), the oil draining process (*see* 7.4.2.1) and the refrigerant clearing process (*see* 7.4.4.1), all divided by the net refrigerant content of the test batches. The refrigerant loss shall not exceed 3% by weight.

9.5.1 *Non-Condensable Purge.* Evacuate an empty container to 2 kPa absolute. Record the empty weight of the container. Place the container in a dry ice bath. Connect the equipment purge connection to the container and operate purge according to operating instructions so as to capture the non-condensables and lost refrigerant. Weigh the cylinder after the recycling is complete. Equivalent means are permissible.

9.5.2 *Oil Draining.* Refrigerant removed from the oil after draining shall be collected and measured in accordance with 7.4.2.1.

9.5.3 *Clearing Unit.* Refrigerant captured during the clearing process shall be measured in accordance with 7.4.4.1.

9.6 *Final Recovery Vacuum.* The final recovery vacuum shall be the mixing chamber pressure in 7.4.3 expressed in kPa. The accuracy of the measurement shall be within 0.33 kPa.

9.7 *Residual Trapped Refrigerant.* The amount of residual trapped refrigerant shall be the final weight minus the initial weight of the test cylinder in 7.4.4.2, expressed in kg. The accuracy shall be ±0.02 kg and reported to the nearest 0.05 kg.

9.8 *Quantity Recycled.* The amount of refrigerant processed before changing filters (*see* 7.5.3) shall be expressed in kg to an accuracy of ±1%.

9.9 *Contaminant Levels.* The contaminant levels remaining after testing shall be published as follows:

Moisture content, ppm by weight
Chloride ions, pass/fail
Acidity, ppm by weight
High boiling residue, % (by volume)
Particulates-solid, pass/fail (visual examination)
Non-condensables, % (by volume)

9.10 *Minimum Data Requirements for Published Ratings.* Published ratings shall include all of the parameters as shown in Tables 2 and 3 for each refrigerant designated by the manufacturer.

Section 10. Tolerances

10.1 *Tolerances.* Performance related parameters shall not be less favorable than the published ratings.

Section 11. Marking and Nameplate Data

11.1 *Marking and Nameplate Data.* The nameplate shall display the manufacturer's name, model designation, type of equipment, designated refrigerants, capacities and electrical characteristics where applicable. The nameplate shall also conform to the labeling requirements established for certified recycling and recovery equipment established at 40 CFR 82.158(h).

Recommended nameplate voltages for 60 Hertz systems shall include one or more of the utilization voltages shown in Table 1 of ARI Standard 110–90. Recommended nameplate voltages for 50 Hertz systems shall include one or more of the utilization voltages shown in Table 1 of IEC Standard Publication 38, IEC Standard Voltages.

11.2 *Data for Designated Refrigerants.* For each refrigerant designated, the manufacturer shall include all the following that are applicable per Table 2:

a. Liquid Recovery Rate
b. Vapor Recovery Rate
c. High Temperature Vapor Recovery Rate
d. Final Recovery Vacuum
e. Recycle Flow Rate
f. Residual Trapped Refrigerant
g. Quantity Recycled

TABLE 2.—PERFORMANCE

Parameter/Type of equipment	Recovery	Recovery/ Recycle	Recycle	System dependent equipment
Liquid Refrigerant Recovery Rate	(1)	(1)	N/A	N/A
Vapor Refrigerant Recovery Rate	(1)	(1)	N/A	N/A
High Temp. Vapor Recovery Rate	(1)	(1)	N/A	N/A
Final Recovery Vacuum	(X)	(X)	N/A	(X)
Recycle Flow Rate	N/A	(X)	(X)	N/A
Refrigerant Loss	(3)	(X)	(X)	(3)
Residual Trapped Refrigerant	(2)	(2)	(2)	(2)
Quantity Recycled	N/A	(X)	(X)	N/A

X Mandatory rating.
1 For a recovery or recovery/recycle unit, one must rate either liquid refrigerant recovery rate or vapor refrigerant recovery rate or one can rate for both. If rating only the one, the other shall be indicated by N/A, ''not applicable.''
2 Mandatory rating for equipment tested for multiple refrigerants.
3 Mandatory rating if multiple refrigerants, oil separation or non-condensable purge are rated.
NOTE: For recovery equipment, these parameters are optional. If not rated use N/A, ''not applicable.''

TABLE 3.—CONTAMINANTS

Contaminant/Type of equipment	Recovery	Recovery/ Recycle	Recycle	System dependent equipment
Moisture Content	(*)	(X)	(X)	N/A
Chloride Ions	(*)	(X)	(X)	N/A
Acidity	(*)	(X)	(X)	N/A
High Boiling Residue	(*)	(X)	(X)	N/A
Particulates	(*)	(X)	(X)	N/A
Non-Condensables	(*)	(X)	(X)	N/A

* For recovery equipment, these parameters are optional. If not rated, use N/A, ''not applicable.''
X Mandatory rating.

[FR Doc. 03–18150 Filed 7–23–03; 8:45 am]
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Federal Register

Thursday,
July 24, 2003

Part III

Environmental Protection Agency

40 CFR Part 30 et al.

Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30, 31, 33, 35, and 40

[Docket ID NO. OA–2002–0001; FRL–7528–1]

RIN 2020–AA39

Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to revise its Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) Program and rename it as EPA's Disadvantaged Business Enterprise (DBE) Program. EPA is proposing to delete existing MBE and WBE specific provisions in regulations for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, State and Local Assistance, and Research and Demonstration Grants and is proposing to consolidate and add to these provisions in a new regulation. The new regulation is intended to harmonize EPA's statutory DBE procurement objectives with the United States Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena,* 115 S. Ct. 2097 (1995). In *Adarand,* the Supreme Court extended strict judicial scrutiny to federal programs that use racial or ethnic criteria as a basis for decision making. This proposed rule reflects EPA's efforts to ensure that the compelling government interest of remedying past and current racial discrimination through the use of agency-wide DBE procurement objectives at EPA is served by a narrowly-tailored program. If you are a recipient of an EPA financial assistance agreement or an entity receiving an identified loan under a financial assistance agreement capitalizing a revolving loan fund, this proposed rule may affect you.

DATES: *Comments:* You must send comments electronically, by mail or through hand delivery/courier on or before January 20, 2004.

ADDRESSES: Send your comments (in triplicate, if possible) to: Office of Environmental Information Docket Environmental Protection Agency, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OA 2002–0001. Please use a font no smaller than 12pt. Comments may also be submitted electronically, or through hand delivery/courier. Follow the detailed instructions as provided in I.B. of the **SUPPLEMENTARY INFORMATION** section.

Public hearings: EPA will hold public hearings on this proposed rule. If you wish to speak, contact the person(s) named under the section entitled ''For Further Information Contact.'' Verbatim transcripts of the hearings will be available for reading and copying at the official public docket for this action under Docket ID NO. OA–2002–0001. See Supplementary Information I.A.1.

FOR FURTHER INFORMATION CONTACT: Mark Gordon, Attorney Advisor at (202) 564–5951, Kimberly Patrick, Attorney Advisor at (202) 564–5386, or David Sutton, Deputy Director at (202) 564–4444, OSDBU, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OA–2002–0001. 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 Office of Environmental Information Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. 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, and the telephone number for the Office of Environmental Information is (202) 566–1752.

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 I.A.1 above.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA

Dockets online or *see* 67 FR 38102, May 31, 2002.

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 docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OA–2002–0001. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to oei.docket @ epamail.epa.gov Attention Docket ID No. OA–2002–0001. 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 I.A.1 above. 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 (in triplicate, if possible) to: Office of Environmental Information Docket Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OA 2002–0001. Please use a font size no smaller than 12.

3. *By Hand Delivery or Courier.* Deliver your comments (in triplicate, if possible) to: EPA Docket Center, (EPA/DC) EPA West, Room B 102, 1301 Constitution Avenue, NW., Washington, D.C. Attention Docket ID No. OA 2002–0001. Such deliveries are only accepted during the Docket's normal hours of operation as identified in I.A.1 above. Please use a font size no smaller than 12.

The docket is an organized file of all the information EPA considered in developing this proposed rule. The docketing system allows you to readily identify and locate documents so you can participate in the rulemaking. Along with the proposed and promulgated standards and their preambles, contents of the docket will serve as the record in case of judicial review.

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

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

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

D. Will EPA Hold Public Hearings and Tribal Consultations on This Proposed Rule?

EPA plans to hold a number of public hearings on this proposed rule during the 180 day comment period. As part of its ongoing consultation with Tribes, EPA also plans to hold a number of meetings with Tribal officials/representatives on this proposed rulemaking during the 180 day comment period. EPA will announce in the **Federal Register** the dates, times and locations of these public hearings and meetings.

In writing the following proposed preamble and rule, EPA has considered all comments received in response to the staff draft of the preamble and rule, dated June 19, 2000, which was posted on EPA's website at *http://www.epa.gov/osdbu* and distributed to various stakeholders. Changes have been made to this proposed preamble and rule in response to some of these comments.

This is a proposed rule. The contents of today's preamble are listed in the following outline:

I. Introduction
II. Section-by-Section Analysis
A. Subpart A—General Provisions
B. Subpart B—Certification
C. Subpart C—Good Faith Efforts
D. Subpart D—Fair Share Objectives
E. Subpart E—Recordkeeping and Reporting
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.*
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. Introduction

40 CFR Part 33, Procurement under Assistance Agreements, became effective March 28, 1983. These procurement requirements required recipients of EPA financial assistance

agreements to take the six affirmative steps to assure that small, minority and women's businesses were used when possible as sources of construction, services and supplies. As part of a government-wide effort in 1988, EPA promulgated 40 CFR Part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. In 1996, the Agency promulgated 40 CFR Part 30, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. Parts 30 and 31 superseded the procurement provisions of former Part 33. Parts 30 and 31 contain DBE Program provisions at 40 CFR 30.44(b) and 31.36(e), respectively.

Various EPA programs have their own regulations containing DBE requirements. For example, the EPA Superfund Program promulgated regulations which contain DBE provisions for Grants for Technical Assistance at 40 CFR 35.4066(g) and for Cooperative Agreements and Superfund State Contracts for Superfund Response Actions at 40 CFR 35.6015(a)(26) and (54), 35.6580 and 35.6665 (b). The EPA Clean Water State Revolving Fund (CWSRF) Program promulgated regulations containing DBE provisions at 40 CFR 35.3145(d) and (e). The DWSRF Program has promulgated regulations containing DBE provisions at 40 CFR 35.3575(d). DBE requirements for Research and Demonstration Grants can be found at 40 CFR 40.145–3(c).

EPA's legal authorities for its DBE Program are:

Public Law 102–389, a 1993 appropriations act (42 U.S.C. 4370d) (EPA's 8% statute), which provides:

> The Administrator of the Environmental Protection Agency shall, hereafter, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of Section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women
> * * *

Public Law 101–549, Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 *note*) (EPA's 10% statute), which states:

> In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments which use funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of the total Federal funding for such research will be made available to disadvantaged business concerns. Nothing in this title shall permit or require the use of quotas or a requirement that has the effect of a quota in determining eligibility * * *

Other legal authorities include Public Law 99–499, the Superfund Amendments and Reauthorization Act of 1986; Public Law 100–590, the Small Business Administration Reauthorization and Amendment Act of 1988; Executive Order 12138, ''Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women's Business Enterprise,'' issued May 18, 1979; Executive Order 11625, ''Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise,'' issued October 13, 1971; and Executive Order 12432, ''Minority Business Enterprise Development,'' issued July 14, 1983.

In 1995, the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097(1995), extended strict judicial scrutiny to federal affirmative action programs that use racial or ethnic criteria as a basis for decision making. In other words, such programs must be based on a compelling governmental interest, for example, remedying the effects of discrimination, and must be narrowly tailored to accomplish that interest.

In 1996, the Department of Justice (DOJ) began a review of affirmative action programs in the Federal Government. In response to this review, the Department of Transportation (DOT) revised its program for participation of DBEs in procurement under DOT's financial assistance agreements. 64 FR 5096. In direct Federal procurement, the Small Business Administration (SBA) has issued final regulations amending two programs intended to foster small disadvantaged business participation, the 8(a) Business Development and Small Disadvantaged Business Participation Programs. 63 FR 35726; 63 FR 36120.

This proposed rulemaking would affect only procurements pursuant to EPA financial assistance agreements rather than direct Federal procurement actions. All of EPA's current DBE fair share objectives and good faith efforts regulatory provisions would be deleted as part of this rulemaking effort, and the proposed DBE provisions to be codified in the new 40 CFR Part 33 would apply. In addition, this proposal would supersede inconsistent provisions of previous guidance documents for EPA's former MBE and WBE Program, including, but not limited to, OSDBU's ''Guidance for Utilization of Small, Minority, and Women's Business Enterprises in Procurement Under Assistance Agreements' (the 1997 Guidance). 62 FR 45645.

II. Section-by-Section Analysis

Subpart A—General Provisions

Section 33.101 What Are the Objectives of This Part?

This proposed rule is EPA's revision to its current MBE and WBE Program. EPA needs to reconcile its requirements for financial assistance agreements under EPA's 8% statute and EPA's 10% statute with the Supreme Court's decision in *Adarand*. In that case the Supreme Court held that Federal Government programs that use race or national origin as a criterion for decision making are subject to strict judicial scrutiny. Such programs must be based on a compelling government interest, for example, remedying the effects of racial/ethnic discrimination, and must be narrowly tailored to accomplish that interest.

EPA's proposed rulemaking is one part of the Agency's overall effort to review and, where necessary, revise affirmative action programs in light of *Adarand*. This rulemaking proposal tailors EPA's DBE Program more precisely to the objective of remedying the effects of racial/ethnic discrimination.

Section 33.102 When Do the Requirements of This Part Apply?

This Part's requirements apply to procurement under EPA financial assistance agreements, including financial assistance agreements to capitalize revolving loan funds, performed entirely within the United States. The term ''United States'' is later defined in 33.103 to include the Commonwealth of Puerto Rico and any other territories and possessions of the United States.

Section 33.103 What Do the Terms in This Part Mean?

To the extent possible, EPA has referred to definitions contained in 40 CFR Parts 30, 31 and 35, and other agencies' existing regulations, *e.g.*, Historically Black College or University

(HBCU). Other definitions were derived from the 1997 Guidance.

EPA is creating a new term, DBE, for its revised program. The new Part 33 defines DBE as an entity owned or controlled by an individual who is socially and economically disadvantaged under EPA's 8% statute, an entity owned and controlled by an individual who is socially and economically disadvantaged under EPA's 10% statute, as well as a Small Business Enterprise (SBE), a Small Business in a Rural Area (SBRA), a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program. Unlike EPA's previous program, the terms MBE and WBE no longer describe the entire program. Instead, these terms are now merely subsets of the entities described as DBEs. As a result, the definition of MBE has been modified to include an entity owned and/or controlled by an individual who is socially and economically disadvantaged under either EPA's 8% or 10% statutes.

In addition, the term ''financial assistance agreement'' has been defined as both grants and cooperative agreements awarded by EPA, including such agreements used to capitalize revolving loan funds including, but not limited to, the Clean Water State Revolving Fund, the Drinking Water State Revolving Fund or the Brownfields Revolving Fund Programs. The term ''identified loan'' is also defined to indicate those projects and activities to which the requirements of this Part apply for recipients of capitalization agreements for revolving loan funds. For Brownfields capitalization grant recipients, the identified loans will be those funded with EPA financial assistance.

The definition of Small Business in Rural Areas has been shortened from the one contained in the 1997 Guidance. No substantive change is intended. The U.S. Department of Agriculture (USDA) Rural-Urban Continuum Classification Code applies to every county in the United States, and classifies counties based on proximity to metropolitan areas. EPA is using Codes 6–9 as rural counties for purposes of identifying small businesses in rural areas.

Section 33.104 May a Recipient Apply for a Waiver From the Requirements of This Part?

A recipient will be able to apply for a waiver in a special or exceptional situation where the recipient believes that compliance with any of the requirements in this Rule would be impractical. The Agency believes that the waiver provision is an important component of narrowly tailoring its DBE Program to unique local circumstances and to ensure non-discrimination. EPA intends to carefully review any waiver applications to ensure that any proposed alternative program is able to meet the objectives of EPA's DBE Program and is in accordance with law. This added flexibility could allow an EPA financial assistance agreement recipient to deal creatively with its specific circumstances.

Section 33.105 What Are the Compliance and Enforcement Provisions of This Part?

This section reserves to EPA the right to take remedial action under existing legal authorities if a recipient fails to comply with any of the requirements of the Rule.

Section 33.106 What Assurances Must EPA Financial Assistance Recipients Obtain From Their Contractors?

An EPA financial assistance recipient must ensure that the contract term and condition in the Appendix to this Rule is included in the procurement contracts it awards under EPA financial assistance agreements. This includes contracts under identified loans pursuant to EPA financial assistance agreements capitalizing revolving loan fund programs. This term and condition ensures that a recipient applies pertinent provisions of this Rule to its prime contractor.

Section 33.107 What Are the Rules Governing Availability of Records, Cooperation, and Intimidation and Retaliation?

Paragraph (a) of this section discusses the availability to the general public of information concerning EPA's DBE Program. Paragraphs (b) and (c) discuss the obligation of all participants in EPA's DBE Program to cooperate and never use intimidation and retaliation with respect to EPA's DBE Program.

Subpart B—Certification

Section 33.201 What Does This Subpart Require?

Currently EPA recognizes an entity which is certified as socially and economically disadvantaged by the Small Business Administration (SBA), certified as an MBE by a State or Federal Agency or self-certifies that it is an independent business concern owned and controlled by a minority group member(s) as an MBE. 40 CFR 35.6015 (26); the 1997 Guidance, pp. 3–2 through 3–6.

EPA is proposing to make four changes to the current certification requirements. The first change is to no longer allow an entity to self-certify as being owned and/or controlled by a socially and economically disadvantaged individual or as a WBE under EPA's 8% or 10% statutes. The second change is to allow recognition of certifications of entities as owned and/or controlled by a socially and economically disadvantaged individual or by a woman under EPA's 8% or 10% statutes by Indian Tribal, State (including Insular Areas) and local Governments or independent private organizations so long as the applicable criteria match those under SBA's applicable 8(a) Business Development Program regulations. The third change is to clarify that EPA will accept DOT DBE certifications of U.S. citizens as valid certifications under this program. The fourth change is that EPA will set up its own certification program with the possible use of EPA Private Certifiers to assist EPA in its certification determinations.

The provisions for certification under EPA's 8% and 10% statutes have been separated from one another since the presumptions under those statutes are different. Because EPA's 8% statute incorporates Section 8(a)(5) of the Small Business Act, this Rule adopts for purposes of the 8% statute SBA's regulatory presumption that the following individuals are socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong and Macao), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, the Phillippines, U.S. Trust Territory of the Pacific Islands, (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by SBA. As is the case under SBA's 8(a) Business Development Program, Brazilian Americans with Portugese surnames and Portugese Americans would be considered Hispanic Americans under this Program. In addition, Congress has by statute established that HBCUs and women also automatically qualify as

socially and economically disadvantaged under EPA's 8% statute. An entity must still be certified by a third party as to ownership or control in order to be eligible to participate as a WBE contractor for an EPA recipient under the DBE Program.

EPA's 10% statute also adopts SBA's regulatory presumption regarding the socially disadvantaged status of the individuals listed above. However, EPA's 10% statute also presumes that Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women and Disabled Americans are socially and economically disadvantaged individuals. Furthermore, Congress provided in EPA's 10% statute that the following institutions are presumed to be entities owned and controlled by socially and economically disadvantaged individuals: HBCUs, colleges and universities having a student body in which 40% of the students are Hispanic, Minority Institutions and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged. EPA's 8% and 10% statutes may be distinguished by their provisions regarding ownership and control. EPA's 8% statute references entities owned *or* controlled by socially and economically disadvantaged individuals while EPA's 10% statute references entities owned *and* controlled by socially and economically disadvantaged individuals.

Section 33.202 How Does an Entity Qualify as an MBE or WBE Under EPA's 8% Statute?

An entity must establish that it is owned or controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. With one exception, definitions of ''ownership,'' ''control'' and ''socially and economically disadvantaged individuals'' are the same as under the Small Business Act and its implementing regulations at 13 CFR 124.105, 124.106, 124.103 and 124.104. (*See also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations). Generally, these regulations provide that ownership must be real, substantial and continuing, going beyond pro forma ownership of the business concern as reflected in ownership documents. Owners must share in the risks and profits of the business concern commensurate with their ownership interests. Control is demonstrated in most cases by the power to direct or cause the direction of the management and policies of the business concern and to make day-to-day as well as long-term decisions on matters of management, policy and operations. The one exception from the regulation regarding economic disadvantage worth noting is the exclusion of individuals with a net worth greater than or equal to $250,000 from initial eligibility and individuals with a net worth greater than or equal to $750,000 from continued eligibility. Similar to DOT, EPA is proposing to make $750,000 the cut off point for both initial and continued eligibility under the DBE Program.

HBCUs do not need to go through the certification process contained in Subpart B of this Rule since EPA's 8% statute automatically deems an HBCU to be owned or controlled by socially and economically disadvantaged individuals. While women are also deemed to be socially and economically disadvantaged under EPA's 8% statute, entities must still evidence ownership or control in accordance with paragraph (a) of this section, which may be accomplished by certification, pursuant to § 33.204.

Section 33.203 How Does an Entity Qualify as an MBE or WBE Under EPA's 10% Statute?

An entity must establish that it is owned and controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. Again with the same notable exception discussed above regarding the $750,000 personal net worth threshold, definitions of ''ownership,'' ''control'' and ''socially and economically disadvantaged individuals'' are the same as under the Small Business Act and its implementing regulations at 13 CFR 124.105, 124.106, 124.103 and 124.104. (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

With one exception, the provisions contained within subparagraphs (d)–(g) of this section are derived from EPA's 10% statute. EPA's 10% statute contains a presumption that colleges and universities having a student body in which 40% of the students are Hispanic should be considered entities owned and controlled by socially and economically disadvantaged individuals. In order to eliminate the burden of additional certification by such colleges and universities, EPA is proposing instead to apply the presumption to colleges and universities which have qualified as Hispanic-Serving Institutions under the Department of Education regulations at 34 CFR Part 606 or as Minority Institutions as defined by § 33.103 of this proposed Rule. Among other things, Hispanic-Serving Institutions and Minority Institutions require a student body in which 50% of the students are Hispanic. Because EPA's 10% statute only requires the Agency to implement the statute's requirements to the ''extent practicable,'' the Agency, for administrative reasons, may propose regulatory provisions which vary from the exact wording of the statute.

Section 33.204 Where Does an Entity Become Certified Under EPA's 8% and 10% Statutes?

This proposed rule discontinues acceptance of an individual's self-certification regarding his or her racial/ethnic status in order to ensure consistency with the approach taken by other Federal agencies. For example, SBA under its Small Disadvantaged Business Program no longer permits self-certification of social and economic disadvantaged status. Similarly, DOT does not allow self-certification under its DBE Program. EPA is also proposing to discontinue self-certification by WBEs.

In addition, EPA would require that an entity first attempt to become certified as an MBE or WBE by the SBA or DOT under their respective programs or by an Indian Tribal Government, State Government, local Government, or independent private organization consistent with EPA's 8% or 10% statute as applicable. An entity may only attempt to become certified by EPA as an MBE or WBE under the procedures described in § 33.205 if that entity is unable to obtain certification from the other certifying entities described above. However, as part of the certification process, EPA will make the determination as to whether an entity's current certification by DOT, an Indian Tribal Government, State Government, local Government, or independent private organization constitutes acceptable certification under EPA's 8% statute, EPA's 10% statute or both. Acceptance of certifications from these other certifying entities is EPA's attempt at easing the burden created by discontinuation of the self-certification option. EPA currently envisions five categories of individuals or groups who would qualify for MBE or WBE certification under EPA's DBE Program but would be unable to obtain MBE or WBE certification from SBA or DOT due to differences in those Agencies' respective programs. These categories are women-owned and minority-owned

concerns that do not meet the SBA/DOT size standards (EPA's 8% and 10% statutes), Disabled Americans (EPA's 10% statute), private and voluntary organizations controlled by individuals who are socially and economically disadvantaged (EPA's 10% statute), entities which are certified under criteria which are inconsistent with EPA's DBE Program criteria (EPA's 8% and 10% statutes) and any entity claiming that it is owned *or* controlled by socially and economically disadvantaged individuals under EPA's 8% statute. SBA and DOT currently do not certify the first three categories and, as to the fifth category, requires a showing of ownership *and* control. Accordingly, these categories of individuals or groups may initially come to EPA for MBE or WBE certification if that individual or group is also unable to obtain MBE or WBE certification from an Indian Tribal, State, or local Government or an independent private organization in accordance with EPA's 8% or 10% statute as applicable. Finally, in implementing its own certification program, the Agency may use EPA Private Certifiers to assist the Agency in its certification determinations.

EPA has had a longstanding policy of requiring U.S. citizenship for eligibility as an MBE or WBE. See ''EPA Guidance for Utilization of S/M/WBE in Procurement under Assistance Agreements' dated 05/22/86. This policy was continued in the Agency's 1997 Guidance. Currently, the Agency's regulatory definition of an MBE requires U.S. citizenship for a minority group member. See 40 CFR 35.6015(a)(26)(iii). EPA believes that its requirement for U.S. citizenship is consistent with SBA's 8(a) Business Development Program regulations at 13 CFR 124.101, and its Small Disadvantaged Business Programs regulations at 13 CFR 124.1002(d). While the Agency recognizes that DOT allows lawfully admitted permanent residents to qualify for certification under its DBE Program (49 CFR 26.67), the Agency believes that given its close association with SBA requirements, it is appropriate for U.S. citizenship to be a requirement for certification by EPA as well. In addition, at this time, EPA lacks data regarding how many additional entities EPA would have to certify if the Agency were to change its longstanding policy on this issue and the possible resource implications of such a policy change; the Agency believes that changing its policy on this issue could result in a substantial increase to the number of entities EPA would have to certify.

EPA welcomes public comment on these proposed changes, especially from large businesses and members of the DBE community since they are most likely to be directly affected if these proposed changes become part of the final rule. In addition, because EPA continues to explore opportunities to standardize DBE certification with other Federal agencies, the Agency encourages specific comments on the requirement for U.S. citizenship under this program, and the resource implications for the Agency if it were to change its policy of requiring U.S. citizenship for certification by EPA.

Section 33.205 How Does an Entity Become Certified by EPA?

This section describes the EPA certification application process, including procedures regarding the filing of an application, application processing, EPA's ownership and/or control determination, EPA's disadvantaged determination and evaluation standards.

Section 33.206 Is There a List of Certified MBEs and WBEs?

This provision provides two ways someone can obtain a list of certified MBEs and WBEs under EPA's DBE Program, via internet or mail.

Section 33.207 Can an Entity Reapply to EPA for MBE or WBE Certification?

This section describes how long an entity must wait before reapplying to EPA for MBE or WBE certification.

Section 33.208 How Long Does an MBE or WBE Certification From EPA Last?

This provision states that MBE or WBE certifications from EPA generally last for three years.

Section 33.209 Can EPA Re-Evaluate the MBE or WBE Status of an Entity After EPA Certifies It To Be an MBE or WBE?

This section explains procedures for removal of an entity from the EPA list of certified MBEs and WBEs. Credible information calling into question an entity's eligibility as an MBE or WBE may come from any source.

Section 33.210 Does an Entity Certified as an MBE or WBE by EPA Need To Keep EPA Informed of Any Changes Which May Affect the Entity's Certification?

This provision requires an annual affidavit from EPA certified MBEs or WBEs affirming that no changes in circumstance have occurred that affect the entity's status as an MBE or WBE. In addition to this annual affidavit, MBEs and WBEs certified by EPA are under a constant requirement throughout the year to keep EPA informed of any changes in circumstance which might affect that entity's status as an MBE or WBE.

Section 33.211 What Is an EPA Private Certifier?

This provision generally describes the role of an EPA Private Certifier. In all cases, EPA shall make the determination as to whether a particular entity should be certified as an MBE or WBE. EPA Private Certifiers are used by EPA merely to assist in the Agency's certification determination.

Section 33.212 Can an EPA Private Certifier Charge a Fee to an Entity To Process the Entity's Application for MBE or WBE Certification?

A reasonable fee, not contingent on whether the entity is eventually certified as an MBE or WBE by EPA, may be charged with the permission of the Agency.

Section 33.213 How Does an Organization or Business Concern Become an EPA Private Certifier?

This provision establishes the means by which an organization or business concern may become an EPA Private Certifier. In addition, this provision describes some of the requirements an organization or business concern must meet in order to be an EPA Private Certifier.

Section 33.214 How Long May an Organization or Business Concern Be an EPA Private Certifier?

The length of time an organization or business concern may be an EPA Private Certifier will be negotiated between EPA and that organization or business concern.

Section 33.215 Is There a List of EPA Private Certifiers?

This provision provides two ways someone can obtain a list of EPA Private Certifiers under EPA's DBE Program, via internet or mail.

Section 33.216 What Is the Process for Appealing or Challenging an EPA MBE or WBE Certification Determination?

This section describes the way in which an entity who has been denied MBE or WBE certification by EPA or a third party who disagrees with EPA's decision to certify an entity as an MBE or WBE can submit an appeal or challenge to the Agency. Included in these procedures are filing deadlines, appeal or challenge content

requirements and the Agency's standard of review.

Section 33.217 What Conduct Is Prohibited by This Subpart?

This provision prohibits false, fraudulent or deceitful conduct on the part of entities attempting to participate in the DBE Program. It has been placed in the Rule in order to protect the integrity of the DBE Program.

Subpart C—Good Faith Efforts

Section 33.301 What Does This Subpart Require?

The good faith efforts required by this section are activities by a recipient or its prime contractor to increase DBE awareness of procurement opportunities through race/gender neutral efforts. Race/gender neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment and technical assistance. The good faith efforts must be made by a recipient and its prime contractor toward all DBEs, including SBEs, LSAFs and SBRAs and not just MBEs and WBEs, even if the fair share objective requirements of Subpart D have been met.

For purposes of simplification, EPA has combined the six positive efforts of 40 CFR 30.44(b) applicable to institutions of higher education, hospitals and other non-profit organizations with the six affirmative steps of 40 CFR 31.36(e) applicable to Indian Tribal, State, and local Government recipients and renamed them the six ''good faith efforts.''is not the intention of the Agency to change the substance of the positive efforts or the affirmative steps.

The six good faith efforts required by this section must be performed by all recipients (including recipients who have been exempted under § 33.411 from the requirements of applying fair share objectives) and their prime contractors, if they award subcontracts, for the procurement categories of construction, equipment, services (including consulting services) and supplies. EPA offers the following examples to assist recipients and prime contractors in carrying out the good faith efforts.

(1) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and local Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(a) Maintain and update a listing of qualified DBEs that can be solicited for construction, equipment, services and/or supplies.

(b) Provide listings to all interested parties who request copies of the bidding or proposing documents.

(c) Contact appropriate sources within your geographic area and State to identify qualified DBEs for placement on your DBE business listings.

(d) Utilize other DBE listings such as those of the State's Minority Business Office, the Small Business Administration, Minority Business Development Agency (MBDA) of the Department of Commerce, EPA OSDBU, and DOT.

(e) Have State environmental agency personnel review solicitation lists.

(2) Make information of forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(a) Develop realistic delivery schedules which may provide for greater DBE participation.

(b) Advertise through the minority media in order to facilitate DBE utilization. Such advertisements may include, but are not limited to, contracting and subcontracting opportunities, hiring and employment, or any other matter related to the project.

(c) Advertise in general circulation publications, trade publications, State agency publications and minority and women's business focused media concerning contracting opportunities on your projects. Maintain a list of minority and/or women's business-focused publications that may be utilized to solicit DBEs.

(3) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities in order to increase opportunities for participation by DBEs in the competitive process.

(a) Perform an analysis to identify portions of work that can be divided and performed by qualified DBEs.

(b) Scrutinize the elements of the total project to develop economical units of work that are within the bonding range of DBEs.

(c) Conduct meetings, conferences, and follow-ups with DBE associations and minority media to inform these groups of opportunities to provide construction, equipment, services and supplies.

(4) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(a) Notify DBEs of future procurement opportunities so they may establish bidding solicitations and procurement plans.

(b) Provide DBE trade organizations with succinct summaries of solicitations.

(c) Provide interested DBEs with adequate information about plans, specifications, timing and other requirements of the proposed projects.

(5) Use the services and assistance of the SBA and the MBDA.

(a) Use the services of outreach programs sponsored by the MBDA and/or the SBA to recruit bona fide firms for placement on DBE bidders lists to assist these firms in the development of bid packaging.

(b) Seek out Minority Business Development Centers (MBDCs) to assist recipients and prime contractors in identifying DBEs for potential work opportunities on projects.

Appropriate use of the services and assistance of the SBA and the MBDA depends on the circumstances. It may involve using the services of outreach programs sponsored by the MBDA and/or the SBA to recruit bona fide firms for placement on DBE bidder's lists to assist the firms in the development of bid packages. Recipients and prime contractors may use SBA's Pro-Net Procurement Marketing and Access Network services to identify available DBEs to do the work. Recipients and prime contractors may utilize MBDCs for assistance in identifying DBEs for potential work opportunities on contracts under EPA financial assistance agreements, as well as using MBDA's Phoenix dBASE System to identify available DBEs to do the work.

(6) If the prime contractor awards subcontracts, require the prime contractor to take the steps in subparagraphs (1)–(5) of this section.

Section 33.302 Are There Any Additional Contract Administration Requirements?

The first provision of this section is intended to ensure that subcontractors receive prompt payment from prime contractors. The other provisions of this section, including the requirement to complete the forms mentioned below, are intended to prevent any ''bait and switch'' tactics at the subcontract level by prime contractors which may

circumvent the spirit of the DBE Program. In addition, this proposal would require a recipient to be notified in writing before its prime contractor could terminate a DBE subcontractor for convenience and then perform the work itself.

Furthermore, when a DBE subcontractor is terminated or fails to complete its work under the subcontract for any reason, the recipient must require the prime contractor to make good faith efforts if the prime contractor chooses to hire another subcontractor. A recipient must also require its prime contractor to continue to make the good faith efforts even if the fair share objectives in Subpart D of this Rule have been met. Finally, this proposed rule mentions three new forms which are required if there are DBE subcontractors involved in a procurement. First, a recipient must require its prime contractor to provide EPA Form 6100–2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100–2—DBE Program Subcontractor Participation Form will allow DBE subcontractors the option of describing to EPA the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have. Second, a recipient must require its prime contractor to have any anticipated DBE subcontractors complete EPA Form 6100–3—DBE Program Subcontractor Performance Form. The prime contractor would then submit this form as part of its bid or proposal package when competing for a procurement. Third, a recipient must have its prime contractor complete EPA Form 6100–4—DBE Program Subcontractor Utilization Form whenever applicable and submit the form as part of the prime contractor's bid or proposal package when competing for a procurement.

Section 33.303 Are There Special Rules for Loans Under EPA Financial Assistance Agreements?

A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, such as a State under the CWSRF or DWSRF or an eligible entity under the Brownfields Cleanup Revolving Loan Fund program, must require that borrowers receiving identified loans comply with the good faith efforts described in § 33.301 and the contract administration requirements of § 33.302. This provision does not require that such private or non profit borrowers expend identified loan funds in compliance with any other procurement procedures contained in 40 CFR Part 30, 40 CFR Part 31, or 40 CFR Part 35, Subpart O, as applicable.

Section 33.304 Must a Native American (Either as an Individual, Organization, Tribe or Tribal Government) Recipient or Prime Contractor Follow the Six Good Faith Efforts?

Native Americans are defined in § 33.103 to include American Indians, Eskimos, Aleuts and Native Hawaiians. A Native American (either as an individual, organization, corporation, Tribe or Tribal Government) recipient or prime contractor must follow the six good faith efforts only if doing so would not conflict with existing Tribal or Federal law, including but not limited to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) which establishes, among other things, that any federal contract, subcontract, grant, or subgrant awarded to Indian organizations or for the benefit of Indians, shall require preference in the award of subcontracts and subgrants to Indian organizations and to Indian-owned economic enterprises.

Indian organizations awarded an EPA financial assistance agreement have the ability to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. Tribal governments with promulgated tribal laws and regulations concerning the solicitation and recruitment of Native American-owned and other minority business enterprises, including women-owned business enterprises, have the discretion to utilize these tribal laws and regulations in lieu of the six good faith efforts. If the effort to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts. Such tribal governments still must retain records documenting compliance in accordance with § 33.501 of the Rule and must report to EPA on their accomplishments in accordance with § 33.502 of the Rule.

Any recipient, whether Native American or not, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.

Subpart D—Fair Share Objectives

Section 33.401 What Does This Subpart Require?

EPA's previous fair share policy has required that fair share objectives for MBEs and WBEs be negotiated with EPA financial assistance recipients, but has not required that fair share objectives be established for other types of DBEs. While good faith efforts have been required with respect to all DBEs, including LSAFs, SBEs and SBRAs, numerical fair share objectives need only be negotiated for MBEs and WBEs in accordance with EPA's 8% and 10% statutes. This proposed rule would continue this policy.

EPA's position reflects the requirement of its 8% and 10% statutes and is consistent with Executive Order 12138 (May 18, 1979), which requires all Federal agencies to take ''appropriate affirmative action in support of [WBEs].'' Further, OMB Circular A–102 (March 3, 1988) provides that ''[i]t is national policy to award a fair share of contracts to small and minority business firms: and that ''[g]rantees shall take similar appropriate affirmative action * * * [in] support of women's enterprises * * *''

Prior to FY 1998, EPA applied its 8% and 10% MBE and WBE objectives directly to each of its financial assistance agreements. Thus, each EPA financial assistance agreement for research relating to the requirements of the Clean Air Act Amendments of 1990 had a minimum of 10% as MBE and WBE fair share objectives. All other EPA financial assistance agreements had a minimum of 8% as MBE and WBE fair share objectives. EPA changed this policy beginning with its FY 1998 financial assistance agreements so that the minimum 8% and 10% MBE and WBE fair share objectives became agency-wide objectives rather than fair share objectives for each EPA financial assistance agreement. Notwithstanding these national objectives, fair share objectives for each financial assistance agreement recipient are negotiated based on an assessment of the availability of qualified MBEs and WBEs in the relevant procurement market for construction, equipment, services and supplies; thus, the overall national objectives may vary from the specific fair share objectives of an individual financial assistance agreement recipient.

The 8% and 10% objectives are national objectives which EPA uses to evaluate and monitor MBE and WBE opportunities to participate in contracts under EPA financial assistance agreements. They do not serve as quotas or set-asides. These national objectives

do not authorize or require a recipient to automatically establish MBE or WBE fair share objectives at the 8% or 10% levels. The fair share objectives apply only to procurement dollars and not, for example, to salaries or other overhead costs.

Section 33.402 Are There Special Rules for Loans Under EPA Financial Assistance Agreements?

A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund will apply its fair share objective (if the entity receiving the identified loan uses a relevant geographic area that is substantially similar to the recipient's) or a separately negotiated fair share objective to entities receiving identified loans. For the CWSRF and DWSRF Programs, identified loans are those projects or activities funded from amounts equal to the capitalization grant. For the Brownfields Cleanup Revolving Loan Fund (BCRLF) Program, identified loans are those projects funded with federal financial assistance. If procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

Section 33.403 What Is a Fair Share Objective?

A fair share objective is a percentage based on the capacity and availability of qualified MBEs, and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services and supplies compared to the number of all qualified entities in the same market for the same procurement categories adjusted, if possible, to reflect the level of MBE and WBE participation absent the effects of past discrimination in the marketplace.

A fair share objective is not a quota. A recipient and its prime contractor must make the good faith efforts described in Subpart C of this Rule in attempting to achieve its fair share objectives.

Section 33.404 When Must a Recipient Negotiate Fair Share Objectives With EPA?

This Rule requires a recipient to submit its proposed fair share objectives and supporting documentation to the Agency within 90 days after its acceptance of a financial assistance agreement for more than $250,000. In situations where a recipient receives several EPA financial assistance agreements that are $250,000 or less in one fiscal year, the recipient must submit its proposed fair share objectives and supporting documentation to the Agency within 90 days after its acceptance of the financial assistance agreement that takes the recipient over the $250,000 threshold (*see* § 33.411). In recent years EPA has included time frames for submission of proposed fair share objectives in special grant conditions for each financial assistance agreement. EPA is now incorporating a general time frame into this Rule. A recipient may not spend any of its financial assistance award for procurement until the fair share objective negotiation process has been completed.

Section 33.405 How Does a Recipient Determine Its Fair Share Objectives?

Starting in FY 1998, EPA, through the 1997 Guidance and implementing terms and conditions, has required that fair share objectives for MBEs and WBEs be based on the availability of qualified MBEs and WBEs in the relevant market for the four procurement categories of construction, equipment, services and supplies. In this proposed regulation, EPA is also offering recipients the option of combining the four proposed procurement category objectives for MBEs into a single weighted objective. The same option would be available for WBEs. In this proposed regulation, EPA is continuing to allow recipients to establish separate MBE and WBE fair share objectives for different EPA financial assistance programs and to establish separate MBE and WBE fair share objectives by geographic area.

Beginning with MBE and WBE objectives for FY 1999, the Agency required that fair share negotiations be supported by an availability analysis, or at the recipient's option, a disparity study conducted within the past ten years. In this rulemaking, EPA is proposing to keep this basic approach, with some fine tuning. The recipient would have to consider whether an adjustment from the availability analysis or disparity study percentage is needed based on past MBE or WBE achievements, other disparity studies done within the recipient's jurisdiction or other types of relevant available data (*e.g.*, statistical disparities in the ability of MBEs and WBEs to obtain financing, bonding and insurance required to participate in the DBE Program). This process is needed to ensure that objectives accurately reflect the MBE and WBE participation expected absent the effects of discrimination.

Recognizing that EPA makes many different types of financial assistance awards (*e.g.*, Superfund awards for Hazardous Waste Cleanup, CWSRF capitalization grants) to a wide variety of recipients, EPA is also soliciting comments to help us determine how best to achieve a ''level playing field'' for MBEs and WBEs. EPA is specifically asking for comments on whether recipients should be able to choose from a variety of methods in calculating MBE and WBE fair share objectives with the Agency.

This process is intended to provide maximum flexibility for recipients while ensuring that objectives are based, at a minimum, on the capacity and availability of qualified MBEs and WBEs in the recipient's relevant market.

A recipient may negotiate separate MBE and WBE fair share objectives applicable to different geographic markets, and must use the fair share objectives for the geographic markets in which the contract work for its project is being performed.

(1) Step 1: Determining a Base Figure for the MBE and WBE Objectives

A recipient may determine a base figure by preparing an availability analysis. An availability analysis represents an actual measurement by the recipient of the availability of MBEs and WBEs in the relevant geographic market in the four procurement categories compared to the number of all businesses in the same market that perform work in the same procurement categories. From these data the recipient would derive a base figure that is as accurate a representation as possible of the percentage of qualified MBEs and WBEs available versus the total number of available businesses.

EPA is not specifying a methodology or formula for a recipient to use in preparing its availability analysis. Instead, the Agency is proposing to place primary emphasis on the principles underlying the measurement, requiring only that a measurement of the availability be made on the basis of demonstrable evidence of relevant market conditions.

EPA is providing a number of examples which recipients may adopt or use as guidelines for deriving their own availability analysis.

(A) MBE/WBE Directories and Census Bureau Data

The first example is setting an MBE base figure using a recipient's own MBE directories, including the bidders list required by § 33.501. For each procurement category, the recipient would first tabulate the number of

qualified MBEs, with the resulting number becoming the numerator of the base figure. The denominator could then be derived from the Census Bureau's County Business Pattern (CBP) Database. The CBP Database contains all available businesses in the recipient's relevant geographic market organized by Standard Industrial Code (SIC code). SIC codes have been converted to North American Industrial Classification System (NAICS) codes. For purposes of the following discussion, NAICS codes may be substituted for SIC codes. The recipient may then combine all available businesses pertaining to construction, for example, and use this number as the denominator in the base figure for that particular procurement category.

EPA has a link to the Census Bureau's website at *osdbuweb.dot.gov/business/dbe/abe.pdf*. Utilizing this data, recipients would be able to customize their base figure within each procurement category. For example, major construction SIC codes are 15, 16 and 17. If a recipient estimates it will spend 10% of its federal funds within SIC code 15, 40% in SIC code 16, 25% in SIC code 17, and the remaining 25% on contracting spread over SIC codes 35 (equipment) and 87 (services), the recipient could separately determine the availability of MBEs for each of the SIC codes and weight each according to the amount of money to be spent in each area. In this example, the recipient could calculate its weighted base figure by first determining the number of MBEs in its directory for each of the SIC codes, then extracting the availability of CBP businesses for the same SIC codes. The recipient would then perform the following calculation to arrive at a base figure for step one of the objective setting process for MBEs.

Numerator = [.10 *(MBEs in SIC code 15)* + .40(*MBEs in SIC code 16*) + .25(*MBEs in SIC code 17*) + .25(*MBEs in SIC codes 35 & 87*)] × 100

Denominator = CBPs in SIC code 15 + CBPs in SIC code 16 + CBPs in SIC code 17 + CBPs in SIC codes 35 & 87

$$\text{Base Figure} = \frac{\text{Numerator}}{\text{Denominator}}$$

This formula is offered only as an example of how a recipient could choose to use the CBP Database. Recipients using the CBP data could choose whether to weight their calculation, and whether to do so by individual SIC codes or by groups of SIC codes, based on their own assessment of which method will best fit their spending patterns.

EPA is proposing to allow a recipient to negotiate separate MBE and separate WBE fair share objectives for each of the four procurement categories of construction, equipment, services and supplies or, at its option, negotiate a combined weighted objective for these four procurement category objectives for MBEs and separately for WBEs. This proposed approach would give recipients flexibility in preparing their availability analyses.

Several issues arise when comparing numbers from two different data sources. First, recipients will need to ensure that the scope of businesses included in the numerator is as close as possible to the scope included in the denominator. A recipient using its own MBE and WBE directories will still need to determine a similar scope for the fields it will use for the denominator. A good way for a recipient to do this would be to examine its contracting program and determine the SIC codes for the majority of its contracts. While it may be sufficient for some recipients to use their State borders as the boundaries for their relevant geographic market, this may not be appropriate for other recipients whose relevant geographic market may extend beyond their State borders. Conversely, the relevant geographic market for some recipients may be a specific region within a State's borders.

An alternative means of calculating the numerator is to use a bidders list. Under this approach the recipient would measure availability by the number of firms that have previously competed in the recipient's procurement process. The recipient must include all firms that have competed for prime and/or subcontracts.

In the category of construction, most MBE and WBE participation occurs through subcontracting. It is therefore crucial that all firms competing for subcontracts be included in the bidders list. EPA encourages recipients to use any sources of local data which allows them to make a more accurate calculation.

(B) Data From a Disparity Study

Another option for a recipient in determining a base figure is using a disparity study. Disparity studies involve comparing available MBE and WBE contractors with the contracts actually awarded to them. They generally are based on statistics which measure MBE and WBE utilization and anecdotal evidence showing that the underutilization of MBEs and WBEs is caused by conditions other than chance. These studies may be expensive and time consuming to perform.

EPA is not requiring a recipient to conduct a disparity study. EPA is also not specifying the data or analysis required in a disparity study since the design and conduct of the study are best left to recipients and the professional organizations with which they contract to perform the studies. If a disparity study is used it must address MBE and WBE utilization under the four procurement categories and be no more than ten years old. The fact that a disparity study utilized in negotiating fair share objectives has become more than ten years old during the three year period does not by itself constitute a significant change requiring renegotiation.

(C) The Objective of Another EPA Recipient

A recipient may also use another EPA recipient's MBE and WBE objectives if they were established in accordance with this Rule and were based on a substantially similar relevant geographic market. For example, a non-State agency recipient may use a State agency's MBE and WBE fair share objectives, but only if the non-State agency uses a substantially similar geographic market. Otherwise, the non-State Agency recipient would have to negotiate its own MBE and WBE fair share objectives with EPA based on the availability of MBEs and WBEs in its relevant geographic market. With the proposed exemption from the fair share objective negotiation process, the number of recipients who would be required to separately negotiate with EPA would be substantially reduced.

(D) Alternative Methods

This proposal also includes an option for recipients to propose an alternative method for calculating MBE and WBE base figures. Recipients may use this option to take advantage of any unique expertise or source of data that may not be available to other recipients, such as a comparable objective negotiated with DOT. EPA will consider any such proposal that recipients believe will better reflect their relevant market than any of the examples provided in this Rule.

Step 2: Adjusting the Base Figure for the MBE and WBE Objectives

Once a recipient has derived base figures for its proposed MBE and WBE objectives, it must then consider whether an adjustment from the Step 1 MBE and WBE base figures is appropriate. This second step is needed to ensure that objectives more

accurately reflect the MBE and WBE participation expected absent the effects of discrimination. A recipient should consider the proven capacity of MBEs and WBEs to perform on contracts under EPA financial assistance agreements. MBE and WBE past utilization does not necessarily reflect the availability of MBEs and WBEs. However, such past utilization is an indicia of the proven capacity of an MBE or WBE to perform on contracts under EPA financial assistance agreements. Other relevant information which should be examined, if available, include any other disparity studies conducted within a recipient's relevant geographic market; statistical disparities in the ability of MBEs and WBEs to get necessary financing, bonding and insurance; and data on limitations for employment, self employment, education, training and union apprenticeship.

EPA is not proposing to require recipients to make an adjustment to their base figures. Rather, recipients must consider whether an adjustment to the base figures is appropriate, and if so, make the adjustment. It is important to note that the data recipients would consider under this proposed approach only involve existing data and not the generation of any new data.

The question of allowability of costs of preparing availability analyses or disparity studies in connection with the DBE Program is determined in accordance with the cost principles applicable to the organization incurring the cost. 40 CFR 30.27 and 31.22. For State and local governments, the pertinent cost principles are found in OMB Circular A–87, as amended 8/29/97 (''A–87''). For institutions of higher education and other non-profit institutions, OMB Circulars A–21 and A–122 apply, respectively. Allowability of costs for hospitals is determined in accordance with the provision of appendix E of 45 CFR Part 74.

In general, the cost must be necessary and reasonable, be allocable to the Federal grant, be consistent with State law and be afforded consistent treatment as direct or indirect. The cost must be adequately documented, and be the net of any applicable credits. There is nothing inherent in the cost principles that would render the DBE costs unallowable.

Each recipient will have different fact situations to apply. In CERCLA Core Program Cooperative Agreements, costs incurred in encouraging DBE utilization in the Superfund Program are allowable for funding. The recipient may have conducted an analysis or study for its own purposes prior to the EPA financial assistance agreement, in which case some of the costs might be allocable to the EPA grant as an in-kind contribution. Costs must also be treated consistently as either direct or indirect in similar circumstances. Under OMB cost principles the costs of such analyses or studies could either be allowable direct or allowable indirect costs under an EPA assistance award. The recipient must determine whether under its particular circumstances, the DBE costs are allocable to the cost objective in question, and whether it is a direct or indirect cost.

In each case, the recipient will have to devise a method of allocating the cost of the analysis or study appropriately. If audited, the recipient may be asked to document and justify the allocation. If a recipient has questions concerning allocation issues, it should contact its appropriate EPA grants administration office.

Section 33.406 May a Recipient Designate a Lead Agency for Fair Share Objective Negotiation Purposes?

If an Indian Tribal, State or local Government has more than one agency that receives EPA financial assistance, the agencies within that government may designate a lead agency to negotiate MBE and WBE fair share objectives with EPA to be used by each of the agencies. Each agency must otherwise negotiate with EPA separately its own MBE and WBE fair share objectives.

Section 33.407 How Long Do MBE and WBE Fair Share Objectives Remain in Effect?

Once approved, a recipient's MBE and WBE fair share objectives would remain in effect for three fiscal years. However, if significant changes have occurred rendering the data relied upon in establishing the fair share objectives obsolete, the fair share objectives may need to be renegotiated before the end of the three fiscal year period. The fact that a disparity study utilized in negotiating fair share objectives has become more than ten years old during the three year period does not by itself constitute a significant change requiring renegotiation.

Section 33.408 May a Recipient Use Race and/or Gender Conscious Measures as Part of This Program?

To the extent good faith efforts described in Subpart C of this Rule and other race and/or gender neutral efforts prove to be adequate to achieve fair share objectives for MBEs and WBEs, a recipient or prime contractor need not take any race and/or gender conscious action. To the extent good faith efforts described in Subpart C of this Rule and other race and/or gender neutral efforts prove to be inadequate to achieve fair share objectives for MBEs and WBEs, a recipient or prime contractor is encouraged to take reasonable race and/or gender conscious action, subject to § 33.409, to more closely achieve the fair share objectives. Such actions may include, among other things, price incentives and technical evaluation credits. Any use of race and/or gender conscious measures must not result in the selection of an unqualified MBE or WBE. A recipient must notify EPA in advance of any race and/or gender conscious action it plans to take.

Section 33.409 May a Recipient Use Quotas as Part of This Program?

Quotas may never be used under EPA's 8% or 10% statute. In fact, EPA's 10% statute specifically prohibits quotas.

Section 33.410 May a Recipient Be Penalized for Failing To Meet Its Fair Share Objectives?

Under this Rule, a recipient may not be penalized or considered to be in noncompliance solely because its MBE or WBE utilization falls short of its fair share objectives. However, EPA may take remedial action under § 33.105 for a recipient's failure to administer any portion of the DBE Program including, but not limited to, the good faith efforts requirements described in Subpart C of this part.

Section 33.411 Who May be Exempted From This Subpart?

EPA is proposing to exempt recipients of financial assistance agreements with a combined total of $250,000 or less in EPA funds for any particular EPA financial assistance project or in any one fiscal year from the fair share objective requirements. These recipients would not be exempted from the six good faith efforts requirements of Subpart C or the recordkeeping and reporting requirements of Subpart E. The Agency is requesting comments on whether the exemption should be extended to the other requirements. Commenters are encouraged to submit relevant burden and/or cost information in support of extending the exemption to the other requirements of this Rule.

Financial assistance agreements of $250,000 or less account for about 82% of new EPA financial assistance awards each fiscal year, but less than 12% of the total EPA financial assistance funds awarded. For the Clean Water State Revolving Fund (CWSRF), Drinking Water State Revolving Fund (DWSRF), and Brownfields Cleanup Revolving

Loan Fund (BCRLF) Programs, recipients are not required to apply the fair share objective requirements to an entity receiving an identified loan in the amount of $250,000 or less or to an entity receiving a combination of loans totaling in the amount of $250,000 or less in any one fiscal year. These exemptions are designed to minimize administrative burdens on EPA recipients. Recipients exempted by this provision are not exempted from the other requirements of the rule. The Agency is requesting comment, including comments from Tribes, on whether the exemptions should apply to other requirements, specifically the good faith efforts and reporting requirements. Commenters are encouraged to submit relevant burden and/or cost information in support of their comments to extend the exemption to other requirements of this Rule, including the good faith efforts and reporting requirements.

EPA is proposing to exempt Tribal and tribal consortia recipients from applying the fair share objective requirements to eligible program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B, due to the nature of these program grants and the unique nature of eligible recipients.

Finally, a recipient of a Technical Assistance Grant (TAG) would not be required to apply the fair share objective requirements of this Subpart to that grant. This provision would not, however, exempt such recipients from any other requirements of this Part.

Section 33.412 Is There a Special Rule for an Insular Area or Indian Tribal Government Recipient?

Currently, Insular Area and Indian Tribal Government recipients are not required to negotiate fair share objectives with EPA. For the most part, EPA is proposing to treat Insular Area and Indian Tribal Government recipients the same as other recipients with regard to the fair share objective negotiation requirements. For example, the fair share objectives of another recipient may be used so long as the relevant geographic market is the same or substantially similar.

The impact of this change on Indian Tribal Government recipients would be minimized by the general exemption described in § 33.411(a). The impact is further minimized in the case of tribes and tribal consortia by the exemption for eligible program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B, described in § 33.411(c). As with other recipients, fair share objectives would remain in effect for three years.

EPA is proposing to phase-in the MBE and WBE fair share objective negotiation process for Insular Area and Indian Tribal Government recipients over three years in order for such recipients to adjust to this change in policy. The Agency will develop guidance on what specific factors should be taken into account in determining the phase-in period for these recipients. In the interim, such recipients must still comply with all other requirements of this Rule.

Subpart E—Recordkeeping and Reporting

Section 33.501 What Are the Recordkeeping Requirements of This Part?

A recipient is required to maintain the records documenting its compliance with the requirements of this Part, including documentation of its and its prime contractor's good faith efforts and data relied upon in formulating its fair share objectives. A recipient must also comply with the applicable retention and access requirements for its financial assistance agreement, *e.g.*, 40 CFR 30.53 (for institutions of higher education, hospitals and other non-profit organizations); 40 CFR 31.42 (for Indian Tribal, State and local Government recipients); and 40 CFR 35.6705, 35.6710 (for Superfund Response Action Cooperative Agreements). In addition, a recipient of a Continuing Environmental Program Grant (*e.g.*, a State) or other annual grant would be required to create and maintain a bidders list. Such a list must only be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. (See *e.g.*, 40 CFR 33.303). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. Such a list must only be kept until the project period for the identified loan has ended. Recipients are required to comply with these recordkeeping requirements, even if they are exempted by § 33.411 from applying the fair share objective requirements. The Agency is requesting comments on whether the exemption should be extended to the recordkeeping requirements. Commenters are encouraged to submit relevant burden and/or cost information in support of their comment to extend the exemption to the recordkeeping requirements.

Section 33.502 What Are the Reporting Requirements of This Part?

The effectiveness of EPA's DBE Program may be measured through its reporting requirements. These reports measure EPA's progress in achieving the national objectives established by EPA's 8% and 10% statutes.

All financial assistance agreement recipients must report on a quarterly basis except for recipients of continuing environmental program grants, and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance awards under 40 CFR Part 30, who report on an annual basis. Examples of continuing environmental program grants include those specified in 40 CFR Part 35, Subpart A, as well as Performance Partnership Grants (PPGs) and GAP Grants for Indian Tribal governments and intertribal consortia. Recipients of grants capitalizing CWSRF or DWSRF Programs have historically reported MBE/WBE participation quarterly, and will continue to do so under this rule. Recipients of financial assistance agreements that capitalize revolving loan programs must require entities receiving identified loans to submit their MBE and WBE participation reports on a quarterly basis to the financial assistance agreement recipient, rather than to EPA. Private and non-profit organization loan recipients are not required to maintain a certified procurement system (*e.g.*, see 40 CFR 35.6055(a)).

In the past, EPA has presumed that all financial assistance award funds to Indian Tribal Government and Insular Area recipients have benefitted MBEs. Accordingly, despite the reporting requirements contained in 40 CFR Part 31, as a matter of policy, EPA has not uniformly required Indian Tribal Government and Insular Area recipients to report their degree of MBE or WBE utilization. In this proposed Subpart, Indian Tribal Government and Insular Area recipients are treated the same as other recipients with regard to recordkeeping and reporting requirements. All such recipients would therefore be required to retain records and report on actual MBE and WBE utilization.

The reporting requirements are applicable to all recipients, even those exempted from applying the fair share

objective requirements. The Agency is requesting comments on whether the exemption should be extended to the reporting requirements. Commenters are encouraged to submit relevant burden and/or cost information in support of their comment to extend the exemption to the reporting requirements.

Section 33.503 How Does a Recipient Calculate MBE and WBE Participation for Reporting Purposes?

In this rulemaking proposal the Agency is proposing to codify the principles of Chapter 8 of its 1997 Guidance concerning how MBE and WBE participation is counted.

EPA requires that a recipient report the total amount of financial assistance spent on procurement and the amount awarded to an MBE or WBE. For EPA assistance awards, except the CWSRF and DWSRF Revolving Funds, all project expenditures are deemed to include both the Federal Share and the recipient's required matching share. Therefore, except in the SRF Programs, the amount of procurement in the assistance award as a whole, *i.e.*, including any required cost share funds contributed by the recipient is reported. In the SRF Programs, only identified loans are considered to include Federal funds. Negative reports are required, *i.e.*, if a recipient does not make an MBE or WBE procurement award in a reporting period, the recipient must still file a Form 5700–52A.

By requiring recipients to report, EPA is attempting to measure the amount of overall MBE and WBE participation under the DBE Program. The reporting of MBE and WBE dollar amounts under a particular prime contract will result in a total that is no more than 100% of the prime contract value. For example, if an MBE is awarded a prime contract and then subcontracts 30% of the value of the contract, the total number of dollars reported would remain at the 100% level. This would be true even if the subcontractor in this example is another MBE.

If all project costs attributable to MBE and WBE participation are not eligible for funding under the EPA financial assistance agreement, the recipient may report MBE and WBE participation compared to the total eligible and non-eligible costs of the project.

Joint Ventures. The MBE and WBE participation within a joint venture shall be credited in a *pro rata* fashion. Where an MBE's or WBE's risk of loss, control or management responsibilities is not consistent with its share of the profit, the award official may direct an adjustment in the percentage of MBE or WBE participation.

Central Purchasing or Procurement Centers. Recipients must verify procurement dollars awarded to MBE and WBE firms from a recipient's central purchasing or procurement center.

In reporting MBE and WBE utilization, a recipient may use one of the methods described below or propose another method for approval by EPA.

(1) A recipient may report actual dollars expended on procurement from EPA financial assistance agreement funds to MBEs and WBEs, if sufficient records are maintained;

(2) If records are maintained for a recipient's MBE and WBE procurement generally but records are not specifically maintained for procurement under EPA financial assistance agreements, a recipient's MBE and WBE percentage utilization for its funds as a whole may be applied proportionally to the amount of procurement under EPA financial assistance agreements; or

(3) If actual records of MBE and WBE utilization are not maintained, a recipient may authorize its procurement center to estimate the total amount of funds awarded to MBEs and WBEs. Such estimate, provided it is reasonable, will be accepted.

Brokers. MBE and WBE participation will be credited for those MBEs and WBEs performing a useful business function according to industry custom and practice. Recipients *may not* count expenditures to an MBE or WBE that acts merely as a broker or passive conduit in a transaction. A broker is a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business. However, an MBE or WBE may subcontract a portion of the work to a non-MBE or non-WBE, provided that such further subcontracting is in accordance with this proposed regulation and that the majority of work is retained by the MBE or WBE having the prime contract.

Presumption. If an MBE or WBE prime contractor awards 50% or more of the prime contract value to a non-MBE and non-WBE, EPA presumes that such a MBE or WBE prime contractor is a broker. No MBE or WBE utilization may be reported for a broker.

Rebuttal. An MBE or WBE contractor may rebut this presumption by demonstrating that the degree of subcontracting is consistent with normal business practice and that it will actively perform, manage and supervise the work under its contract.

MBE or WBE Truckers/Haulers. A recipient may only count expenditures to an MBE or WBE Trucker/Hauler if that MBE or WBE Trucker/Hauler is performing a commercially useful function. The proposed rule discusses two factors to consider in determining whether an MBE or WBE Trucker/Hauler is performing a commercially useful function.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). 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 tribal, State or local 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 programs, or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule is a significant rule under Executive Order 12866 because of the substantial public interest concerning and policy importance of programs to ensure nondiscrimination in Federally assisted contracting. It also affects a wide variety of parties, including all EPA financial assistance programs, and the DBE and non-DBE contractors that perform work under them. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Based on currently available information about costs that may be associated with complying with this rule (*e.g.*, costs to obtain MBE or WBE certification), EPA believes that this rule will not have an annual effect on the economy of $100 million or more. Therefore, EPA does not plan to prepare a regulatory impact statement for this rule. However, EPA invites commentors

to furnish information on the economic costs, impacts and distributional effects of this proposed rule, after which the agency may reconsider its position.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned ICR No–2047.01.

This ICR is for the purpose of ensuring that EPA's statutory DBE procurement goal requirements are implemented in harmony with the United States Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097 (1995).

The requirements to complete EPA Forms 6100–2–DBE Program Subcontractor Participation Form, 6100–3–DBE Program Subcontractor Performance Form, and 6100–4–DBE Program Subcontractor Utilization Form, are intended to prevent any ''bait and switch'' tactics at the subcontract level by prime contractors which may circumvent the spirit of the DBE Program.

The requirements to complete the EPA DBE Certification Application (EPA Form 6100–1a) (Sole Proprietorship), the EPA DBE Certification Application (EPA Form 6100–1b) (Limited Liability Company), the EPA DBE Certification Application (EPA 6100–1c) (Partnerships), the EPA DBE Certification Application (EPA Form 6100–1d) (Corporations), the EPA DBE Certification Application (EPA Form 6100–1e) (Alaska Native Corporations), the EPA DBE Certification Application (EPA Form 6100–1f) (Tribally Owned Businesses), the EPA DBE Certification Application (EPA Form 6100–1g) (Private and Voluntary Organizations), the EPA DBE Certification Application (EPA Form 6100–1h) (Concerns owned by Native Hawaiian Organizations), and the EPA DBE Certification Application (EPA Form 6100–1i) (Concerns Owned by Community Development Corporations), as applicable, would be required to be completed by an entity seeking to be counted as a minority business enterprise (MBE) or women's business enterprise (WBE) under EPA's DBE Program, which cannot get certified as an MBE or WBE by the SBA or DOT under their respective programs or by an Indian Tribal Government or independent private organization consistent with EPA's 8% or 10% statute as applicable.

Responses to the collection of information will be mandatory. EPA's legal authorities for the DBE Program are Public Law 102–389, a 1993 appropriations act (42 U.S.C. 4370d) (EPA's 8% statute), and Public Law 101–549, Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 *note*) (EPA's 10% statute).

Other legal authorities include Public Law 99–499, the Superfund Amendments and Reauthorization Act of 1986; Public Law 100–590, the Small Business Administration Reauthorization and Amendment Act of 1988; Executive Order 12138, ''Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women's Business Enterprise,'' issued May 18, 1979; Executive Order 11625, ''Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise,'' issued October 13, 1971; and Executive Order 12432, ''Minority Business Enterprise Development,'' issued July 14, 1983.

EPA may make available to the public any information concerning EPA's DBE Program release of which is not prohibited by Federal law or regulation, including EPA's Confidential Business Information regulations at 40 CFR Part 2, Subpart B.

The total labor burden and costs to MBEs and WBEs for certification under State, Tribal and Insular Area funding programs is estimated to total $8,750,300, with 168,275 burden hours and 6,731 MBE and WBE entities affected for the three-year period of the ICR. The estimated annual burden hours per response is 25 hours; the number of respondents is estimated at 2,244 at an average annual labor burden and cost per MBE and WBE of $1300. The average annual burden and costs are estimated by spreading the first year cost over the three-year period of the ICR, yielding a total annual average burden of 56,092 hours and $2,916,767 in costs.

The total labor burden and costs to all EPA grant and loan recipients that would have to perform an availability analysis to meet the requirements of the proposed rule and other paperwork requirements are estimated to be $16,509,500 with 825,475 burden hours and 3,115 entities affected for the three-year period of the ICR. The estimated annual burden hours for all responses is 275,158, and the annual number of respondents is estimated at 1,038.

The annual cost for all respondents would be $5,503,167. The cost per respondent is estimated at $5,250 (each respondent is estimated to perform an availability analysis once every three years) and is estimated to take 265 hours at $20/hour. EPA assumed there were no additional start up costs or capital expenditures.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. OA–2002–0001 which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West Room B102, 1301 Constitution Ave., NW., Washington, DC. 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) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket and to access those documents in the public docket, and to access those documents in the public docket that are available electronically. Once on the system, select ''search,'' then key in the docket ID number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725

17th St., NW., Washington, DC 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID No. OA–2002–0001 in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 24, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by August 25, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Today's proposed rule is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. As a grants-related rule, this rule is not subject to the notice and comment requirements of the APA, 5 U.S.C. 553(a)(1). Nor is there any other statute which requires EPA to undergo notice and comment for this rulemaking.

Although this proposed rule is not subject to the RFA, EPA nonetheless will assess the potential of this rule to adversely affect small entities, which include small businesses, small not for profit enterprises and small governmental jurisdictions. At the outset, it is important to note that EPA's DBE Program is aimed at improving contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals, among others (*e.g.*, HBCUs, etc.). Accordingly, EPA believes that this proposed rule would affect a substantial number of small entities.

However, if the proposed exemptions at the $250,000 level or less from the fair share objective requirements are adopted, EPA believes that the effect on small entities, including small government jurisdictions, would be minimal. Additionally, under this rulemaking proposal, small entity recipients would be able to use State Agency negotiated MBE/WBE objectives if such recipients solicit bids/offers from a substantially similar geographic market as that State Agency. Accordingly, EPA believes that the economic impact of this rule, if enacted, on small entities should be minimal.

In EPA's view, this rule, if enacted, would not affect the total funds or business opportunities available to small businesses that seek to work in EPA financial assistance programs. To the extent that the provisions in this rulemaking proposal (*e.g.*, with respect to changes in the methods used to set objectives) lead to different objectives than those under EPA's current program policy, some firms may gain and others lose, business.

EPA is unaware of any data which would enable the Agency at this time to measure the distributive effects of the rulemaking proposal on various types of small entities. We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Morever, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal Mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA excluded from the definition of ''Federal intergovernmental mandate'' duties that arise from conditions of federal assistance.

Pursuant to section 203 of the UMRA, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. If the proposed exemptions at the $250,000 level or less from compliance with the fair share objective requirements are adopted, EPA believes that there would be minimal impacts on small entities, including small government jurisdictions. Additionally, under this rulemaking proposal, small entity recipients would be able to use appropriate State Agency-negotiated MBE/WBE objectives if such recipients solicit bids/offers from substantially the same relevant geographic market as that State Agency. Therefore, this rule does not meet the threshold test for application of Section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State

law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule does not have ''federalism implications,'' as that phase is defined in the Executive Order. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Because this rule conditions the use of federal assistance, it will not impose substantial direct compliance costs on State and local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Stakeholders, including representatives from State government agencies, State government organizations and local governments, were given an opportunity to comment on a draft of the rule which was posted on the Internet for public comment. Meetings were also held in several states across the country to discuss the draft of the rule and to encourage comment.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA to a great extent developed this proposed rule, however, during the period when Executive Order 13084 was in effect. Although EPA believes that it has fully complied with the requirements of Executive Order 13175, as indicated in the following discussion, EPA will analyze and ensure full compliance with the requirements of Executive Order 13175 before promulgating the final rule.

Executive Order 13175 requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation. However, today's proposed rulemaking will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this rule.

EPA has concluded that the proposed rule would have tribal implications because it will have substantial direct effects on one or more Indian tribes. The substantial direct effects on tribal governments are as follows:

Tribes receiving an EPA financial assistance agreement of more than $250,000 for any single assistance agreement or of more than one financial assistance agreement with a combined total of more than $250,000 in any one fiscal year (excluding PPG eligible grants to tribes and intertribal consortia under 40 CFR Part 35, Subpart B) would have to negotiate fair share objectives with EPA unless they choose to adopt MBE and WBE objectives of another EPA recipient consistent with today's proposed rule. Those tribes required to negotiate fair share objectives with EPA would have a phase-in period of up to three years in which to do so; their fair share objectives will remain in effect for three fiscal years after they have been approved by EPA, unless there are significant changes to the data supporting the fair share objectives.

Some tribally owned businesses (businesses that a Federally recognized tribal government owns or in which it has a majority share) would not be eligible to be counted in the future towards meeting the MBE/WBE fair share objectives if they do not meet the applicable SBA 8(a) criteria, *e.g.*, see 13 CFR 124.109(b); under EPA's current requirements such businesses may self certify their MBE status. Of course, tribes may continue to do business with tribally owned or other companies which do not meet the applicable SBA 8(a) criteria, they simply could not count such procurements toward meeting MBE/WBE objectives. In addition, the proposed rule would have the following impacts on tribes/tribally owned businesses:

First, a business owned by a Federally recognized tribal government would have to file an annual affidavit with EPA certifying no change in its MBE status, pursuant to § 33.210 of today's proposed rulemaking.

Second, a business owned by a Federally recognized tribal government would have to be recertified every three years as meeting SBA's applicable 8(a) criteria to be eligible to be counted in the future towards meeting the MBE/WBE fair share objectives, pursuant to § 33.208.

Third, a business owned by a Federally recognized tribal government, if it is not already certified in accordance with SBA's applicable 8(a) criteria, may have to incur costs to be certified if there is no tribal certifier available and the other certifying entity charges for its services.

Fourth, a tribe as a recipient of EPA financial assistance, would have to be notified in writing before any termination of a DBE subcontractor for convenience is made by its prime contractor, pursuant to § 33.303(a).

Fifth, consistent with other Federal and tribal laws, a tribe would have to require its prime contractor, after the tribe has unsuccessfully sought to apply Indian preference consistent with the Indian Self-Determination and Education Assistance Act, to employ the good faith efforts described in § 33.301 if a DBE subcontractor fails to complete work under a subcontract for any reason and the prime contractor solicits a replacement subcontractor, pursuant to § 33.303(b).

Sixth, consistent with other Federal and tribal Laws, a tribe would have to require its prime contractor, after it has unsuccessfully sought to apply Indian preference consistent with the Indian Self-Determination and Education Assistance Act, to employ the good faith efforts described in § 33.301 even if it has achieved its fair share objectives under Subpart D of the rule, pursuant to § 33.303(c).

Seventh, a tribe would have to require its prime contractors to provide EPA Form 6100–2—DBE Program Subcontractor Participation Form, EPA Form 6100–3—DBE Program Subcontractor Performance Form and EPA Form 6100–4—DBE Program

Subcontractor Utilization Form to all of its DBE subcontractors, pursuant to § 33.303(e), (f) and (g), respectively.

Eighth, a tribal recipient that conducts procurements will have to create and maintain a bidders list in accordance with § 33.501(b). The purpose of this list is to provide recipients as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors who seek to work on procurements under EPA financial assistance agreements. The following information must be obtained from all such prime and subcontractors: (1) Entity name; (2) Entity address; (3) Entity's status as an MBE/WBE.

Consistent with EPA policy, EPA nonetheless consulted with tribal officials and/or representatives of tribal governments early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Because E.O. Sections 5(b) and 5(c) do not apply, a Tribal Impact Summary is not required. EPA nonetheless is including one in this preamble.

The following constitutes a Tribal Impact Summary under Executive Order 13175:

EPA posted a staff draft of this proposed rule, dated June 19, 2000, on EPA's internet website. As part of its ongoing tribal consultations on this rule, EPA held meetings with tribal officials to discuss the staff draft rule in Boston, Massachusetts on April 11, 2001 and in Seattle, Washington on May 23, 2001. EPA held further formal consultations with tribal officials to discuss a draft of this Rule in Ocean Shores, Washington during the week of January 28, 2002.

By way of further background, today's proposed rule has been under development for the past several years. EPA invited tribal recipients of EPA grants and cooperative agreements to an EPA/State/Tribal Annual Conference held on February 2–4, 1999 in Albuquerque, New Mexico. During this conference, EPA representatives discussed a number of issues relating to the rule under development with the general audience. In addition, EPA representatives met separately with tribal officials and/or representatives to discuss issues of concern to tribes. On June 27–30, 2000, the Agency held its EPA/State/Tribal Annual Conference in Albuquerque, New Mexico. Again, EPA invited tribal recipients of EPA financial assistance agreements to attend. During the June, 2000 conference, agency representatives discussed in detail the June 19, 2000 staff draft of the rule, which had been posted on EPA's website. EPA solicited comments on the staff draft of the rule from conference participants. Tribal officials and/or representatives attended that conference as well. As of June 30, 2001, EPA has received a total of 17 written comments on the staff draft from Indian tribes.

During the development of this rule EPA representatives have made a number of oral presentations to the Tribal Operations Committee (TOC) on the rule's progress and solicited input. The TOC is comprised of 19 national tribal representatives from the nine EPA Regions that have federally recognized tribes, and EPA Senior Management; its role is to provide input into EPA decision making affecting Indian Country. On November 29, 2000, EPA representatives met with the TOC at the EPA Tribal Caucus Regional Joint meeting in Miami, Florida to discuss the staff draft rule and to obtain further tribal input into the rulemaking process.

Starting in November, 2000, EPA invited tribal recipients of EPA grants and cooperative agreements to participate in outreach sessions held in cities around the country having EPA Regional offices in order to discuss the staff draft rule. EPA has further solicited tribal input into the rulemaking at meetings with tribal officials/representatives at the Department of the Interior 2001 Conference on the Environment hosted by the Bureau of Indian Affairs on March 13–15, 2001 in Albuquerque, New Mexico and at the Reservation Economic Summit and American Indian Business Trade Fair (RES 2001) in Anaheim, California, on March 20, 2001. EPA further solicited tribal input in another meeting with the TOC on April 24, 2001 in Miami, Florida.

EPA has considered tribal concerns and written comments in today's rulemaking. A summary of the nature of tribal concerns and EPA's initial response follows:

1. In general, tribes believe they should be exempt from the rule.

Awards of Grants and Cooperative Agreements to tribes are currently governed by 40 CFR Part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' These are government wide requirements that have been in effect since 1988. Among other entities subject to the regulations are governments. The definition of ''Government'' in 40 CFR 31.3 includes ''* * * a federally recognized Indian tribal government.'' Many requirements contained in this proposed rule are not new but rather are the same requirements contained in 40 CFR Part 31, with which many tribes already have been complying. For example, the reporting and recordkeeping requirements are already applicable to Indian tribes. In addition, neither EPA's 10% MBE/WBE procurement objective statute for research relating to the requirements of the Clean Air Act Amendments of 1990 nor EPA's statutory 8% MBE/WBE procurement objective requirements for all other programs contain language exempting tribes from their applicability. Therefore, EPA proposes that tribes should not be exempted from this rule because it promotes the utilization of all disadvantaged entities in procurement under EPA financial assistance agreements, including tribally owned businesses and businesses owned by a member(s) of a tribe.

2. Trigger for Fair Share Negotiations.

The issue of increasing the dollar amount of the trigger requiring compliance with the fair share objective requirements and the corresponding availability analysis was of special concern to tribes awarded GAP grants. One commentor also expressed the view that availability analysis preparation requirements should apply only to tribes spending 90% or more of their grants on outside procurement. Other tribes expressed the view that preparing availability analyses is too costly for them, especially for smaller tribes.

In response to concerns raised by tribes, under today's proposed rulemaking, the trigger requiring compliance with the fair share objective requirements has been increased to $250,000 from $100,000 contained in the staff draft of the rule. Also because of the nature of eligible program grants which can be included in Performance Partnership Grants (PPGs) to tribes under 40 CFR Part 35, Subpart B, and the unique nature of eligible recipients, the Agency is proposing to exempt PPG eligible program grants to tribes under 40 CFR Part 35, Subpart B from the fair share negotiation requirements.

Accordingly, only tribes receiving an EPA financial assistance agreement of more than $250,000 for any single assistance agreement or of more than one financial assistance agreement with a combined total of more than $250,000 in any one fiscal year (excluding PPG eligible program grants under 40 CFR Part 35, Subpart B) would have to comply with the fair share objective requirements.

The Agency believes that this change effectively addresses the concerns by setting a uniform standard applicable to all recipients, including tribes, rather than, for example, setting a standard based on amounts spent by tribes on outside procurement, which could pose implementation difficulties. EPA believes that most tribes will not have

to comply with the fair share objective requirements under today's rulemaking because they will fall under the $250,000 exemption or the exemption for PPG eligible program grants under 40 CFR Part 35, Subpart B. Finally, EPA believes that a number of tribes which otherwise would have to negotiate fair share objectives may elect instead to apply the objectives of another recipient in accordance with the requirements of today's rulemaking. In any case, the rule would provide tribes with a three year phase-in period to comply with the fair share negotiation requirements.

Comments were also received suggesting that EPA exempt tribes from Fair Share Negotiations based on procurement dollars, rather than on total grant dollars. EPA is considering this option which would exempt tribal grantees whose actual procurement activities total $250,000 or less from Fair Share Negotiations. EPA is specifically requesting public comment on this suggestion.

3. The reporting and recordkeeping requirements.

Some tribes expressed concerns that keeping records of and reporting purchases for EPA funded grants would impose a heavy burden on tribal governments. Instead, they suggested basing reporting on the amount of money the tribe received rather than on the amount of money it spent on outside supplies and services.

EPA considered these concerns. However, 40 CFR Part 31 already requires tribes to comply with Part 31's recordkeeping and reporting requirements, which include MBE/WBE recordkeeping and reporting. Today's proposed rulemaking make no changes to the existing Part 31 reporting and recordkeeping requirements. The Agency believes that basing requirements on amounts received rather than on amounts spent would be an inaccurate measurement of MBE/WBE procurement utilization. EPA currently requires financial assistance recipients to report MBE/WBE accomplishments based on dollars spent on MBE/WBE procurements. EPA is not proposing to change this requirement.

4. Compliance with the good faith efforts requirements.

One commentor objected to having to advertise in newspapers; a comment was also made that EPA should investigate alternative mechanisms that encourage a tribe to seek out MBEs/WBEs during the procurement process without incurring an unreasonable financial burden.

However, as discussed above, Section 7(b) of the Indian Self-Determination and Education Assistance Act requires tribal governments to solicit tribally-owned businesses and/or businesses owned by a member(s) of a tribe, before undertaking the six good faith efforts. Tribes currently are currently subject to 40 CFR Part 31, which requires them to make good faith efforts to ensure that DBEs are used whenever possible. EPA is not proposing to change this requirement. EPA does not believe that the good faith efforts requirements are unduly burdensome. The good faith efforts requirements would take effect only if no DBEs are found to do the work in each of the four procurement categories of construction, equipment, services and supplies in the initial tribal solicitation.

5. Phase-In Period.

One commentor expressed a concern about the timing of the phase-in period and the maximum amount of time needed for the requirement to be implemented.

EPA expects those tribes who could implement this requirement before the expiration of the three year phase-in period to do so. Those tribes who cannot do so would be given the full three years. It is important for tribes to note that the three year phase-in period would only begin after the final rule's effective date, which should allow tribes sufficient time to comply with prepare for the implementation of the requirement.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

Copies of written communications submitted by tribal officials/representatives are available upon request from the docket clerk for this rulemaking.

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

Executive Order 13045 applies to any rule that is determined to be: (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns any 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, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA has determined that the proposed rule is not a covered regulatory action because it is not economically significant and it does not involve decisions based on environmental health or safety risks. As a result, the proposed rule is not subject to the requirements of the Executive Order.

H. Executive Order 13211: Actions 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. EPA has concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 30

Environmental protection, Administrative practice and procedure, Grant programs—environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 31

Accounting, Administrative practice and procedure, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 33

Grant programs—environmental protection.

40 CFR Part 35

Grant programs—environmental protection. Grant programs—Indians, Hazardous waste, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 40

Research and Demonstration Grants—Projects involving construction.

Dated: July 9, 2003.

Linda J. Fisher,

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 30—[AMENDED]

1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*; 15 U.S.C. 2601 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 241, 242(b), 243, 246, 300f, 300j–1, 300j–2, 300j–3; 1857 *et seq.*; 6901 *et seq.*, 7401 *et seq.*, OMB circular A–110 (64 FR 54926, October 8, 1999).

§ 30.44 [Amended]

2. Section 30.44 is amended by removing and reserving paragraph (b).

PART 31—[AMENDED]

3. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; 42 U.S.C. 6901 *et seq.*; 42 U.S.C. 300f *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 9601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1401 *et seq.*

§ 31.36 [Amended]

4. Section 31.36 is amended by removing and reserving paragraph (e).

5. Part 33 is added as follows:

PART 33—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROGRAMS

Subpart A—General Provisions

Sec.
33.101 What are the objectives of this part?
33.102 When do the requirements of this part apply?
33.103 What do the terms in this part mean?
33.104 May a recipient apply for a waiver from the requirements of this part?
33.105 What are the compliance and enforcement provisions of this part?
33.106 What assurances must EPA financial assistance recipients obtain from their contractors?
33.107 What are the rules governing availability of records, cooperation, and intimidation and retaliation?

Subpart B—Certification

33.201 What does this subpart require?
33.202 How does an entity qualify as an MBE or WBE under EPA's 8% statute?
33.203 How does an entity qualify as an MBE or WBE under EPA's 10% statute?
33.204 Where does an entity become certified under EPA's 8% and 10% statutes?
33.205 How does an entity become certified by EPA?
33.206 Is there a list of certified MBEs and WBEs?
33.207 Can an entity reapply to EPA for MBE or WBE certification?
33.208 How long does an MBE or WBE certification from EPA last?
33.209 Can EPA re-evaluate the MBE or WBE status of an entity after EPA certifies it to be an MBE or WBE?
33.210 Does an entity certified as an MBE or WBE by EPA need to keep EPA informed of any changes which may affect the entity's certification?
33.211 What is an EPA Private Certifier?
33.212 Can an EPA Private Certifier charge a fee to an entity to process the entity's application for MBE or WBE certification?
33.213 How does an organization or business concern become an EPA Private Certifier?
33.214 How long may an organization or business concern be an EPA Private Certifier?
33.215 Is there a list of EPA Private Certifiers?
33.216 What is the process for appealing or challenging an EPA MBE or WBE certification determination?
33.217 What conduct is prohibited by this subpart?

Subpart C—Good Faith Efforts

33.301 What does this subpart require?
33.302 Are there any additional contract administration requirements?
33.303 Are there special rules for loans under EPA financial assistance agreements?
33.304 Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

Subpart D—Fair Share Objectives

33.401 What does this subpart require?
33.402 Are there special rules for loans under EPA financial assistance agreements?
33.403 What is a fair share objective?
33.404 When must a recipient negotiate fair share objectives with EPA?
33.405 How does a recipient determine its fair share objectives?
33.406 May a recipient designate a lead agency for fair share objective negotiation purposes?
33.407 How long do MBE and WBE fair share objectives remain in effect?
33.408 May a recipient use race and/or gender conscious measures as part of this program?
33.409 May a recipient use quotas as part of this program?
33.410 Can a recipient be penalized for failing to meet its fair share objectives?
33.411 Who may be exempted from this subpart?
33.412 Must an Insular Area or Indian Tribal Government recipient negotiate fair share objectives?

Subpart E—Recordkeeping and Reporting

33.501 What are the recordkeeping requirements of this part?
33.502 What are the reporting requirement of this part?
33.503 How does a recipient calculate MBE and WBE participation for reporting purposes?
Appendix to Part 33—Term and Condition

Authority: 42 U.S.C. 7601 note, 42 U.S.C. 4370d, 15 U.S.C. 637 *note,* 42 U.S.C. 9605(f); E.O. 11625, 36 FR 19967, 3 CFR, 1971 Comp., p. 213; E.O. 12138, 49 FR 29637, 3 CFR, 1979 Comp., p. 393; E.O. 12432, 48 FR 32551, 3 CFR, 1983 Comp., p. 198.

Subpart A—General Provisions

§ 33.101 What are the objectives of this part?

The objectives of this part are:

(a) To ensure nondiscrimination in the award of contracts under EPA financial assistance agreements;

(b) To ensure that EPA's DBE Program is narrowly tailored in accordance with applicable law;

(c) To help remove barriers to the participation of DBEs in the award of contracts under EPA financial assistance agreements; and

(d) To provide appropriate flexibility to recipients of EPA financial assistance in establishing and providing contracting opportunities for DBEs.

§ 33.102 When do the requirements of this part apply?

The requirements of this part apply to procurement under EPA financial assistance agreements performed entirely within the United States, whether by a recipient or its prime contractor, for construction, equipment, services and supplies.

§ 33.103 What do the terms in this part mean?

Terms not defined below shall have the meaning given to them in 40 CFR part 30, part 31 and part 35 as applicable. As used in this part:

Availability analysis means documentation of the availability of MBEs and WBEs in the relevant geographic market in relation to the total number of firms available in that area.

Award official means the EPA Regional or Headquarters official delegated the authority to execute financial assistance agreements on behalf of EPA.

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor.

Construction means erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.

Disabled American means, with respect to an individual, permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

Disadvantaged Business Enterprise (DBE) means an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102–389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.

Disparity study means a comparison within the preceding ten years of the available MBEs and WBEs in a relevant geographic market with their actual usage by entities procuring in the categories of construction, equipment, services and supplies.

EPA Private Certifier means an organization or business concern approved by EPA's Office of Small and Disadvantaged Business Utilization (OSDBU) to assist in EPA OSDBU's determination of whether an entity is owned and/or controlled by one or more individuals claiming disadvantaged status.

Equipment means items procured under a financial assistance agreement as defined by applicable regulations (for example 40 CFR 30.2 and 40 CFR 31.3) for the particular type of financial assistance received.

Fair share objective means an objective expressing the percentage of MBE or WBE utilization expected absent the effects of discrimination.

Financial assistance agreement means grants or cooperative agreements awarded by EPA. The term includes grants or cooperative agreements used to capitalize revolving loan funds, including, but not limited to, the Clean Water State Revolving Loan Fund (CWSRF) Program under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381 *et. seq.,* the Drinking Water State Revolving Fund (DWSRF) Program under section 1452 of the Safe Drinking Water Act, 42 U.S.C. 300j-12, and the Brownfields Cleanup Revolving Loan Fund (BCRLF) Program under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604.

Good faith efforts means the race and/or gender neutral measures described in Subpart C of this part.

Historically Black College or University (HBCU) means an institution determined by the Secretary of Education to meet the requirements of 34 CFR part 608.

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified metropolitan counties, or lands within the external boundaries of an Indian reservation.

HUBZone Small Business Concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Identified loan means a loan project or set-aside activity receiving assistance from a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, which:

(1) In the case of the CWSRF Program, is a project funded from amounts equal to the capitalization grant;

(2) In the case of the DWSRF Program, is a loan project or set-aside activity funded from amounts up to the amount of the capitalization grant; or

(3) In the case of the BCRLF Program, is a project that has been funded with EPA financial assistance.

Insular area means the Commonwealth of Puerto Rico or any territory or possession of the United States.

Joint venture means an association of two or more concerns to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge.

Labor Surplus Area Firm (LSAF) means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

Minority Business Enterprise (MBE) means a Disadvantaged Business Enterprise (DBE) other than a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF), a Small Business in Rural Areas (SBRA), or a Women's Business Enterprise (WBE).

Minority institution means an accredited college or university whose enrollment of a single designated group or a combination of designated groups (as defined by the Small Business Administration regulations at 13 CFR part 124) exceeds 50% of the total enrollment.

Native American means any individual who is an American Indian, Eskimo, Aleut, or Native Hawaiian.

Recipient means an entity that receives an EPA financial assistance agreement or is a subrecipient of such agreement.

Services means a contractor's labor, time or efforts provided in a manner consistent with normal business practices which do not involve the delivery of a specific end item, other than documents (*e.g.*, reports, design drawings, specifications).

Small business, small business concern or Small Business Enterprise (SBE) means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

Small Business in a Rural Area (SBRA) means a small business operating in an area identified as a rural county with a code 6–9 in the Rural-Urban continuum Classification Code developed by the United States Department of Agriculture in 1980.

Supplies means items procured under a financial assistance agreement as defined by applicable regulations for the particular type of financial assistance received.

United States means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico and

any other territories and possessions of the United States.

Women's Business Enterprise (WBE) means a business concern which is at least 51% owned or controlled by women for purposes of EPA's 8% statute or a business concern which is at least 51% owned and controlled by women for purposes for EPA's 10% statute. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband's 50 percent interest in her share. Similarly, a business concern which is more than 50 percent owned by a married man will not become a qualified WBE by virtue of his wife's 50 percent interest in his share.

§ 33.104 May a recipient apply for a waiver from the requirements of this part?

(a) A recipient may apply for a waiver from any of the requirements of this part that are not specifically based on a statute or Executive Order, by submitting a written request to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU Director).

(b) The request must document special or exceptional circumstances that make compliance with the requirement impractical, including a specific proposal addressing how the recipient intends to achieve the objectives of this part as described in § 33.101. The request must show that:

(1) There is a reasonable basis to conclude that the recipient could achieve a level of MBE and WBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subparts C or D of this part;

(2) Conditions in the recipient's jurisdiction are appropriate for implementing the request; and

(3) The request is consistent with applicable law.

(c) The OSDBU Director has the authority to approve a recipient's request. If the OSDBU Director grants a recipient's request, the recipient may administer its program as provided in the request, subject to the following conditions:

(1) The recipient's level of MBE and WBE participation continues to be consistent with the objectives of this part;

(2) There is a reasonable limitation on the duration of the recipient's modified program; and

(3) Any other conditions the OSDBU Director makes on the grant of the waiver.

(d) The OSDBU Director may end a program waiver at any time upon notice to the recipient and require a recipient to comply with the provisions of this part. The OSDBU Director may also extend the waiver if he or she determines that all requirements of paragraphs (b) and (c) of this section continue to be met. Any such extension shall be for no longer than the period originally set for the duration of the program waiver.

§ 33.105 What are the compliance and enforcement provisions of this part?

If a recipient fails to comply with any of the requirements of this part, EPA may take remedial action under 40 CFR parts 30, 31 or 35, as appropriate, or any other action authorized by law, including, but not limited to, enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

§ 33.106 What assurances must EPA financial assistance recipients obtain from their contractors?

The recipient must ensure that each procurement contract it awards contains the term and condition specified in the appendix to this part concerning compliance with the requirements of this part. The recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

§ 33.107 What are the rules governing availability of records, cooperation, and intimidation and retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of EPA's DBE Program, EPA complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). EPA may make available to the public any information concerning EPA's DBE Program release of which is not prohibited by Federal law or regulation, including EPA's Confidential Business Information regulations at 40 CFR part 2, subpart B.

(2) EPA recipients shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal, state, and local law.

(b) *Cooperation.* All participants in EPA's DBE Program are required to cooperate fully and promptly with EPA, EPA Private Certifier and EPA recipient reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved in accordance with § 33.105.

(c) *Intimidation and retaliation.* A recipient, contractor, or any other participant in EPA's DBE Program must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this Part. Violation of this prohibition shall be a ground for appropriate action against the party involved in accordance with § 33.105.

Subpart B—Certification

§ 33.201 What does this subpart require?

(a) In order to participate as an MBE or WBE prime or subcontractor for EPA recipients under EPA's DBE Program, an entity must be properly certified.

(b) EPA's DBE Program is primarily based on two statutes. Public Law 102–389, 42 U.S.C. 4370d, provides for an 8% objective for awarding contracts under EPA financial assistance agreements to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals, including HBCUs and women (''EPA's 8% statute''). Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. 7601 note, provides for a 10% objective for awarding contracts under EPA financial assistance agreements for research relating to such amendments to business concerns or other organizations owned and controlled by socially and economically disadvantaged individuals (''EPA's 10% statute'').

§ 33.202 How does an entity qualify as an MBE or WBE under EPA's 8% statute?

To qualify as an MBE or WBE under EPA's 8% statute, an entity must establish that it is owned or controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. An entity need not demonstrate potential for success.

(a) *Ownership or control.* ''Ownership'' and ''control'' shall have the same meanings as set forth in 13 CFR 124.105 and 13 CFR 124.106, respectively. (*See also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(b) *Socially disadvantaged individual.* A socially disadvantaged individual is a person who has been subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of a group without regard to his or her individual qualities and as further defined by the implementing regulations of section 8(a)(5) of the

Small Business Act (15 U.S.C. 637(a)(5); 13 CFR 124.103; *see also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(c) *Economically disadvantaged individual*. An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged and as further defined by section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) and its implementing regulations (13 CFR 124.104). (*See also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations). Under EPA's DBE Program, an individual claiming disadvantaged status must have an initial and continued personal net worth of less than $750,000.

(d) *HBCU*. An HBCU automatically qualifies as an entity owned or controlled by socially and economically disadvantaged individuals.

(e) *Women*. Women are deemed to be socially and economically disadvantaged individuals. Ownership or control must be demonstrated pursuant to paragraph (a) of this section, which may be accomplished by certification under § 33.204.

§ 33.203 How does an entity qualify as an MBE or WBE under EPA's 10% statute?

To qualify as an MBE or WBE under EPA's 10% statute, an entity must establish that it is owned and controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States.

(a) *Ownership and control*. An entity must be at least 51% owned by a socially and economically disadvantaged individual, or in the case of a publicly traded company, at least 51% of the stock must be owned by one or more socially and economically disadvantaged individuals, and the management and daily business operations of the business concern must be controlled by such individuals. (*See also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(b) *Socially disadvantaged individual*. A socially disadvantaged individual is a person who has been subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of a group without regard to his or her individual qualities and as further defined by the implementing regulations of section 8(a)(5) of the Small Business Act (15 U.S.C. 637(a)(5); 13 CFR 124.103; *see also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(c) *Economically disadvantaged individual*. An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged and as further defined by section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) and its implementing regulations (13 CFR 124.104). (*See also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations). Under EPA's DBE Program, an individual claiming disadvantaged status must have an initial and continued personal net worth of less than $750,000.

(d) *Presumptions*. In accordance with Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. 7601 note, Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women and Disabled Americans are presumed to be socially and economically disadvantaged individuals. In addition, the following institutions are presumed to be entities owned and controlled by socially and economically disadvantaged individuals: HBCUs, Minority Institutions (including Tribal Colleges and Universities and Hispanic-Serving Institutions) and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

(e) *Individuals not members of designated groups*. Nothing in this section shall prohibit any member of a racial or ethnic group that is not designated as socially and economically disadvantaged under paragraph (d) of this section from establishing that they have been impeded in developing a business concern as a result of racial or ethnic discrimination.

(f) *Rebuttal of presumptions*. The presumptions established by paragraph (d) of this section may be rebutted in accordance with § 33.209 with respect to a particular entity if it is reasonably established that the individual at issue is not experiencing impediments to developing such entity as a result of the individual's identification as a member of a specified group.

(g) *Joint ventures*. (1) A joint venture may be considered owned and controlled by socially and economically disadvantaged individuals, notwithstanding the size of such joint venture, if a party to the joint venture is an entity that is owned and controlled by a socially and economically disadvantaged individual.

(2) A person who is not an economically disadvantaged individual or an entity owned and controlled by a socially and economically disadvantaged individual, as a party to a joint venture, may not be a party to more than two awarded contracts in a fiscal year solely by reason of paragraph (g)(1) of this section.

§ 33.204 Where does an entity become certified under EPA's 8% and 10% statutes?

(a) In order to participate as an MBE or WBE prime or subcontractor for EPA recipients under EPA's DBE Program, an entity should first attempt to become certified by the following:

(1) The United States Small Business Administration (SBA), under its 8(a) Business Development Program (13 CFR part 124, subpart A) or its Small Disadvantaged Business (SDB) Program, (13 CFR part 124, subpart B);

(2) The United States Department of Transportation (DOT), under its regulations for Participation by Disadvantaged Business Enterprises in DOT Programs (49 CFR parts 23 and 26); or

(3) an Indian Tribal Government, State Government, local Government or independent private organization in accordance with EPA's 8% or 10% statute as applicable.

(4) Such certifications shall be considered acceptable for establishing MBE or WBE status, as appropriate, under EPA's DBE Program so long as the certification meets EPA's U.S. citizenship requirement under § 33.202 or § 33.203. An entity may only apply to EPA for MBE or WBE certification under the procedures set forth in § 33.205 if that entity first is unable to obtain MBE or WBE certification under paragraphs (a) (1) through (3) of this section.

(b) [Reserved].

§ 33.205 How does an entity become certified by EPA?

(a) *Filing an application*. In accordance with § 33.204, an entity may apply to EPA's Office of Small and Disadvantaged Business Utilization (EPA OSDBU) for certification as an

MBE or WBE. EPA's Regional Offices will provide further information and required application forms to any entity interested in MBE or WBE certification. In order to become certified as an MBE or WBE, an entity may apply to EPA OSDBU or, if directed by EPA OSDBU, to an EPA Private Certifier. The applicant must attest to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. The application must include evidence demonstrating that the entity is owned or controlled by one or more individuals claiming disadvantaged status under EPA's 8% statute or owned and controlled by one or more individuals claiming disadvantaged status under EPA's 10% statute, along with certifications or narratives regarding the disadvantaged status of such individuals. In addition, the application must include documentation of a denial of certification by a Federal agency, State government, local government, Indian Tribal government, or independent private organization, if applicable.

(b) *Application processing*. EPA OSDBU or an EPA Private Certifier will advise each applicant within 15 days, whenever practicable, after receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required. EPA OSDBU shall make its certification decision within 30 days of receipt of a complete and suitable application package, whenever practicable. The burden is on the applicant to demonstrate that those individuals claiming disadvantaged status own or control the entity under EPA's 8% statute or own and control the entity under EPA's 10% statute.

(c) *Ownership and/or control determination*. EPA OSDBU first will determine whether those individuals claiming disadvantaged status own or control the applicant entity under EPA's 8% statute or own and control the applicant entity under EPA's 10% statute. If EPA OSDBU determines that the applicant does not meet the ownership and/or control requirements of this Subpart, EPA OSDBU will issue a written decision to the entity rejecting the application and set forth the reasons for disapproval.

(d) *Disadvantaged determination*. Once EPA OSDBU determines whether an applicant meets the ownership and/or control requirements of this subpart, EPA OSDBU will determine whether the applicable disadvantaged status requirements under EPA's 8% or 10% statute have been met. If EPA OSDBU determines that the applicable disadvantaged status requirements have been met, EPA OSDBU shall notify the applicant that it has been certified and place the MBE or WBE on EPA OSDBU's list of qualified MBEs and WBEs. If EPA OSDBU determines that the applicable disadvantaged status requirements have not been met, EPA OSDBU will reject the entity's application for certification. EPA OSDBU will issue a written decision to the entity setting forth EPA OSDBU's reasons for disapproval.

(e) *Evaluation standards*. (1) An entity's eligibility shall be evaluated on the basis of present circumstances. An entity shall not be denied certification based solely on historical information indicating a lack of ownership and/or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the entity currently meets the ownership and/or control standards of this Subpart.

(2) Entities seeking MBE or WBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial of certification.

(3) In making its certification determination, EPA OSDBU may consider whether an entity has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE Program.

(4) EPA OSDBU shall not consider the issue of whether an entity performs a commercially useful function in making its certification determination. Consideration of whether an entity performs a commercially useful function or is a regular dealer pertains solely to counting toward MBE and WBE objectives as provided in subpart E of this part.

(5) Information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information will be safeguarded from disclosure to unauthorized persons, consistent with applicable Federal, State, and local law.

(6) To assist in making EPA OSDBU's certification determination, EPA OSDBU itself, or through an EPA Private Certifier, may take the following steps:

(i) Perform an on-site visit to the offices of the entity. Interview the principal officers of the entity and review their resumes and/or work histories. Perform an on-site visit to local job sites if there are such sites on which the entity is working at the time of the certification investigation. Already existing site visit reports may be relied upon in making the certification;

(ii) If the entity is a corporation, analyze the ownership of stock in the entity;

(iii) Analyze the bonding and financial capacity of the entity;

(iv) Determine the work history of the entity, including contracts it has received and work it has completed;

(v) Obtain a statement from the entity of the type of work it prefers to perform for EPA recipients under the DBE Program and its preferred locations for performing the work, if any, and;

(vi) Obtain or compile a list of the equipment owned by or available to the entity and the licenses the entity and its key personnel possess to perform the work it seeks to do for EPA recipients under the DBE Program.

§ 33.206 Is there a list of certified MBEs and WBEs?

EPA OSDBU will maintain a list of certified MBEs and WBEs on EPA OSDBU's Home Page on the Internet. Any interested person may also obtain a copy of the list from EPA OSDBU.

§ 33.207 Can an entity reapply to EPA for MBE or WBE certification?

An entity which has been denied MBE or WBE certification may reapply for certification at any time 12 months or more after the date of the most recent determination by EPA OSDBU to decline the application.

§ 33.208 How long does an MBE or WBE certification from EPA last?

Once EPA OSDBU certifies an entity to be an MBE or WBE by placing it on the EPA OSDBU list of certified MBEs and WBEs specified in § 33.206, the entity will generally remain on the list for a period of three years from the date of its certification. To remain on the list after three years, an entity must submit a new application and receive a new certification.

§ 33.209 Can EPA re-evaluate the MBE or WBE status of an entity after EPA certifies it to be an MBE or WBE?

(a) EPA OSDBU may initiate a certification determination whenever it receives credible information calling into question an entity's eligibility as an MBE or WBE. Upon its completion of a certification determination, EPA OSDBU will issue a written determination regarding the MBE or WBE status of the questioned entity.

(b) If EPA OSDBU finds that the entity does not qualify as an MBE or WBE, EPA OSDBU will decertify the entity as

an MBE or WBE, and immediately remove the entity from the EPA OSDBU list of certified MBEs and WBEs.

(c) If EPA OSDBU finds that the entity continues to qualify as an MBE or WBE, the determination remains in effect for three years from the date of the decision under the same conditions as if the entity had been granted MBE or WBE certification under § 33.205.

§ 33.210 Does an entity certified as an MBE or WBE by EPA need to keep EPA informed of any changes which may affect the entity's certification?

(a) An entity certified as an MBE or WBE by EPA OSDBU must provide EPA OSDBU, every year on the anniversary of the date of its certification, an affidavit sworn to by the entity's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the entity's circumstances affecting its ability to meet disadvantaged status, ownership, and/or control requirements of this subpart or any material changes in the information provided in its application form. Failure to comply may result in the loss of MBE or WBE certification under EPA's DBE Program.

(b) An entity certified as an MBE or WBE by EPA OSDBU must inform EPA OSDBU in writing of any change in circumstance affecting the MBE or WBE's ability to meet disadvantaged status, ownership, and/or control requirements of this subpart or any material change in the information provided in its application form. The MBE or WBE must attach supporting documentation describing in detail the nature of such change. The notice from the MBE or WBE must take the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The MBE or WBE must provide the written notification within 30 calendar days of the occurrence of the change.

§ 33.211 What is an EPA Private Certifier?

An EPA Private Certifier is an organization or business concern assisting EPA OSDBU in its determination of whether an entity applying for MBE or WBE certification is owned and/or controlled by one or more individuals claiming disadvantaged status. EPA OSDBU may elect to arrange for one or more EPA Private Certifiers to perform certain functions in the certification process; however the determination as to whether an entity will be certified as an MBE or WBE under this program shall only be made by EPA OSDBU. If EPA OSDBU elects to use EPA Private Certifiers to perform certain functions in the certification process, the provisions of §§ 33.212 through 33.214 will apply to those EPA Private Certifiers. EPA OSDBU may establish more detailed standards regarding qualifications, monitoring, procedures and use, if any, of EPA Private Certifiers in specific contracts or agreements between EPA and the EPA Private Certifiers.

§ 33.212 Can an EPA Private Certifier charge a fee to an entity to process the entity's application for MBE or WBE certification?

With EPA OSDBU's approval, an EPA Private Certifier may charge a reasonable fee to an entity in order to screen the entity's application for completeness. The fee must be for actual services rendered and must not be related to whether or not the entity is found to be owned and/or controlled by one or more individuals claiming disadvantaged status.

§ 33.213 How does an organization or business concern become an EPA Private Certifier?

(a) EPA may execute contracts or agreements with organizations or business concerns seeking to become EPA Private Certifiers. Any such contract or agreement will include provisions for the oversight, monitoring, and evaluation of all certification related activities by EPA.

(b) The organization or business concern must demonstrate a knowledge of EPA and SBA regulations regarding ownership and control, as well as business organizations and the legal principles affecting their ownership and control generally, including stock issuances, voting rights, convertibility of debt to equity, options, and powers and responsibilities of officers and directors, general and limited partners, and limited liability members.

(c) The organization or business concern must also, along with its principals, demonstrate good character. Good character does not exist for these purposes if the organization or concern or any of its principals:

(1) Is debarred or suspended under any Federal procurement or non-procurement debarment and suspension regulations; or

(2) Has been indicted or convicted for any criminal offense or suffered a civil judgment indicating a lack of business integrity.

(d) As a condition of approval, EPA may require that appropriate officers and/or key employees of the organization or business concern attend a training session on EPA and SBA rules and requirements.

(e) An organization or business concern seeking to become an EPA Private Certifier must agree to provide access to EPA of its books and records when requested, including records pertaining to its certification related activities.

(f) EPA will include in any contract or agreement document authorizing an organization or business concern to act as an EPA Private Certifier appropriate conditions to prohibit conflicts of interests between the EPA Private Certifier and the entities for which it processes MBE or WBE certifications.

§ 33.214 How long may an organization or business concern be an EPA Private Certifier?

(a) EPA's contract or agreement with the EPA Private Certifier will specify how long the organization or business concern may be an EPA Private Certifier.

(b) EPA may terminate a contract or agreement with an organization or business concern which is an EPA Private Certifier for the convenience of the Government at any time, and may terminate the contract or agreement for default where appropriate. Specific grounds for termination for default include, but are not limited to:

(1) Charging improper, unreasonable or contingent fees in violation of § 33.212; or

(2) Engaging in prohibited business transactions with firms for which it processes MBE or WBE certification applications in violation of § 33.213(f).

§ 33.215 Is there a list of EPA Private Certifiers?

EPA OSDBU will maintain a list of approved EPA Private Certifiers on EPA OSDBU's Home Page on the Internet. Any interested person may also obtain a copy of the list from EPA's OSDBU. The list is available at: *www.epa.gov/osdbu.*

§ 33.216 What is the process for appealing or challenging an EPA MBE or WBE certification determination?

(a) An entity which has been denied MBE or WBE certification by EPA OSDBU under § 33.205 or § 33.209 may appeal that denial. A third party may challenge EPA OSDBU's determination to certify an entity as an MBE or WBE under § 33.205 or § 33.209.

(b) Appeals and challenges must be sent to the Director of OSDBU at Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 1230A, Washington, DC 20460.

(c) The appeal or challenge must be sent to the Director of OSDBU (Director) within 90 days of the date of EPA OSDBU's MBE or WBE certification determination. The Director may accept an appeal or challenge filed later than 90 days after the date of EPA OSDBU's MBE or WBE certification determination if the Director determines that there was good cause, beyond the control of the appellant or challenger, for the late filing of the appeal or challenge.

(d) No specific format is required for an appeal or challenge. However, the appeal or challenge must include information and arguments concerning why EPA OSDBU's MBE or WBE certification determination should be reversed. For challenges in which a third party questions EPA OSDBU's determination to certify an entity as an MBE or WBE under § 33.205 or § 33.209, the third party must also send a copy of the challenge to the entity whose MBE or WBE certification is being questioned. In addition, the Director shall request information and arguments from that entity as to why EPA OSDBU's determination to certify the entity as an MBE or WBE should be upheld.

(e) The Director makes his/her appeal or challenge decision based solely on the administrative record and does not conduct a hearing. The Director may supplement the record by adding relevant information made available by any other source, including the EPA Office of Inspector General; Federal, State, or local law enforcement authorities; an EPA recipient; or a private party.

(f) Consistent with Federal law, the Director shall make available, upon the request of the appellant, challenger or the entity affected by the Director's appeal or challenge decision, any supplementary information the Director receives from any source as described in paragraph (e) of this section.

(g) Pending the Director's appeal or challenge decision, EPA OSDBU's MBE or WBE certification determination remains in effect. The Director does not stay the effect of its MBE or WBE certification determination while he/she is considering an appeal or challenge.

(h) The Director shall reverse EPA OSDBU's MBE or WBE certification determination only if there was a clear and significant error in the processing of the certification or if EPA OSDBU failed to consider a significant material fact contained within the entity's application for MBE or WBE certification.

(i) All decisions under this section are administratively final.

§ 33.217 What conduct is prohibited by this subpart?

An entity that does not meet the eligibility criteria of this subpart may not attempt to participate as an MBE or WBE in contracts awarded under EPA financial assistance agreements or be counted as such by an EPA recipient. An entity that submits false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty may be subject to sanctions under § 33.105.

Subpart C—Good Faith Efforts

§ 33.301 What does this subpart require?

A recipient, including one exempted from applying the fair share objective requirements by § 33.411, is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair share objectives under subpart D of this part:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

§ 33.302 Are there any additional contract administration requirements?

(a) A recipient must require its prime contractor to pay its subcontractor for satisfactory performance within a specific number of days from the prime contractor's receipt of payment from the recipient.

(b) A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

(c) If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor.

(d) A recipient must require its prime contractor to employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of this part.

(e) A recipient must require its prime contractor to provide EPA Form 6100–2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100–2 gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the prime contractor. DBE subcontractors may send completed copies of EPA Form 6100–2 directly to the appropriate EPA DBE Coordinator.

(f) A recipient must require its prime contractor to have its DBE subcontractors complete EPA Form 6100–3—DBE Program Subcontractor Performance Form. A recipient must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package.

(g) A recipient must require its prime contractor to complete and submit EPA Form 6100–4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package.

(h) Copies of EPA Form 6100–2—DBE Program Subcontractor Participation Form, EPA Form 6100–3—DBE Program Subcontractor Performance Form and EPA Form 6100–4—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU.

(i) A recipient must ensure that each procurement contract it awards contains the term and condition specified in the Appendix concerning compliance with the requirements of this part. A recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

§ 33.303 Are there special rules for loans under EPA financial assistance agreements?

A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, such as a State under the CWSRF or DWSRF or an eligible entity under the Brownfields Cleanup Revolving Loan Fund program, must require that borrowers receiving identified loans comply with the good faith efforts described in § 33.301 and the contract administration requirements of § 33.302. This provision does not require that such private and nonprofit borrowers expend identified loan funds in compliance with any other procurement procedures contained in 40 CFR part 30, part 31, or part 35, subpart O, as applicable.

§ 33.304 Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

(a) A Native American (either as an individual, organization, corporation, Tribe or Tribal Government) recipient or prime contractor must follow the six good faith efforts only if doing so would not conflict with existing Tribal or Federal law, including but not limited to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e), which establishes, among other things, that any federal contract, subcontract, grant, or subgrant awarded to Indian organizations or for the benefit of Indians, shall require preference in the award of subcontracts and subgrants to Indian organizations and to Indian-owned economic enterprises.

(b) Tribal organizations awarded an EPA financial assistance agreement have the ability to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. Tribal governments with promulgated tribal laws and regulations concerning the solicitation and recruitment of Native-owned and other minority business enterprises, including women-owned business enterprises, have the discretion to utilize these tribal laws and regulations in lieu of the six good faith efforts. If the effort to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts. All tribal recipients still must retain records documenting compliance in accordance with § 33.501 and must report to EPA on their accomplishments in accordance with § 33.502.

(c) Any recipient, whether or not Native American, of an EPA financial assistance agreement *for the benefit of Native Americans,* is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.

(d) Native Americans are defined in § 33.103 to include American Indians, Eskimos, Aleuts and Native Hawaiians.

Subpart D—Fair Share Objectives

§ 33.401 What does this subpart require?

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

§ 33.402 Are there special rules for loans under EPA financial assistance agreements?

A recipient of an EPA financial assistance agreement to capitalize revolving loan funds must either apply its own fair share objectives negotiated with EPA under § 33.401 to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with entities receiving identified loans, as long as such separate objectives are based on demonstrable evidence of availability of MBEs and WBEs in accordance with this subpart. If procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

§ 33.403 What is a fair share objective?

A fair share objective is an objective based on the capacity and availability of qualified MBEs and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services and supplies compared to the number of all qualified entities in the same market for the same procurement categories, adjusted, as appropriate, to reflect the level of MBE and WBE participation expected absent the effects of discrimination. A fair share objective is not a quota.

§ 33.404 When must a recipient negotiate fair share objectives with EPA?

A recipient must submit its proposed MBE and WBE fair share objectives and supporting documentation to EPA within 90 days after its acceptance of its financial assistance award. EPA must respond in writing to the recipient's submission within 30 days of receipt, either agreeing with the submission or providing initial comments for further negotiation. Failure to respond within this time frame may be considered as agreement by EPA with the fair share objectives submitted by the recipient. MBE and WBE fair share objectives must be agreed upon by the recipient and EPA before funds may be expended for procurement under the recipient's financial assistance agreement.

§ 33.405 How does a recipient determine its fair share objectives?

(a) A recipient must determine its fair share objectives based on demonstrable evidence of the number of qualified MBEs and WBEs in the relevant geographic market for each of the four procurement categories. The relevant geographic market is the area of solicitation for the procurement as determined by the recipient. The market may be a geographic region of a State, an entire State, or a multi-State area. Fair share objectives must reflect the recipient's determination of the level of MBE and WBE participation it would expect absent the effects of discrimination. A recipient may combine the four procurement categories into one weighted objective for MBEs and one weighted objective for WBEs.

(b) *Step 1.* A recipient must first determine a base figure for the relative availability of MBEs and WBEs. The following are examples of approaches that a recipient may take. Any percentage figure derived from one of these examples should be considered a basis from which a recipient begins when examining evidence available in its jurisdiction.

(1) *MBE and WBE directories and Census Bureau data.* Separately determine the number of qualified MBEs and WBEs in the relevant geographic market for each procurement category from a MBE/WBE directory, such as a bidder's list. Using the Census Bureau's County Business Pattern (CBP)

data base, determine the number of all qualified businesses available in the market that perform work in the same procurement category. Separately divide the number of MBEs and WBEs by the number of all businesses to derive a base figure for the relative availability of MBEs and WBEs in the market.

(2) *Data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study conducted within the preceding ten years comparing the available MBEs and WBEs in the relevant geographic market with their actual usage by entities procuring in the categories of construction, equipment, services and supplies.

(3) *The objective of another EPA recipient.* A recipient may use, as its base figure, the fair share objectives of another EPA recipient if the recipient demonstrates that it will use the same, or substantially similar, relevant geographic market as the other EPA recipient. (*See* § 33.411 for exemptions from fair share objective negotiations).

(4) *Alternative methods.* Subject to EPA approval, other methods may be used to determine a base figure for the overall objective. Any methodology chosen must be based on demonstrable evidence of local market conditions and be designed to ultimately attain an objective that is rationally related to the relative availability of MBEs and WBEs in the relevant geographic market.

(c) *Step 2.* After calculating a base figure, a recipient must examine the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the fair share objective.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of MBEs and WBEs to perform contract work under EPA financial assistance agreements, as measured by the volume of work MBEs and WBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within the recipient's jurisdiction, to the extent it is not already accounted for in the base figure; and

(iii) If the base figure is the objective of another EPA recipient, it must be adjusted for differences in the local market and the recipient's contracting program.

(2) A recipient may also consider available evidence from related fields that affect the opportunities for MBEs and WBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of MBEs and WBEs to get the financing, bonding and insurance required to participate; and

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent it can be related to the opportunities for MBEs and WBEs to perform in the program.

(3) If a recipient attempts to make an adjustment to its base figure to account for the continuing effects of past discrimination (often called the ''but for'' factor) or the effects of another ongoing MBE/WBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

§ 33.406 May a recipient designate a lead agency for fair share objective negotiation purposes?

If an Indian Tribal, State or local Government has more than one agency that receives EPA financial assistance, the agencies within that government may designate a lead agency to negotiate MBE and WBE fair share objectives with EPA to be used by each of the agencies. Each agency must otherwise negotiate with EPA separately its own MBE and WBE fair share objectives.

§ 33.407 How long do MBE and WBE fair share objectives remain in effect?

Once MBE and WBE fair share objectives have been negotiated, they will remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The fact that a disparity study utilized in negotiating fair share objectives has become more than ten years old during the three year period does not by itself constitute a significant change requiring renegotiation.

§ 33.408 May a recipient use race and/or gender conscious measures as part of this program?

(a) Should the good faith efforts described in subpart C of this part or other race and/or gender neutral measures prove to be inadequate to achieve an established fair share objective, a recipient and its prime contractor are encouraged, but not required, to take reasonable race and/or gender conscious action, subject to § 33.409, to more closely achieve the fair share objectives.

(b) A recipient must notify EPA in advance of any race and/or gender conscious action it plans to take. Any use of race and/or gender conscious efforts must not result in the selection of an unqualified MBE or WBE.

§ 33.409 May a recipient use quotas as part of this program?

A recipient is not permitted to use quotas in procurements under EPA's 8% or 10% statute.

§ 33.410 Can a recipient be penalized for failing to meet its fair share objectives?

A recipient cannot be penalized, or treated by EPA as being in noncompliance with this subpart, solely because its MBE or WBE participation does not meet its applicable fair share objective. However, EPA may take remedial action under § 33.105 for a recipient's failure to comply with other provisions of this part, including, but not limited to, the good faith efforts requirements described in subpart C of this part.

§ 33.411 Who may be exempted from this subpart?

(a) *General.* A recipient of an EPA financial assistance agreement in the amount of $250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of $250,000 or less in any one fiscal year, is not required to apply the fair share objective requirements of this subpart. This provision does not exempt such recipients from any other requirements of this part.

(b) *Clean Water State Revolving Fund (CWSRF) Program, Drinking Water State Revolving Fund (DWSRF) Program, and Brownfields Cleanup Revolving Loan Fund (BCRLF) Program identified loan recipients.* A recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the fair share objective requirements of this subpart to an entity receiving an identified loan in an amount of $250,000 or less or to an entity receiving more than one identified loan with a combined total of $250,000 or less in any one fiscal year. This provision does not exempt such recipients from any other requirements of this part.

(c) *Tribal and Intertribal Consortia recipients of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B.* Tribal and Intertribal consortia recipients of PPG eligible grants are not required to apply the fair share objective requirements of this subpart to those grants.

(d) *Technical Assistance Grant (TAG) Program Recipients.* A recipient of a TAG is not required to apply the fair share objective requirements of this subpart to that grant. This provision does not exempt such recipients from any other requirements of this part.

§ 33.412 Must an Insular Area or Indian Tribal Government recipient negotiate fair share objectives?

The requirements in this subpart regarding the negotiation of fair share objectives will not apply to an Insular Area or Indian Tribal Government recipient until three calendar years after the effective date of this part. Furthermore, in accordance with § 33.411(c), tribal and intertribal consortia recipients of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR part 35, subpart B are not required to apply the fair share objective requirements of this subpart to such grants.

Subpart E—Recordkeeping and Reporting

§ 33.501 What are the recordkeeping requirements of this part?

(a) A recipient, including those recipients exempted under § 33.411 from the requirement to apply the fair share objectives, must maintain all records documenting its compliance with the requirements of this part, including documentation of its, and its prime contractor's, good faith efforts and data relied upon in formulating its fair share objectives. Such records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement.

(b) A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list. Such a list must only be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. (See *e.g.*, § 33.303). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate of a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. Such a list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors: entity name; entity address; entity's status as an MBE/WBE.

§ 33.502 What are the reporting requirements of this part?

MBE and WBE participation must be reported by recipients, including those recipients exempted under § 33.411 from the requirement to apply the fair share objectives, on EPA Form 5700–52A on a quarterly basis, except for recipients of Continuing Environmental Program Grants, and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements under 40 CFR part 30, which report on an annual basis. Recipients of financial assistance agreements capitalizing revolving loan funds, including those exempted by § 33.411 from the requirement of applying the fair share objectives, will continue to report quarterly. Recipients of financial assistance agreements that capitalize revolving loan programs must require entities receiving identified loans to submit their MBE and WBE participation reports on a quarterly basis to the financial assistance agreement recipient, rather than to EPA.

§ 33.503 How does a recipient calculate MBE and WBE participation for reporting purposes?

(a) *General.* Amounts of MBE and WBE participation are calculated as a percentage of total financial assistance agreement project procurement costs, which include the match portion of the project costs, if any. For recipients of financial assistance agreements that capitalize revolving loan programs, the total amount is the total procurement dollars in the amount of identified loans equal to the capitalization grant amount.

(b) *Ineligible project costs.* If all project costs attributable to MBE and WBE participation are not eligible for funding under the EPA financial assistance agreement, the recipient may choose to report the percentage of MBE and WBE participation based on the total eligible and non-eligible costs of the project.

(c) *Joint ventures.* For joint ventures, MBE and WBE participation consists of the portion of the dollar amount of the joint venture attributable to the MBE or WBE. If an MBE's or WBE's risk of loss, control or management responsibilities are not commensurate with its share of the profit, the Agency may direct an adjustment in the percentage of MBE or WBE participation.

(d) *Central purchasing or procurement centers.* A recipient must report MBE and WBE participation from its central purchasing or procurement centers.

(e) *Brokers.* A recipient may not count expenditures to a MBE or WBE that acts merely as a broker or passive conduit of funds, without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices.

(1) *Presumption.* If 50% or more of the total dollar amount of a MBE or WBE's prime contract is subcontracted to a non-DBE, the MBE or WBE prime contractor will be presumed to be a broker, and no MBE or WBE participation may be reported.

(2) *Rebuttal.* The MBE or WBE prime contractor may rebut this presumption by demonstrating that its actions are consistent with normal practices for prime contractors in its business and that it will actively perform, manage and supervise the work under the contract.

(f) *MBE or WBE truckers/haulers.* A recipient may count expenditures to an MBE or WBE trucker/hauler only if the MBE or WBE trucker/hauler is performing a commercially useful function. The following factors should be used in determining whether an MBE or WBE trucker/hauler is performing a commercially useful function:

(1) The MBE or WBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting MBE or WBE objectives.

(2) The MBE or WBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

Appendix to Part 33—Term and Condition

Each procurement contract signed by an EPA financial assistance agreement recipient, including those for an identified loan under an EPA financial assistance agreement capitalizing a revolving loan fund, must include the following term and condition:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

PART 35—[AMENDED]

Subpart E—[Amended]

6. The authority citation for part 35, subpart E, continues to read as follows:

Authority: Secs. 109(b), 201 through 205, 207, 208(d), 210 through 212, 215 through

217, 304(d)(3), 313, 501, 511, and 516(b) of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

§ 35.936–7 [Removed]

7. Section 35.936–7 is removed.

§ 35.938–9 [Amended]

Section 35.938–9 is amended by removing and reserving paragraph (b)(2).

Subpart K—[Amended]

8. The authority citation for part 35, subpart K, continues to read as follows:

Authority: Sections 205(m), 501(a) and title VI of the Clean Water Act, as amended, 42 U.S.C. 1285(m), 33 U.S.C. 1361(a), 33 U.S.C. 1381–1387.

§ 35.3145 [Amended]

9. Section 35.3145(d) is removed and reserved.

§ 35.3145 [Amended]

10. Section 35.3145(e) is removed.

Subpart L—[Amended]

11. The authority citation for part 35, subpart L, continues to read as follows:

Authority: Section 1452 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j–12.

§ 35.3575 [Amended]

12. Section 35.3575(d) is removed and reserved.

Subpart M—[Amended]

13. The authority citation for part 35, subpart M, continues to read as follows:

Authority: 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

§ 35.4170 [Amended]

14. Section 35.4170(b) is removed and reserved.

§ 35.4205 [Amended]

15. Section 35.4205(g) is removed.

§ 35.4240 [Amended]

16. Section 35.4240(e) is removed and reserved.

Subpart O—[Amended]

17. The authority citation for part 35, subpart O, continues to read as follows:

Authority: 42 U.S.C. 9601 *et seq.*

§ 35.6015 [Amended]

18. Sections 35.6015(a)(26) and (a)(54) are removed and reserved.

§ 35.6580 [Removed]

19. Section 35.6580 is removed.

§ 35.6665 [Amended]

20. Section 35.6665(b) is removed.

PART 40—[AMENDED]

21. The authority citation for part 40 continues to read as follows:

Authority: Cited in § 40.110.

§ 40.145–3 [Amended]

22. Section 40.145–3(c) is removed and reserved.

[FR Doc. 03–18002 Filed 7–23–03; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Thursday,
July 24, 2003

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter I, et al.
Federal Acquisition Circular 2001–15; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–15; Introduction

AGENCIES: Department of Defense (DoD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules and technical amendments and corrections.

SUMMARY: This document summarizes the FederalAcquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the DefenseAcquisition Regulations Council in this FederalAcquisition Circular (FAC) 2001–15. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–15 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Elimination of Standard Form 129, Solicitation Mailing ListApplication	2001–032	De Stefano.
II	Energy-Efficient Standby Power Devices	2001–028	Smith.
III	Electronic Listing of Acquisition Vehicles Available For Use By More Than One Agency	2001–030	Zaffos.
IV	Compensation Cost Principle	2001–008	Loeb.
V	Leadership in Environmental Management (E.O. 13148)	2000–005	Goral.
VI	Selling Cost Principle	2001–024	Loeb.
VII	Section 508 Micropurchase Exception Sunset Provision	2002–012	Nelson.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–15 amends the FAR as specified below:

Item I—Elimination of Standard Form 129, Solicitation Mailing List Application (FAR Case 2001–032)

This final rule removes the requirement for contracting offices to establish and maintain manual solicitation mailing lists and the need to use the Standard Form (SF) 129, Solicitation Mailing List Application. The purpose of the rule is to broaden use and reliance on e-business applications. It is expected that this rule will eliminate, in part, the need for contracting offices to maintain paper-based sources of contractor information.

Item II—Energy-Efficient Standby Power Devices (FAR Case 2001–028)

This final rule implements Executive Order 13221, of July 31, 2001, Energy-Efficient Standby Power Devices, by providing guidance on energy-efficient standby power devices. The rule also clarifies requirements for the purchase of recovered material. The requirements of this rule apply to contracting officers that purchase products that use external standby power devices or that contain an internal standby power function, and products that are composed of recovered material. Government contracting and technical personnel will need to ensure that proposed acquisitions comply with the Government preference for energy-efficient products.

Item III—Electronic Listing of Acquisition Vehicles Available for use by More Than One Agency (FAR Case 2001–030)

This final rule provides the regulatory underpinning for the operation and use of an online directory to facilitate greater awareness of contracts available for multiple agency use. The rule—

1. Adds a new Subpart 5.6, Publicizing Multi-Agency Use Contracts, that—

(a) Provides the Internet address to access the database;

(b) Requires agencies to enter information into the database within ten days of award of a Governmentwide acquisition contract (GWAC), multi-agency contract, Federal Supply Schedule contract, or other procurement instrument intended for use by multiple agencies including blanket purchase agreements under Federal Supply Schedule contracts; and

(c) Requires contracting activities to enter information into the database by October 31, 2003, on all existing contracts and other procurement instruments intended for use by multiple agencies, except for those expiring on or before June 1, 2004.

2. Adds language at FAR 7.105(b)(1) to consider the sources contained in the database as prospective sources of supplies and services.

3. Adds language at FAR 10.002(b)(2)(iv) to encourage querying the database during market research for information relevant to agency acquisitions.

Item IV—Compensation Cost Principle (FAR Case 2001–008)

This final rule amends the FAR to revise the ''compensation for personal services'' cost principle by removing unnecessary and duplicative language and restructuring it. This rule is of particular interest to contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, indirect cost rates.

Item V—Leadership in Environmental Management (E.O. 13148) (FAR Case 2000–005)

This final rule provides policies and procedures for obtaining contractor information so that agencies can implement environmental management systems and complete facility compliance audits. The rule implements Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management. The requirements of this rule apply to facilities owned or operated by Federal agencies, except

those facilities located outside the United States and its outlying areas.

Item VI—Selling Cost Principle (FAR Case 2001–024)

This final rule amends the FAR to revise the ''selling costs'' cost principle by restructuring the paragraphs and removing unnecessary and duplicative language to increase clarity. The rule does not change the allowability of selling costs. The case was initiated at the request of the Aerospace Industries Association (AIA). This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VII—Section 508 Micropurchase Exception Sunset Provision (FAR Case 2002–012)

The interim rule published in the **Federal Register** at 67 FR 80321, December 31, 2002, is converted to a final rule, without change, to extend the Electronic and Information Technology (Section 508) micropurchase exception to October 1, 2004.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR 19.1005 and 52.212–1.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–15 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC2001–15 are effective August 25, 2003, except for Items III, VII, and VIII which are effective July 24, 2003.

Dated: July 14, 2003.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: July 14, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administaration.

Dated: July 7, 2003.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 03–18532 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 14, 19, 22, 36, 52, and 53

[FAC 2001–15; FAR Case 2001–032; Item I]

RIN 9000–AJ50

Federal Acquisition Regulation; Elimination of the Standard Form 129, Solicitation Mailing List Application

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the requirement for contracting offices to establish and maintain manual solicitation mailing lists and the need to use the Standard Form (SF) 129, Solicitation Mailing List Application.

DATES: Effective Date: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 2001–15, FAR case 2001–032.

SUPPLEMENTARY INFORMATION:

A. Background

In order to broaden use and reliance on e-business applications, the Councils have been working with the Office of Federal Procurement Policy to eliminate the need to maintain paper-based sources of contractor information. As part of this effort, the Councils have agreed to eliminate the SF 129, Solicitation Mailing List Application.

The SF 129 was created to enable contracting activities to obtain information from sources to develop a solicitation mailing list. At the time the form was developed, manual processes were the only means available to assure access to adequate sources of supplies and services. Today, by sharp contrast, there are multiple tools available to agencies that can provide the functionality of the SF 129, but in a more efficient and effective manner. With the Administration's encouragement, agencies are taking advantage of these tools. For example, an increasing number of agencies are requiring potential contractors to register in the Central Contractor Registration (CCR) System, a centrally located, searchable database, accessible via the Internet, as their tool of choice for developing, maintaining, and providing sources for future procurements. The CCR database enables prospective contractors to update their information in one place via a Web site. Contracting officers are now able to access, via the Internet, contractor data and industry information less expensively, and more efficiently identify sources for contracting opportunities. FAR changes are pending that will require use of CCR as the single validated source of data on contractors doing business with the Government *(http://www.ccr.gov).* Furthermore, agencies are continually working to develop new electronic means of matching interested businesses with Government contracting offices on ''FedBizOpps,'' *http://www.FedBizOpps.gov,* the designated single Governmentwide point of entry for public access to notices of procurement actions over $25,000. FedBizOpp, through its interested vendors list, has the capability to generate a list of vendors who are interested in a specific solicitation for purposes of teaming opportunities, subcontracting opportunities, and other business relationships. In light of these electronic initiatives, we have eliminated the manual collection of contractor data using the SF 129.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 67762, November 6, 2002. Three sources submitted comments in response to the proposed rule. All respondents agreed with the rule as published. One respondent pointed out a typographical error at 52.214–10. That error has been corrected. Additionally, the proposed rule inadvertently omitted the phrase ''except for construction,'' at 14.201–6(e), the prescription for the use of the provision at 52.214–10, Contract Award-Sealed Bidding. That language has been corrected in this final rule.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive

Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule substitutes efficient electronic databases for solicitation mailing lists and the SF 129, Solicitation Mailing List Application. Continued reliance on the SF 129 would unnecessarily promote inefficiency associated with paper-based processes. The successful phase-out of the paper-based *Commerce Business Daily* in favor of reliance on FedBizOpps demonstrates that the Federal contracting community, including small businesses, is successfully transitioning to greater use of electronic tools and their associated efficiencies to conduct business.

C. Paperwork Reduction Act

The Paperwork Reduction Act no long applies because the final rule eliminates reporting and recordkeeping requirements currently approved under OMB Control Number 9000–0002. This rule will reduce the current OMB inventory by 464,000 hours.

List of Subjects in 48 CFR Parts 1, 5, 14, 19, 22, 36, 52, and 53

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 5, 14, 19, 22, 36, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 5, 14, 19, 22, 36, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory paragraph by removing from FAR segment 14.205 its corresponding OMB Control Number ''9000–0002'' and adding ''9000–0037'' in its place; and by removing the FAR segments ''14.205–4(c)'' and ''SF 129'' and their corresponding OMB Control Numbers ''9000–0037'' and ''9000–0002'', respectively.

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 5.205 by revising the fourth sentence of paragraph (a) to read as follows:

5.205 Special situations.

(a) * * * Contracting officers must consider potential sources which respond to advance notices for a subsequent solicitation. * * *

* * * * *

5.403 [Amended]

■ 4. Amend section 5.403 in paragraph (a) by removing ''(a) *Individual requests.*''; and by removing paragraph (b).

PART 14—SEALED BIDDING

14.103–1 [Amended]

■ 5. Amend section 14.103–1 by removing paragraph (b) and redesignating paragraphs ''(c)'' and ''(d)'' as ''(b)'' and ''(c)'', respectively.

■ 6. Amend section 14.201–6 by revising paragraph (e) to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(e) Insert in all invitations for bids, except those for construction, the provision at 52.214–10, Contract Award-Sealed Bidding.

* * * * *

■ 7. Amend section 14.203–1 by revising the first sentence to read as follows:

14.203–1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices must be provided in accordance with 5.102. * * *

■ 8. Revise section 14.205 and its section heading to read as follows:

14.205 Presolicitation notices.

In lieu of initially forwarding complete bid sets, the contracting officer may send presolicitation notices to concerns. The notice shall—

(a) Specify the final date for receipt of requests for a complete bid set;

(b) Briefly describe the requirement and furnish other essential information to enable concerns to determine whether they have an interest in the invitation; and

(c) Normally not include drawings, plans, and specifications. The return date of the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets shall be sent to concerns that request them in response to the notice.

14.205–1 through 14.205–5 [Removed]

■ 9. Remove sections 14.205–1 through 14.205–5.

14.211 [Amended]

■ 10. Amend section 14.211 in the first sentence of paragraph (a) by removing ''14.205–4(c)'' and adding ''14.205'' in its place.

■ 11. Amend section 14.503–1 by revising the introductory text of paragraph (a) to read as follows:

14.503–1 Step one.

(a) Requests for technical proposals shall be synopsized in accordance with Part 5. The request must include, as a minimum, the following:

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.202–2 [Amended]

■ 12. Amend section 19.202–2 by removing paragraph (a) and redesignating paragraphs ''(b)'' and ''(c)'' as ''(a)'' and ''(b)'', respectively.

19.202–4 [Amended]

■ 13. Amend section 19.202–4 by removing paragraph (c) and redesignating paragraph (d) as (c).

19.402 [Amended]

■ 14. Amend section 19.402 in paragraph (c)(3) by removing the words ''on solicitation mailing lists or''.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 15. Amend section 22.1009–2 by revising paragraph (b) to read as follows:

22.1009–2 Attempt to identify possible places of performance.

* * * * *

(b) Databases available via the Internet for lists of prospective offerors and contractors.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

36.213–3 [Amended]

■ 16. Amend section 36.213–3 in the parenthetical in paragraph (d) by removing ''14.205 and''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.214–9 [Removed and Reserved]

■ 17. Remove and reserve section 52.214–9.

52.214–10 [Amended]

■ 18. Amend section 52.214–10 in the prescription by removing ''14.201–6(e)(2)'' and adding ''14.201–6(e)'' in its place.

PART 53—FORMS

53.214 [Amended]

■ 19. Amend section 53.214 by removing and reserving paragraph (e).

53.301–129 [Removed]

■ 20. Remove section 53.301–129.

[FR Doc. 03–18533 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 11, and 23

[FAC 2001–15; FAR Case 2001–028; Item II]

RIN 9000–AJ47

Federal Acquisition Regulation; Energy-Efficient Standby Power Devices

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13221 of July 31, 2001, Energy-Efficient Standby Power Devices, and to clarify requirements for the purchase of recovered material.

DATES: *Effective Date:* August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, at (202) 501–1224. Please cite FAC 2001–15, FAR case 2001–028.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed to amend the FAR to—

1. Implement E.O. 13221, by providing guidance on energy-efficient standby power devices; and

2. Clarify requirements for the purchase of recovered material.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 64010, October 16, 2002. Four respondents submitted public comments. A discussion of the comments is provided below. The Councils concluded that the proposed rule should be converted to a final rule, with only minor editorial changes made to the proposed rule (*see* Response'' to comment number 3).

1. *Comment:* The respondent supported the proposed revisions to the FAR, as ''they provide the needed clarity in both these areas and will enhance contracting officers' ability to effectively purchase green products.''

Councils' Response: No change.

2. Comment: The proposed FAR 23.203(a)(1)(ii) authorizes the purchase of products that meet a Department of Energy Federal Energy Management Program (FEMP) standby power wattage recommendation. However, the FEMP recommended standby power wattage for about half of the product categories is higher than the one watt limit mandated by the E.O., even though the listing of products for the categories identify numerous products that consume one watt or less in their standby mode.

Councils' Response: Nonconcur. In accordance with Section 1. of E.O. 13221, adherence to the one watt requirement is mandated only ''when life-cycle cost-effective and practicable and where the relevant product's utility and performance are not compromised as a result.'' Pursuant to this direction, FEMP does not recommend restricting procurement within a product category to items that use only one watt or less of electricity when such a restriction would not permit adequate competition among producers.

3. *Comment:* The definition of energy-efficient standby power devices that was added in FAR 2.101 could apply to all products that use power (*e.g.*, a flashlight), rather than ''commercially available, off-the-shelf products that use external standby power devices, or that contain an internal standby power function'' per Section 1. of the E.O. The respondent recommended revising paragraph 1 of the definition to read: ''(1) Use external standby power devices, or that contain an internal standby power function.''

Councils' Response: Concur. The Councils have revised the definition of energy-efficient standby power devices at FAR 2.101 accordingly.

4. *Comment:* The proposed rule would amend FAR 11.002, Policy, by adding to paragraphs (d)(1) and (2) a reference to E.O. 13221 and text regarding products containing energy-efficient standby power devices. The amendment, as proposed, could be interpreted as giving preference to products that consume one watt or less while in standby mode over products that consume zero watts when switched off. This, of course, would run contrary to the intent of the E.O. Moreover, many office products rarely enter into a standby power mode and, hence, greater energy can be conserved via a power management function, a feature typical on Energy Star-qualified products.

Councils' Response: Nonconcur. The policy statement does not express a preference for products with energy-efficient standby power devices over products which do not contain a standby power function. Rather, the policy statement indicates that if the Government requires a product that consumes power in a standby mode, the standby power device should be energy-efficient. Whether a product contains a standby power device will, in most instances, be determined by agency needs and related functions required of the product. For product categories covered by Energy Star, FEMP only considers a product for its standby power device list if it also meets the Energy Star criteria which includes power management functions.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule simply provides additional guidance to Government contracting and technical personnel with respect to the Government's preference, set forth in FAR Subpart 23.2, for buying energy-efficient products and services. This rule requires a contracting officer, when acquiring a product that uses an external standby power device or that

contains an internal standby power function, to purchase an energy-efficient product (when commercially available, life-cycle cost-effective, and practicable), *i.e.*, a product that uses no more than one watt in its standby power consuming mode. With respect to the change to the recovered material text, this rule only clarifies the condition for when the contracting office shall prepare a written justification.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 2, 11, and 23

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 11, and 23 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 11, and 23 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 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, by adding in alphabetical order, the definition, ''Energy-efficient standby power devices'' to read as follows:

2.101 Definitions.

* * * * *

Energy-efficient standby power devices means products that use—

(1) External standby power devices, or that contain an internal standby power function; and

(2) No more than one watt of electricity in their standby power consuming mode or meet recommended low standby levels as designated by the Department of Energy Federal Energy Management Program.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 3. Amend section 11.002 by revising paragraph (d)(1) and the introductory text of (d)(2) to read as follows:

11.002 Policy.

* * * * *

(d)(1) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, and Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices, establish requirements for acquiring—

(i) Products containing recovered materials;

(ii) Environmentally preferable products and services;

(iii) Energy-efficient products and services;

(iv) Products and services that utilize renewable energy technologies; and

(v) Products containing energy-efficient standby power devices.

(2) Executive agencies shall consider use of recovered materials, energy- and water-efficient products and services, products containing energy-efficient standby power devices, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (*see* Subparts 23.2 and 23.4, and 23.703(b)) when—

* * * * *

■ 4. Amend section 11.101 in the introductory text of paragraph (b) by removing ''must'' and adding ''shall'' in its place; and by revising paragraph (b)(1) to read as follows:

11.101 Order of precedence for requirements documents.

* * * * *

(b) * * *

(1) Energy efficiency, including using products containing energy-efficient standby power devices and renewable energy technologies; and

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 5. Amend section 23.201 by adding paragraph (e) to read as follows:

23.201 Authorities.

* * * * *

(e) Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices.

■ 6. Revise section 23.203 to read as follows:

23.203 Energy-efficient products.

(a) If life-cycle cost-effective and available—

(1) When acquiring energy-using products—

(i) Agencies shall purchase ENERGY STAR® or other energy-efficient items listed on the Department of Energy's Federal Energy Management Program (FEMP) Product Energy Efficiency Recommendations product list; and

(ii) For products that consume power in a standby mode and are listed on FEMP's Standby Power Devices product listing, agencies shall—

(A) Purchase items which meet FEMP's standby power wattage recommendation or document the reason for not purchasing such items; or

(B) If FEMP has listed a product without a corresponding wattage recommendation, purchase items which use no more than one watt in their standby power consuming mode. When it is impracticable to meet the one watt requirement, agencies shall purchase items with the lowest standby wattage practicable; and

(2) When contracting for services that will include the provision of energy-using products, including contracts for design, construction, renovation, or maintenance of a public building, the specifications shall incorporate the applicable requirements in paragraph (a)(1) of this section.

(b) The requirements in paragraph (a) of this section only apply when the relevant product's utility and performance meet the agency's need.

(c) Information is available via the Internet about—

(1) ENERGY STAR® at *http://www.energystar.gov/*; and

(2) FEMP at *http://www.eere.energy.gov/femp/procurement.*

■ 7. Amend section 23.405 by revising the introductory text of paragraph (c) to read as follows:

23.405 Procedures.

* * * * *

(c) The contracting officer shall place in the contract file a written justification if an acquisition of EPA-designated products above the micro-purchase threshold does not meet applicable minimum recovered material content recommended by EPA guidelines. If the agency has designated an Environmental Executive, the contracting officer shall give a copy of the written justification to that official. The contracting officer shall base the justification on the inability to acquire the product—

* * * * *

■ 8. Amend section 23.406 by revising paragraph (a) to read as follows:

23.406 Solicitation provision and contract clause.

(a) Insert the provision at 52.223–4, Recovered Material Certification, in solicitations that are for, or specify the use of, EPA-designated products containing recovered materials.

* * * * *

[FR Doc. 03–18534 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 7, and 10

[FAC 2001–15; FAR Case 2001–030; Item III]

RIN 9000–AJ30

Federal Acquisition Regulation; Electronic Listing of Acquisition Vehicles Available for Use by More Than One Agency

AGENCIES: Department of Defense (DoD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council (Council) has agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require contracting activities to input information in an online contract directory for Governmentwide acquisition contracts (GWACs), multi-agency contracts, Federal Supply Schedule contracts, and other procurement instruments intended for multiple agency use, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts. The directory is located at *http://www.contractdirectory.gov*; and encourage consideration of the online contract directory during acquisition planning and market research.

The Office of Federal Procurement Policy (OFPP) seeks to improve application of acquisition basics generally and use of interagency contracts in particular. The contract directory furthers both of these objectives by providing easier access to information that will support more informed acquisition planning and market research. The contract directory also furthers the Administration's efforts to create a more efficient, effective, and citizen-centric government. *See* OFPP's May 6, 2003, memorandum to the Federal Acquisition Council and Agency Senior Procurement Executives, ''Roll-Out of the Inter-Agency Contract Directory'' available at *http://www.acqnet.gov.*

DATES: This rule is effective July 24, 2003. This rule applies July 24, 2003 for the following procurement instruments, except for those expiring on or before June 1, 2004: GWACs, multi-agency contracts, Federal Supply Schedule contracts, and other procurement instruments intended for multiple agency use, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–15, FAR case 2001–030.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Proposed and Final Rules

The Council published a proposed rule in the **Federal Register** on February 15, 2002 (67 FR 7255). The proposed rule would add a new FAR Subpart 5.6, Publicizing Multi-Agency Use Contracts, to—

- Make contracting officers and program managers aware of an online database of information about GWACs, multi-agency contracts, Federal Supply Schedule contracts, and other procurement instruments intended for multiple agency use, including BPAs under Federal Supply Schedule contracts;
- Require contracting activities, within ten days of award of a procurement instrument intended for use by multiple agencies, to enter into the database general information about the instrument, as specified on the Web site hosting the database; and
- Require contracting activities to enter information into the database on all existing contracts and other procurement instruments intended for multiple agency use by a date to be established in the final rule.

The final rule generally adopts the proposed rule with certain changes. In particular, the final rule amends—

- FAR 7.105(b)(1) to add a requirement that contracting officers and program managers consider the sources contained in the database of interagency contracts, to be known as the ''contract directory'', as prospective sources of supplies and services; and
- FAR 10.002(b)(2)(iv) to encourage querying the database during market research for information relevant to agency acquisitions.

Consistent with the proposed rule, agencies will have ten days after contract award to input information on new awards. *See* FAR 5.601(b)(1). In addition, as set forth at FAR 5.601(b)(2), agencies will be required to enter information on existing contracts by October 31, 2003. Agencies may, but are not required to, input information on contracts that would expire on or before June 1, 2004.

While the Council intends for the contract directory to provide increased visibility regarding the opportunities agencies are creating through interagency vehicles, it also recognizes that contracts relatively close to expiration may be nearing or at ceiling limits. Accordingly, in deciding whether to input such contracts, agencies may consider the administrative burden to input such contracts in light of the likely amount of customer usage prior to expiration.

2. Data Fields

The data elements that will populate the contract directory will not be prescribed in the FAR. As noted in the preamble to the proposed rule, specific elements will be listed on the Web site that hosts the database. The address for the Web site is *http://www.contractdirectory.gov*.

After consideration of public comments (discussed below), the following data fields have been selected for use in the initial population of the contract directory. The fields fall within one of three categories: (1) General information about the procurement instrument, (2) information about placing orders, and (3) information about the servicing agency. (The numbering of the data fields below is provided for easy reference in this preamble and may differ on the contract directory Web site.) The list has been annotated to identify which fields will be searchable as well as those that will have ''drop-down'' boxes with more detailed information.

Description of Initial Data Fields for Contract Directory

Information about the procurement instrument.

(1) Program name and acronym (searchable).

(2) Procurement instrument number (searchable).

(3) Type of procurement instrument (searchable) with drop down box that includes GWAC, multi-agency contract, Federal Supply Schedule contract, BPA under Federal Supply Schedule contract, other.

(4) Contractor.

(5) Data Universal Numbering System (DUNS) Number of the contractor.

(6) North American Industrial Classification (NAICS) code (searchable).

(7) Principal Product or Service Code (searchable).

(8) Brief description of supplies and services (searchable).

(9) Applicable socio-economic information (searchable) with drop down box to identify from the following status categories those that apply to the contractor: Small Business, Emerging Small Business, Small Disadvantaged Business, 8(a), Very Small Business, Woman-Owned Business, HUBZone, Veteran-Owned Small Business, Service-Disabled Veteran-Owned Small Business, Historically Black Colleges and Universities, Minority Institution, Javits-Wagner-O'Day Participating Nonprofit Agency, Large Business, Other.

(10) Government Web site address where contract or program information is located, if available.

Information about placing orders.

(11) Agencies that may place orders (searchable).

(12) Date through which agencies may place orders.

(13) Statutory authority for placing orders with a drop down box to include—

(a) Clinger-Cohen GWAC authority (40 U.S.C. 11302(e));

(b) Economy Act (31 U.S.C. 1535), including Clinger Cohen multi-agency contract authority (40 U.S.C. 11314(a)(2));

(c) The Federal Property and Administrative Services Act authority for the Multiple Award Schedules Program (41 U.S.C. 259(b)(3)); and

(d) Other statutory authority not subject to the Economy Act (to be specified).

(14) Ordering procedures, unless addressed at the Web site identified in data field (10), above.

(15) List of administrative fees, unless addressed at the Web site identified in data field (10), above.

Information about the servicing agency.

(16) Agency or activity that awarded the procurement instrument (searchable).

(17) Activity point of contact/telephone number/e-mail address.

The fields described above include the following changes from the fields that were described in the preamble to the proposed rule:

• *Increased search capabilities.* More fields will be searchable. For example, agencies will be able to search the field that identifies who may place orders. This will make it easier for agencies to identify vehicles that are available for their own use. The ''type of procurement instrument'' field (*i.e.*, field no. 3) is also being made searchable so that agencies may view offerings available through a particular type of procurement vehicle.

To improve the visibility of the small business community, data captured in the socio-economic information field will be made searchable. This field will be further refined so that directory users can identify products offered by a Javits-Wagner-O'Day participating nonprofit agency.

The contract directory will not allow users to search for product and service offerings by contractor. The FAR Council seeks for the directory to be used, in general, to consider a range of sources. Broader searching will help agencies get a better sense of marketplace capabilities as they consider whether their needs are best met through an interagency contract or an open market new procurement action.

• *New field.* A field will be added to identify the contractor's Data Universal Numbering System (DUNS) number. DUNS numbers serve as a common link among Government databases. For example, DUNS numbers are required for contractors that register to do business with the Government in the Central Contractor Registration (CCR) database. Although DUNS numbers function as a useful business identifier, the directory will not provide for searches by DUNS number for the same reason that searches by contractor will not be enabled.

• *Easier entry and maintenance of data.* Data entry of the socio-economic field of the directory has been modified so that population of this information for woman-owned businesses matches the formats for forms DD 350 and SF 279. To aid agencies in maintaining the currency of their data, the directory will identify the last date information on a given entry was submitted or edited. In addition, at the point where agencies may no longer place orders, as identified by the agency, the directory will move the information to an inactive file.

The contract directory project is linked to a broader e-Government initiative to create an ''integrated acquisition environment'' (IAE). The goal of the IAE is to facilitate the migration and leveraging of information technology investments to modernized infrastructures. Once this transformation occurs, agencies will be able to effectively integrate the many functions critical to the successful operation of the acquisition process. Among other things, this effort will help to eliminate redundant processes. As efforts progress to modernize and integrate contract-writing systems, agencies will be able to populate fields in the contract directory without re-keying of information. In the meantime, electronic data submission is an option.

Like other IAE initiatives, the contract directory will be subject to a governance structure and its operations will be overseen by a configuration management board. Currently, a Federal interagency users group, the ''E-Catalogs Group,'' under the aegis of GSA in its capacity as managing partner of the IAE, meets periodically to discuss how the contract directory will operate. The group has sought to minimize burden while ensuring the site supports acquisition planning and market research efforts.

3. Public Comments

Twelve respondents submitted public comments on the proposed rule and the planned fields for the contract directory (as described in the preamble to the proposed rule). The comments primarily focused on: (1) The purpose of FAR coverage, (2) the burden associated with populating and maintaining the contract directory, (3) the functionality of the directory, and (4) impact on small business. All comments were considered in developing the final rule and first generation of data elements. A summary of the more significant comments and their disposition is provided below.

a. *Purpose of FAR coverage.* One commenter recommended that the coverage proposed for FAR Subpart 5.6 establishing the requirement to enter interagency contracts into the database be moved to FAR Part 4, where administrative matters, including contract reporting, are covered. Another commenter supported finalizing the coverage in its proposed location in FAR Part 5.

The FAR Council recognizes that other data reporting requirements, such as that for the Federal Procurement Data System (FPDS), are addressed in FAR Part 4. However, the Council believes that the primary purpose of the contract directory, *i.e.*, to advertise existing contracts available for multiple agency use, is better aligned with the policies of FAR Part 5, which focus on publicizing contract actions.

One commenter suggested that FAR Parts 7 and 10 be revised to identify the database's usefulness in acquisition planning and market research. The FAR Council agrees with this suggestion and, as described above, has amended Parts 7 and 10 to ensure contracting officers and program managers consider information in the contract directory during these important early stages of the acquisition cycle.

b. *Burden.* A number of comments focused on the potential burden the rule and associated Web site instructions would place on agencies required to input information about their interagency contracts into the contract directory. The comments focused on

overall administrative burden, the mandatory nature of individual data fields, and the time for entering data.

i. *Overall administrative burden.* Several commenters suggested that entering the data described in the preamble to the proposed rule would create an administrative strain. As an alternative, they recommended that the desired information be collected through existing data sources, such as the FPDS.

The FAR Council agrees, in concept, that the functionalities of acquisition systems need to be integrated so that duplication of effort and associated burden is minimized. As stated above, this is a key goal of the ongoing IAE effort, the main acquisition initiative towards the creation of a more efficient, effective, and citizen-centric e-Government. Unfortunately, current information systems do not collect the information needed to populate the contract directory. The FPDS, for example, does not break out activity by multiple award contract vehicle. As a result, it is not possible to easily identify the multiple contractors who make up any given multi-agency contract.

The contract directory is designed to overcome these limitations and enable agencies to gauge the number and nature of inter-agency contracts currently in effect. This functionality will help senior managers better understand their own agency's use of these vehicles. Equally important, as noted above, the contract directory will help customers during acquisition planning and market research to identify whether there may be a suitable existing Federal contract that can satisfy their needs.

For these reasons, the Council believes the insight to be gained by the directory, by both customers and servicing agencies, will be worth the effort required to make it fully operational. In addition, the Council expects that the cost of input will be offset by the interagency activity and associated administrative fees servicing agencies will collect to cover costs.

ii. *Mandatory vs. non-mandatory data fields.* One commenter sought clarification as to whether inputs for all of the data fields are mandatory. Agencies will be expected to complete each of the 17 data fields described above, except that, in providing point of contact information (data field no. 17), an agency is not required to furnish an individual point of contact and may rely just on an e-mail address and/or phone number. Also, an agency is not required to create a Web site with program information (*i.e.*, data field no. 10); it is only required to identify the address of the Web site, if one already exists.

The contract directory, like other IAE projects, is designed to minimize redundant effort. If information is already accessible elsewhere on the Web, agencies generally will be able to simply provide a Web address where users may access that information. For example, if ordering procedures (field no. 14) and administrative fees (field no. 15) are already discussed on an agency's Web site, the contracting officer need only provide the Web site address or URL to satisfy those fields.

Recent General Accounting Office (GAO) and agency Inspectors General (IG) reports confirm that customers of task and delivery order contracts need to understand ordering procedures (*e.g.*, fair opportunity processes) and be aware of fees if they are to take effective advantage of competition and make informed decisions. It is especially important in an interagency environment that customers external to the agency be aware of any special management steps a servicing agency has taken to reinforce strategic and accountable use of its vehicle. Accordingly, if information on ordering procedures or administrative fees is not available on an existing Web site, agencies will need to provide this information on the contract directory or otherwise indicate how users may obtain it.

iii. *Time for entering data.* Two commenters raised concerns regarding the time allotted for entering data. One commenter suggested increasing the input period on new contracts from 10 to 45 days. Another commenter proposed an exemption for existing contracts with fewer than twelve months to expiration.

The Council believes that information needs to be entered as close to the time of award as possible to make the directory as current and useful as possible. Hence, the time for input on new contracts will remain at 10 days. However, as discussed above, the FAR Council recognizes that contracts relatively close to expiration may be nearing or at ceiling limits. For this reason, the rule leaves to an agency's discretion the determination as whether to input data on contracts that will expire on or before June 1, 2004.

c. *Functionality.* Numerous comments addressed the planned functionality for the database. Commenters focused, in particular, on the descriptions to be provided for available products and services, searching by individual contractor, information on order placement, data on limited use vehicles, and information on 8(a) contracting.

i. *Descriptions of products and services.* Several commenters raised concerns that the data field calling for a brief description of supplies or services (*i.e.*, data field no. 8) will not likely collect sufficiently meaningful information for an agency to determine if use of a given contract will meet its needs. They noted that the lack of standard nomenclature may further reduce the utility of information provided.

The FAR Council agrees that information placed in the database needs to provide a general level of insight into contract offerings in order for the contract directory to have a practical utility. As a general matter, the Council expects that agencies will have an incentive to exercise quality control and offer meaningful information because the Web site offers a means for agencies to secure greater visibility for, and use of, their vehicles. To assist agencies, the site will provide guidance to address how best to fill in this, and other, data fields. In addition, some degree of standardization will be provided by asking for principal service and product codes (*i.e.*, data field no. 7). While this type of information should help agencies in performing their front-end analysis, the Council recognizes that the contract directory will not, by itself, provide information sufficient for a complete analysis. At the same time, this is not the contract directory's role. It is intended to be just one tool for market research, and agencies will need to undertake additional efforts commensurate with the size and complexity of the acquisition in order to understand marketplace capabilities.

ii. *Searching by contractor.* A number of commenters requested that the ''contractor'' data element (*i.e.,* field no. 4) be searchable. The FAR Council acknowledges that there may be some utility in knowing what a contractor has offered through various vehicles with different agencies. At the same time, the Council is concerned that searches by contractor may, too often, conflict with the goal of encouraging thoughtful consideration of the marketplace and capabilities of multiple sources, as agencies consider whether their needs are better met through an interagency contract or through a new procurement action on the open market. Therefore, the contract directory will not provide for searches by contractor.

Notwithstanding whether the data field is searchable, one commenter suggested that contractor names be standardized in the contract directory. The FAR Council agrees with the intent of the comment and anticipates that the contract directory's integration with

other e-acquisition initiatives in the IAE will lead to this result over time.

iii. *Order placement.* One commenter remarked that while the rule provides benefit by laying the foundation for a new market research tool, the overall effort is shortsighted because it fails to capture any information regarding order placement. The commenter states that ''procurement goals of transparency and accountability are not served when information about many millions of dollars spent under such vehicles is not readily available to the public.''

The FAR Council strongly supports transparency and accountability in Government procurement and anticipates that other IAE initiatives, including the transformation of the FPDS, will facilitate greater insight of the type alluded to by the commenter. However, the Councils do not believe that the benefits of the contract directory should be delayed until this functionality is available.

iv. *Searching limited use vehicles.* Two commenters recommended that the contract directory include contracts available for use only to a single agency, command or even locale. The FAR Council believes the functionality of the directory should, at least initially, focus on contracts that are designed for broad usage. Once the directory is fully functional and is providing the desired insight, the Council may, at a later date, consider expanding the database to accommodate limited use contracts.

v. *8(a) contracting.* One commenter suggested providing a greater level of detail on the actual use and administration of 8(a) contracts. The commenter recommended, for instance, that the contract directory include information on how 8(a) contracting could be accomplished (*e.g.,* sole source), the competitive procedures to be used when the task order exceeds the sole source threshold, agency administrative responsibilities, and procedures regarding limitations on subcontracting and reporting.

As noted above, the contract directory will offer basic socio-economic information, including whether a contractor is an 8(a) small business (*see* field no. 9). Moreover, information on ordering procedures (provided through field no. 14) should reflect the steps customers will be expected to take in order to make a purchase, including those that may need to be taken to be in compliance with 8(a) contracting procedures. However, additional detail on the specific operation of the 8(a) program (or another socio-economic program) would go beyond the general purpose and scope of the contract directory and is more appropriately obtained though other means (*e.g.,* from the servicing agency, the Small Business Administration (SBA)).

d. *Impact on small business.* One commenter stated that the rule would have a significant economic impact on a substantial number of small entities. The commenter asserted that FAR 8.404, which sets forth procedures for the use of FSS contracts, has had a ''withering effect'' on small business awards. The commenter further states that small business set-asides should be incorporated into the FAR 8.404 procedures.

The Council believes this comment is outside of the scope of this rule. The rule focuses on improving access to information about vehicles available for interagency use. This rule does not speak to specific practices for how these vehicles are to be used. However, the Council notes that separate rulemaking efforts have been undertaken to address the consideration of small businesses in order placement under task and delivery order contracts. *See* 68 FR 5138, January 31, 2003, for notice of proposed FAR changes, and 68 FR 5133, January 31, 2003, for notice of proposed changes to SBA regulations. These separate efforts are intended to address concerns regarding the impact of contract bundling on small business participation for Federal procurements.

B. Executive Order 12866.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the establishment of an online database as a tool to collect information on acquisition vehicles intended for multiple agency use in order to facilitate its availability to the acquisition community is a matter of internal Government operating procedure. In addition, the rule is not intended to alter existing requirements addressing the use of small businesses.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 5, 7, and 10

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 7, and 10 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 7, and 10 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 5—PUBLICIZING CONTRACT ACTIONS

■ 2. Add Subpart 5.6 to read as follows:

Subpart 5.6—Publicizing Multi-Agency Use Contracts

5.601 Governmentwide database of contracts.

(a) A Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies is available via the Internet at *http://www.contractdirectory.gov.* This searchable database is a tool that may be used to identify existing contracts and other procurement instruments that may be used to fulfill Government needs.

(b) The contracting activity shall—

(1) Enter the information specified at *http://www.contractdirectory.gov,* in accordance with the instructions on that Web site, within ten days of award of a Governmentwide acquisition contract (GWAC), multi-agency contract, Federal Supply Schedule contract, or any other procurement instrument intended for use by multiple agencies, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts.

(2) Enter the information specified at *http://www.contractdirectory.gov* in accordance with the instructions on that Web site by October 31, 2003, for all contracts and other procurement instruments intended for use by multiple agencies that were awarded before July 24, 2003.

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.105 by revising the second sentence of paragraph (b)(1) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) *Plan of action—(1) Sources.* * * * Consider required sources of supplies or services (*see* Part 8) and sources identifiable through databases including the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at *http://www.contractdirectory.gov.* * * *

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PART 10—MARKET RESEARCH

■ 4. Amend section 10.002 by revising paragraph (b)(2)(iv) to read as follows:

10.002 Procedures.

* * * * *

(b) * * *

(2) * * *

(iv) Querying the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at *http://www.contractdirectory.gov* and other Government databases that provide information relevant to agency acquisitions.

* * * * *

[FR Doc. 03–18535 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 31, 37, and 52

[FAC 2001–15; FAR Case 2001–008; Item IV]

RIN 9000–AJ36

Federal Acquisition Regulation; Compensation Cost Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the ''compensation for personal services'' cost principle by restructuring the paragraphs, and by removing unnecessary and duplicative language.

DATES: *Effective Date:* August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Procurement Analyst, at (202) 501–0650. Please cite FAC 2001–15, FAR case 2001–008.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 19952, April 23, 2002, with request for comments. Three respondents submitted public comments. A discussion of the comments is provided below. Differences between the proposed and the final rule are discussed in paragraphs 1, 5, 13, 15, and 19 below.

Public Comments:

1. *Comment: Designate FAR 31.205–6(c) as Reserved.* The current paragraph designations, especially paragraph (j) for pensions, have been cited in many court cases, Government contracts, and other documents over the years. All the respondents expressed concerns that the re-designation of paragraphs (d) through (p) within FAR 31.205–6 as paragraphs (c) through (o) would create confusion.

Councils' response: Concur.

2. *Comment: Move proposed FAR 31.205–6(g)(1) (Backpay) to FAR 31.205–6(a)(1).* The respondent did not provide an explanation for this recommendation.

Councils' response. Do not concur. The Councils believe there is merit in maintaining a separate paragraph for backpay. *See* paragraph 16 for further discussion.

3. *Comment: Delete proposed FAR 31.205–6(a)(2) (total compensation).* The language is duplicative of FAR 31.201–3, Reasonableness, and the focus of the cost principle should be on the reasonableness of a contractor's total compensation plan and not on individual employees or job classes.

Councils' response. Do not concur. The proposed paragraph makes it clear that, although compensation must conform to FAR 31.201–3, it must also conform to the more specific provisions contained in this cost principle. The Councils do not agree with the concept that the reasonableness of compensation should be based ''solely'' on the contractor's total compensation plan, without consideration of the reasonableness of the compensation for individual employees or job classes of employees. See paragraph 9 for further discussion.

4. *Comment: Delete proposed FAR 31.205–6(a)(5) (unallowable cost).* The proposed language states: ''Costs that are unallowable under other paragraphs of this Subpart 31.2 are not allowable under this subsection 31.205–6 solely on the basis that they constitute compensation for personal services.'' In lieu of the above statement, the respondent suggested adding the following language to FAR 31.204(c): ''Cost made specifically unallowable under one cost principle in this subpart are not allowable under any other cost principle.''

Councils' response: Do not concur. Similar proposals for such a global policy statement were rejected in the past by both industry and the Government. The current language at FAR 31.204(c) was adopted instead, and the ''unallowable under other paragraphs'' statements in individual cost principles were retained. The Councils agree with the original drafters of the current FAR 31.205–6(a)(5) that this language is needed to avoid a situation in which activity that is specifically designated unallowable in another cost principle becomes allowable merely because it meets the criteria for allowable ''compensation.''

5. *Comment: Modify proposed FAR 31.205–6(a)(6)(i) (partners and sole proprietors).* Reinstate the following portion of the current language included in FAR 31.205–6(b)(2)(i): ''Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits.'' This insertion would become 31.205–6(a)(6)(i)(C). ''Without this re-instatement costs previously allowed could become unallowable since there are instances where these costs are not distribution of profits and the deductible amount is zero.''

Councils' response: Partially concur. Historically, the tax deductibility limitation on allowable compensation in the cost principle is solely for closely held corporations. The Councils did not intend to change the allowability of costs in this area. However, the proposed rule inadvertently removed the qualifying phrase for ''closely held corporations.'' In addition, the editorial restructuring unintentionally changed the allowability of costs covered by this subsection. Accordingly, the Councils have revised FAR 31.205–6(a)(6) to clarify and rectify this situation.

6. *Comment: Remove phrase in proposed FAR 31.205–6(a)(6)(ii)(A) (distribution of profits).* Remove the unnecessary phrase ''which is not an allowable cost.''

Councils' response: Do not concur. The Councils' rationale for keeping this phrase is to affirm the unallowability of profit distributions.

7. *Comment: Revise proposed FAR 31.205–6(b)(1) (labor-management agreements).* Reposition the word ''negotiated'' and add the word ''set'' to the first sentence.

Councils' response: Do not concur. The Councils do not believe it improves the readability of this paragraph.

8. *Comment: Express rationale for deletion of current FAR 31.205–6(c)(1) and (c)(2) (unusual conditions).* ''To make clear the contractor still has the opportunity to justify cost and consideration of unusual conditions(,) include express reason for language deletion of original rule sections (c)(1) and (c)(2).''

Councils' response: These paragraphs (c)(1) and (c)(2) were deleted because such guidance is not necessary in the cost principle.

9. *Comment: Revise proposed FAR 31.205–6(b)(2) (total compensation).* Revise FAR 31.205–6(b)(2) to reflect the concept that reasonableness of compensation should be reviewed at the total compensation plan(s) level and not at an individual employee or job class level.

Councils' response: Do not concur. Contractors should be able to determine their own mix of wages, bonuses, and benefits to fit the needs of their business and workforce. The Councils believe that compensation should be reviewed for reasonableness in total by employee or job class of employee and that ''offsets'' are implied in this concept. It should be noted that the concept of ''review of total compensation reasonableness'' does not waive the Government's right to review individual compensation elements in order to determine total reasonableness. It is impossible to determine the reasonableness of total compensation without reviewing individual compensation elements because reliable surveys of ''total compensation'' do not exist.

10. *Comment: Revise proposed FAR 31.205–6(b)(2) (ACO consideration).* Eliminate ACO consideration of the listed reasonableness factors and rely only on FAR 31.201–3 for determining reasonableness since rule enforcement should not vary according to individual ACO determination of relevancy. This list could cause misapplication, *e.g.*, have to consider all four factors in each instance. Restore original language related to proposed FAR 31.205–6(b)(2)(iv), if factors remain. New language is confusing, difficult to understand, and may lead to negative impacts.

Councils' response: Do not concur. In determining the reasonableness of compensation costs, both the criteria in FAR 31.201–3 and the criteria in FAR 31.205–6(b) should be used. The concept of listing various factors to be considered by the ACO has been in the cost principle for many years. The relevancy determination is an important and proper ACO function. The cost principle should continue to include coverage on the factors to be used in determining reasonableness, as well as the authority of the contracting officer to determine how to weigh such factors. We believe the proposed language is very straightforward and easy to understand.

11. *Comment: Change language in proposed FAR 31.205–6(c)(2)(i) (valuation date).* Suggest adding the phrase ''to the employee'' at FAR 31.205–6(c)(2)(i) to make clear that the award date is the date that compensation (in the form of securities) is awarded to the employee.

Councils' response: Do not concur. The proposed rule is basically the same language as in the current FAR. We merely deleted the term ''measurement date'' since the definition already included in the cost principle, *i.e.*, ''first date the number of shares awarded is known,'' is more precise. The proper measurement date is upon the award of the stock; however, this award may be to an employee or to another entity, such as a trust. The respondent's recommended change would radically alter the current valuation methodology.

12. *Comment: Delete proposed FAR 31.205–6(6)(d) (Income tax differential pay).* Affirmative statements of allowability, such as that included in FAR 31.205–6(d)(1) for foreign differential pay, should not be included in the cost principles. In addition, the provision at FAR 31.205-6(d)(2) making domestic differential pay unallowable is not consistent with commercial practices or the allowability of foreign differential pay.

Councils' response: Do not concur. The Councils revised this paragraph to apply only to the allowability of differential pay to cover income tax increases due to foreign or domestic assignments. Normally, affirmative statements of allowability are not value-added in a cost principle. However, in this case, coverage making foreign income tax differentials explicitly allowable should remain. If there were no coverage on foreign differentials, reviewers might use FAR 31.204(c) to find the closest cost principle (domestic differentials) and improperly disallow the costs of foreign differentials. The Councils continue to believe domestic income tax differentials should be unallowable and do not agree with the respondent's argument that the treatment of domestic differentials has to be consistent with the treatment of foreign differentials. We continue to believe that there should be an incentive for employees to accept foreign assignments.

13. *Comment: Delete proposed FAR 31.205–6(e) (Bonuses and incentive compensation).* Specific limitations on bonuses and incentives are not necessary because these situations are covered by the general reasonableness provisions of FAR 31.201–3(b)(2), generally accepted sound business practices, and the executive compensation cap at FAR 31.205–6(p). ''Streamlining should have the goal of defining what is unallowable; illustration of what is allowable makes regulation excessively detailed and cannot be comprehensive.'' There is no need to state in the proposed FAR 31.205–6(e)(1)(ii) that the basis of the award must be supported, since adequate documentation is required for all costs. In addition, the proposed paragraph (e)(2) at FAR 31.205–6 regarding deferred bonus and incentive compensation payment is not needed.

Councils' response. Do not concur. We have deleted those parts (*e.g.*, the listing of various types of incentive compensation) that the Councils view as unnecessary. It is important for the cost principle to continue to explicitly require that ''the basis for the award is supported'' in order for the cost to be allowable. This requirement for documenting the basis for the payment is separate and distinct from documenting that the payment was made. In addition, the proposed language at FAR 31.205–6(e)(2) is necessary to ensure deferred bonus payments are subject to both the incentive compensation and the deferred compensation allowability criteria.

However, this final rule is deleting the qualifying phrase ''based on production, cost reduction, or efficient performance'' which is current in the proposed rule at 31.205–6(e)(1). Although we generally agree that such criteria may be good standards for determining allowability, we do not believe that the current rule or proposed rule actually accomplishes this. The wording of the current cost principle or proposed rule may be read as not covering an incentive payment if it doesn't fall within one of these three criteria, although this is clearly not the intent.

14. *Comment: Delete proposed FAR 31.205–6(f) except for legislative coverage at (f)(5) (Severance pay).* The deleted portion is adequately covered by the reasonableness criteria at FAR 31.201–3.

Councils' response: Do not concur. This paragraph makes it clear that, although severance pay must conform to the general reasonableness criteria of FAR 31.201–3, it must also conform to the more specific provisions contained in this cost principle.

15. *Comment: Deletion of ''designee'' in FAR 31.205–6(f)(5).* To avoid confusion, suggest that the express reason for deleting the term ''designee'' in the waiver provision of the proposed FAR 31.205–6(f)(5) be explained.

Councils' response: The term ''or designee'' is unnecessary because paragraph (b) under FAR 1.108, FAR conventions, states that ''each authority is delegable unless specifically stated otherwise (see 1.102–3(b)).'' Accordingly, the term has been deleted from the final rule at FAR 31.205–6(g)(6), FAR 37.113–1(a), and FAR 37.113–2(b). To avoid any possible ambiguity in the clauses, ''head of the agency, or designee,'' was changed to ''agency'' at FAR provision 52.237–8(a) and (b).

16. *Comment: Modify proposed FAR 31.205–6(g) (Backpay).* Replace the language at FAR 31.205–6(g) with the following sentence: ''Backpay resulting from violations of Federal labor laws or the Civil Rights Act of 1964 other than that for work performed is unallowable.'' Under the current rule, the ''backpay'' provisions do not apply unless and until there is a violation of Federal labor laws or the 1964 Civil Rights Act. Until such a violation is found by a court, compensation costs are not covered by these backpay provisions and they are allowable to the extent they are reasonable as defined by the general reasonableness provisions at FAR 31.201–3 and not limited by additional compensation for work performed. This proposed change could be construed to expand the definition of backpay to now cover retroactive adjustment to salaries or wages for those instances in which there has been no finding of a violation of the 1964 Civil Rights Act or other Federal labor laws and limits recovery to the additional compensation for work performed.

Contractors are currently being reimbursed for prudent decisions to save litigation expense by settling wrongful discharge cases for nominal amounts. It is in the Government's interest to continue to incentivize contractors to make prudent decisions. If the Government begins disallowing all settlements as unallowable ''backpay,'' contractors may be incentivized to spend more allowable money litigating instead of settling.

Councils' response. Do not concur. The Councils rewrote this paragraph to improve its clarity without changing its meaning. Our intent was to emphasize that backpay for underpaid work is the only allowable retroactive adjustment, subject to the specific criteria listed in this paragraph. The current language might be improperly interpreted to mean that if a survey shows an employee is underpaid in a particular year, the contractor could make that underpayment up in a future year. Accordingly, we revised the language of the regulation to preclude such an interpretation.

Backpay for underpaid work that does not fall under the current FAR 31.205–6(h) criteria is unallowable, and the proposed FAR 31.205–6(g) language would not change that fact. The respondent's argument that all settlements would become unallowable is not correct. That part of the settlement that represents backpay for work actually performed is allowable.

17. *Comment: Eliminate FAR 31.205–6(m) (Fringe benefits).* Paragraph (m)(1) is covered by the general reasonableness provisions at FAR 31.201–3, and definitions and examples of allowable cost are not needed, only identification of unallowable cost. ''List[s] of compensation elements have been eliminated throughout and should be eliminated here as well.'' Paragraph (m)(2), which covers the personal use of company furnished automobiles, should be eliminated unless legislated.

Councils' response. Do not concur. This paragraph needs to be retained as it includes needed criteria for allowability and not just general reasonableness criteria. The language on company furnished automobiles is required by 10 U.S.C. 2324(f)(1)(o).

18. *Comment: Eliminate FAR 31.206–6(n) (Employee rebate and purchase discount plans).* In an effort to move toward commercial practice, suggest the elimination of 31.205–6(n) ''on the basis of immateriality and not cost efficient accounting.'' Also, employee rebates and purchase discounts are sales reductions and not compensation cost.

Councils' response. Do not concur. Employee rebates and discounts should be considered as a sales reduction; however, Generally Accepted Accounting Principles do allow such costs to be treated as compensation in some limited cases. Therefore, we retained this provision to prevent such sales reductions from being claimed as compensation costs.

19. *Additional change: Reinstate and revise FAR 31.205–6(g)(2)(ii).* This paragraph was deleted in the proposed rule because it was thought to be covered under FAR 31.201–4, Determining allocability. However, upon further analysis, the Councils have reinstated FAR 31.205–6(g)(2)(ii) (as FAR 31.205–6(g)(4) in the final rule) because the language exceeds the requirement stated in FAR 31.201–4 by expressly identifying what method equates to a proper allocation. The specific identification of what constitutes an allocable allocation of normal severance pay has worked and will continue to work to reduce disputes. The paragraph has been revised, however, to enhance its clarity.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 22, 31, 37, and 52

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 31, 37, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 31, 37, 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.101–2 [Amended]

■ 2. Amend section 22.101–2 in the last sentence of paragraph (a) by removing ''31.205–6(c)'' and adding ''31.205–6(b)'' in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Amend section 31.001 by adding, in alphabetical order, the definition ''Compensation for personal services'' to read as follows:

31.001 Definitions.

* * * * *

Compensation for personal services means all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor.

* * * * *

■ 4. Amend section 31.205–6 by—

■ a. Revising paragraphs (a) through (h);

■ b. Removing the word ''subdivisions'' from the last sentence of the introductory text of paragraph (j)(7) and adding ''paragraphs'' in its place; and removing the word ''subdivision'' from paragraph (j)(8)(iii) and adding ''paragraph'' in its place;

■ c. Removing the word ''section'' from the introductory text of paragraph (o)(2) and adding ''subsection'' in its place; and removing the word ''subdivision'' from the first sentence of paragraph (o)(5) and adding ''paragraph'' in its place; and

d. Removing the colon from the end of the introductory text of paragraph (p)(2) and adding ''—'' in its place.

The revised text reads as follows:

31.205–6 Compensation for personal services.

(a) *General.* Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle:

(1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see paragraphs (g), (h), (j), (k), (m), and (o) of this subsection).

(2) The total compensation for individual employees or job classes of employees must be reasonable for the work performed; however, specific restrictions on individual compensation elements apply when prescribed.

(3) The compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

(4) No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor has not provided the cognizant ACO, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under other paragraphs of this Subpart 31.2 are not allowable under this subsection 31.205–6 solely on the basis that they constitute compensation for personal services.

(6)(i) Compensation costs for certain individuals give rise to the need for special consideration. Such individuals include:

(A) Owners of closely held corporations, members of limited liability companies, partners, sole proprietors, or members of their immediate families; and

(B) Persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise.

(ii) For these individuals, compensation must—

(A) Be reasonable for the personal services rendered; and

(B) Not be a distribution of profits (which is not an allowable contract cost).

(iii) For owners of closely held companies, compensation in excess of the costs that are deductible as compensation under the Internal Revenue Code (26 U.S.C.) and regulations under it is unallowable.

(b) *Reasonableness*—(1) *Compensation pursuant to labor-management agreements.* If costs of compensation established under ''arm's length'' labor-management agreements negotiated under the terms of the Federal Labor Relations Act or similar state statutes are otherwise allowable, the costs are reasonable unless, as applied to work in performing Government contracts, the costs are unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (*e.g.*, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (*e.g.*, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances.

(2) *Compensation not covered by labor-management agreements.* Compensation for each employee or job class of employees must be reasonable for the work performed. Compensation is reasonable if the aggregate of each measurable and allowable element sums to a reasonable total. In determining the reasonableness of total compensation, consider only allowable individual elements of compensation. In addition to the provisions of 31.201–3, in testing the reasonableness of compensation for particular employees or job classes of employees, consider factors determined to be relevant by the contracting officer. Factors that may be relevant include, but are not limited to, conformity with compensation practices of other firms—

(i) Of the same size;

(ii) In the same industry;

(iii) In the same geographic area; and

(iv) Engaged in similar non-Government work under comparable circumstances.

(c) [Reserved]

(d) *Form of payment.* (1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of—

(i) Cash;

(ii) Corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (d)(2) of this subsection regarding valuation); or

(iii) Other assets, products, or services.

(2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the securities is the fair market value on the first date the number of shares awarded is known, determined upon the most objective basis available.

(ii) Accruals for the cost of securities before issuing the securities to the employees are subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.

(e) *Income tax differential pay.* (1) Differential allowances for additional income taxes resulting from foreign assignments are allowable.

(2) Differential allowances for additional income taxes resulting from domestic assignments are unallowable. (However, payments for increased employee income or Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs are allowable under 31.205–35(a)(10).)

(f) *Bonuses and incentive compensation.* (1) Bonuses and incentive compensation are allowable provided the—

(i) Awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment; and

(ii) Basis for the award is supported.

(2) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of paragraphs (f)(1) and (k) of this subsection.

(g) *Severance pay.* (1) Severance pay is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (j)(7) of this subsection.

(2) Severance pay is allowable only to the extent that, in each case, it is required by—

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the contractor's part; or

(iv) Circumstances of the particular employment.

(3) Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(4) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant. However, if the contractor uses the accrual method to account for normal turnover severance payments, that method will be acceptable if the amount of the accrual is—

(i) Reasonable in light of payments actually made for normal severances over a representative past period; and

(ii) Allocated to all work performed in the contractor's plant.

(5) Abnormal or mass severance pay is of such a conjectural nature that accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, the Government will consider allowability on a case-by-case basis.

(6) Under 10 U.S.C. 2324(e)(1)(M) and 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C. 2324(e)(1)(N) and 41 U.S.C. 256(e)(1)(N), all such costs of severance payments that are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C. 2324(e)(3) and 41 U.S.C. 256(e)(2) permit the head of the agency to waive these cost allowability limitations under certain circumstances (see 37.113 and the solicitation provision at 52.237–8).

(h) *Backpay.* Backpay is a retroactive adjustment of prior years' salaries or wages. Backpay is unallowable except as follows:

(1) Payments to employees resulting from underpaid work actually performed are allowable, if required by a negotiated settlement, order, or court decree.

(2) Payments to union employees for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiation are allowable.

(3) Payments to nonunion employees based upon results of union agreement negotiation are allowable only if—

(i) A formal agreement or understanding exists between management and the employees concerning these payments; or

(ii) An established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payments.

PART 37—SERVICE CONTRACTING

■ 5. Amend section 37.113–1 by revising the introductory text of paragraph (a) to read as follows:

37.113–1 Waiver of cost allowability limitations.

(a) The head of the agency may waive the 31.205–6(g)(6) cost allowability limitations on severance payments to foreign nationals for contracts that—

* * * * *

37.113–2 [Amended]

■ 6. Amend section 37.113–2 in paragraph (b) by removing ''\, or designee,''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.237–8 by revising the date of the provision, paragraph (a) and the introductory text of paragraph (b) of the provision to read as follows:

52.237–8 Restriction on Severance Payments to Foreign Nationals.

* * * * *

Restriction on Severance Payments to Foreign Nationals (Aug 2003)

(a) The Federal Acquisition Regulation (FAR), at 31.205-6(g)(6), limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the agency grants a waiver pursuant to FAR 37.113–1 before contract award.

(b) In making the determination concerning the granting of a waiver, the agency will determine that—

52.237–9 [Amended]

■ 8. Amend section 52.237–9 by revising the date of the clause to read ''(Aug 2003); and by removing from paragraph (a) of the clause ''31.205–6(g)(3)'' and adding ''31.205–6(g)(6) in its place.

[FR Doc. 03–18536 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAC 2001–15; FAR Case 2000–005; Item V]

RIN 9000–AJ44

Federal Acquisition Regulation; Leadership in Environmental Management (E.O. 13148)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

DATES: *Effective Date:* August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Craig R. Goral, Procurement Analyst, at (202) 501–3856. Please cite FAC 2001–15, FAR case 2000–005.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55670, August 29, 2002, with a request for comments. Two respondents submitted public comments. A discussion of the comments is provided below. Differences between the proposed and the final rule are discussed in paragraph 1 below.

1. *Comment:* One respondent recommended the following changes to FAR 23.1005:

a. Insert ''or plans to implement'' between ''implemented'' and ''an EMS'' at FAR 23.1005(b)(1) and (b)(2)(i);

b. Change ''contractors'' to ''the contractor'' at 23.1005(c)(1); and

c. Remove ''FCA'' and insert ''facility compliance audit or an environmental management system audit'' at FAR 23.1005(c)(2).

Councils' Response:

a. Concur. As proposed, FAR 23.1005 requires the use of FAR clause 52.223–5 at facilities with an environmental management system (EMS). The clarification expands the prescription for the use of the clause to include situations where an EMS is contemplated.

b. *Partially concur.* The Councils agree that there is a grammatical error, but corrected the error by substituting the term ''contractor activities'' for ''contractors to conduct activities.''

c. *Concur.* The inclusion of the phrase ''or an environmental management system audit'' acknowledges an agency's option to conduct an EMS audit in lieu of a facility compliance audit (FCA) as provided in section 402(b) of Executive Order 13148.

2. *Comment:* The respondent recommended that the FAR rule be reviewed to ensure that, wherever practicable, the FAR actively supports implementation of EMS at Federal facilities including, where the facility or agency deems appropriate, participation in the EMS by contracting entities, including suppliers. The FAR change requires more than the mere provision of information for implementation of an EMS, as the proposed rule now states, to instead include active participation in the EMS, where the facility or agency deems it necessary. At a minimum, the language should state that vendors, contractors, and/or subcontractors are required to be consistent with agency/bureau and/or facility EMS policies.

Councils' Response: Section 305(c) of E.O. 13148 states: ''The Federal Acquisition Regulation (FAR) Council shall develop acquisition policies and procedures for contractors to supply agencies with all information necessary for compliance with this order.'' The Councils believe that the rule satisfies this requirement.

Per section 306 of E.O. 13148, an Interagency Environmental Leadership Workgroup ''shall develop policies and guidance required by this order and member agencies shall facilitate implementation of the requirements of this order in their respective agencies.'' While the Councils recognize and fully appreciate the need for EMS policy and standards, these agency/bureau and/or facility EMS policies will vary among agencies/bureaus and will likely evolve as well. Additionally, the level of participation required by contractors/subcontractors will be contract-specific. Therefore, requirements for EMS participation by contractors/subcontractors would have to be identified in the contract itself. The recommended language does not serve this purpose and would lead to contractual ambiguities.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because as required by E.O. 13148, this rule does not change the current policies and procedures in FAR Subparts 23.8, 23.9, and 23.10. The final rule provides a means for agencies to obtain contractor information for the implementation of EMSs and the completion of FCAs at certain Federal facilities. Agencies will determine which facilities are appropriate for EMS implementation. Federal facilities include Government-owned, contractor-operated facilities, and Government-owned facilities on which multiple contractors perform services. The criteria for performing EMSs indicate that large, rather than small, Federal facilities are more likely to be included in EMSs, and these large Federal facilities are more likely to be operated by large businesses. If, on the other hand, several contractors are performing services on a Government-owned facility, many of the services performed by small businesses fall within the category of administrative support services considered ''environmentally clean'' and not included in EMSs. For similar reasons, the requirement pertaining to FCAs is not expected to have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. These changes to the FAR will increase the information collection requirement currently approved under Office of Management and Budget Control Number 9000–0147, since the rule requires contractors to provide information needed by a Federal facility to implement an EMS (Alternate I of FAR 52.223–5) and to complete an FCA (Alternate II of FAR 52.223–5). Accordingly, the FAR Secretariat has forwarded a request for approval of the

increased information collection requirement concerning Leadership in Environmental Management (E.O. 13148) to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Interested parties may obtain copies of the form and supporting documents increasing the burden hours from the FAR Secretariat by requesting OMB Control Number 9000–0147, Leadership in Environmental Management (E.O. 13148).

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 23 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 23 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 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 2. Add section 23.001 to read as follows:

23.001 Definition.

Toxic chemical, as used in this part, means a chemical or chemical category listed in 40 CFR 372.65.

■ 3. Amend section 23.702 by revising paragraph (d) to read as follows:

23.702 Authorities.

* * * * *

(d) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

* * * * *

■ 4. Amend section 23.801 by revising paragraph (b) to read as follows:

23.801 Authorities.

* * * * *

(b) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

* * * * *

23.803 [Amended]

■ 5. Amend section 23.803 in the introductory text of paragraph (b) by removing ''ensure that acquisitions''; and in paragraph (b)(1) by removing ''Executive Order 12843'' and adding ''Executive Order 13148'' in its place.

Subpart 23.9—Contractor Compliance With Toxic Chemical Release Reporting

■ 6. Revise the heading of Subpart 23.9 as set forth above.

■ 7. Revise section 23.901 to read as follows:

23.901 Purpose.

This subpart implements the requirements of Executive Order (E.O.) 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

■ 8. In section 23.902, add a sentence to the end of paragraph (b) to read as follows:

23.902 General.

* * * * *

(b) * * * See EPA's Web site at *http://www.epa.gov/tri* for guidance.

23.903 [Amended]

■ 9. In section 23.903, amend paragraph (a) by removing ''(including all options)'';

23.904 [Removed]

23.905 through 23.907 [Redesignated as 23.904 through 23.906]

■ 10. Remove section 23.904 and redesignate sections 23.905, 23.906, and 23.907 as 23.904, 23.905, and 23.906, respectively;

■ 11. In the newly designated section 23.905, revise paragraphs (a) introductory text and (a) (2) (iv), and amend paragraph (d) by removing ''E.O. 12969'' and adding ''E.O. 13148'' in its place. The revised text reads as follows:

23.905 Requirements.

(a) E.O. 13148 requires that solicitations for competitive contracts expected to exceed $100,000 include, to the maximum extent practicable, as an award eligibility criterion, a certification by an offeror that, if awarded a contract, either—

* * * * *

(2) * * *

(iv) Do not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094.

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

* * * * *

■ 12. In the newly designated section 23.906, revise paragraph (a), and amend paragraph (b) by removing ''(including all options)''. The revised text reads as follows:

23.906 Solicitation provision and contract clause.

* * * * *

(a) Insert the provision at 52.223–13, Certification of Toxic Chemical Release Reporting, in all solicitations for competitive contracts expected to exceed $100,000 and competitive 8(a) contracts, unless it has been determined in accordance with 23.905(b) that to do so is not practicable; and

* * * * *

■ 13. Revise Subpart 23.10, consisting of sections 23.1000 through 23.1005, to read as follows:

Subpart 23.10—Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements

23.1000 Scope.

This subpart prescribes policies and procedures for obtaining information needed for Government—

(a) Compliance with right-to-know laws and pollution prevention requirements;

(b) Implementation of an environmental management system (EMS) at a Federal facility; and

(c) Completion of facility compliance audits (FCAs) at a Federal facility.

23.1001 Authorities.

(a) Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001–11050 (EPCRA).

(b) Pollution Prevention Act of 1990, 42 U.S.C. 13101–13109 (PPA).

(c) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

23.1002 Applicability.

The requirements of this subpart apply to facilities owned or operated by an agency in the customs territory of the United States.

23.1003 Definitions.

As used in this subpart—

Federal agency means an executive agency (see 2.101).

Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

23.1004 Requirements.

(a) E.O. 13148 requires Federal facilities to comply with the provisions of EPCRA and PPA.

(b) Pursuant to E.O. 13148, and any agency implementing procedures, every new contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with the—

(1) Emergency planning and toxic release reporting requirements in EPCRA, PPA, and E.O. 13148;

(2) Toxic chemical, priority chemical, and hazardous substance release and use reduction goals of sections 502 and 503 of Executive Order 13148; and

(3) Requirements for EMSs and FCAs if the place of performance is at a Federal facility designated by the agency.

23.1005 Contract clause.

(a) Insert the clause at 52.223–5, Pollution Prevention and Right-to-Know Information, in solicitations and contracts that provide for performance, in whole or in part, on a Federal facility.

(b) Use the clause with its Alternate I if the contract provides for contractor—

(1) Operation or maintenance of a Federal facility at which the agency has implemented or plans to implement an EMS; or

(2) Activities and operations—

(i) To be performed at a Government-operated Federal facility that has implemented or plans to implement an EMS; and

(ii) That the agency has determined are covered within the EMS.

(c) Use the clause with its Alternate II if—

(1) The contract provides for contractor activities on a Federal facility; and

(2) The agency has determined that the contractor activities should be included within the FCA or an environmental management system audit.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 14. Amend section 52.213–4 by revising the date of the clause and paragraph (b)(1)(vii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other than Commercial Items) (Aug 2003)

* * * * *

(b) * * *

(1) * * *

(vii) 52.223–5, Pollution Prevention and Right-to-Know Information (Aug 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

* * * * *

■ 15. Revise section 52.223–5 to read as follows:

52.223–5 Pollution Prevention and Right-to-Know Information.

As prescribed in 23.1005, insert the following clause:

Pollution Prevention and Right-to-Know Information (Aug 2003)

(a) *Definitions.* As used in this clause—

Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

Toxic chemical means a chemical or chemical category listed in 40 CFR 372.65.

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101–13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of section 302 of EPCRA.

(2) The emergency notice requirements of section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.

(5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.

(6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of sections 502 and 503 of Executive Order 13148.

(End of clause)

Alternate I (Aug 2003). As prescribed in 23.1005(b), add the following paragraph (c)(7) to the basic clause:

(c)(7) The environmental management system as described in section 401 of E.O. 13148.

Alternate II (Aug 2003). As prescribed in 23.1005(c), add the following paragraph (c)(7) to the basic clause. If Alternate I is also prescribed, renumber paragraph (c)(7) as paragraph (c)(8).

(c)(7) The facility compliance audits as described in section 402 of E.O. 13148.

■ 16. Amend section 52.223–13 by revising the introductory text, the date of the provision, and paragraphs (a), (b)(2)(i) and (b)(2)(iv) to read as follows:

52.223–13 Certification of Toxic Chemical Release Reporting.

As prescribed in 23.906(a), insert the following provision:

Certification of Toxic Chemical Release Reporting (Aug 2003)

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) * * *

(2) * * *

[ ] (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

* * * * *

[ ] (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094.

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

* * * * *

■ 17. Amend section 52.223–14 by revising the introductory text, the date of the clause, and paragraphs (b)(1) and (b)(4) to read as follows:

52.223–14 Toxic Chemical Release Reporting.

As prescribed in 23.906(b), insert the following clause:

Toxic Chemical Release Reporting (Aug 2003)

* * * * *

(b) * * *

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

* * * * *

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094.

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/

or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*)), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

* * * * *

[FR Doc. 03–18537 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2001–15; FAR Case 2001–024; Item VI]

RIN 9000–AJ42

Federal Acquisition Regulation; Selling Cost Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) ''selling costs'' cost principle by restructuring the paragraphs and removing unnecessary and duplicative language to increase clarity.

DATES: *Effective Date:* August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–0650. Please cite FAC 2001–15, FAR case 2001–024.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55682, August 29, 2002, with request for comments. One respondent submitted comments; a discussion of the comments is provided below. Differences between the proposed rule and final rule are discussed in paragraph B.2. below.

B. Public Comments

Clarity of the Cost Principle

1. *Comment: Revise proposed FAR 31.205–38(a).* The cost principle's readability and clarity can be improved by changing the second sentence of the proposed paragraph (a) from ''The cost of any selling efforts other than those addressed in this cost principle are unallowable'' to ''The costs of selling efforts are allowable unless expressly identified as unallowable in this or any other cost principle.'' The proposed wording will be difficult to apply in the field. The respondent is unaware of any selling costs that are not already included in the cost principle.

Councils' response: Nonconcur. The sentence in question was simply moved from the current paragraph (d) to the beginning of the cost principle. The sentence is not new; it was originally included to comply with the provisions of section 911 of the Defense Procurement Improvement Act of 1985 (codified at 10 U.S.C. 2324 (f)(1)(J)), which required that the allowability of selling and marketing costs be clarified. At that time, Congress and the General Accounting Office (GAO) were concerned about potential negotiation of 50/50 splits of the costs in this area due to unclear wording of the cost principle. The intent was to ensure that any gray areas of selling costs would be disallowed, particularly the costs of broadly targeted selling and marketing. The current wording continues this intent.

Cost Principle Consistency

2. *Comment: Delete portion of proposed FAR 31.205–38(a).* The last sentence in the proposed paragraph (a) is not needed as it reiterates what is already included in 31.204(c) (Application of principles and procedures).

Councils' response: Partially concur. Do not agree that the intent of the sentence in question is adequately covered by 31.204(c). However, the Councils concluded that the objective of this sentence is already adequately achieved by the operation of the proposed paragraph (b) which directs the reader to other specific cost principles governing the allowability of the identified categories of costs, and the second sentence of the proposed paragraph (a) which makes any selling efforts other than those addressed in the cost principle unallowable. Therefore, the last sentence of paragraph (a) is deleted.

Cost Principle Elimination

3. *Comment: Delete proposed FAR 31.205–38.* With the exception of its last paragraph, the proposed cost principle defines selling costs and expressly states they are allowable or refers the reader to other cost principles for the determination of allowability of related costs. Therefore, consideration should be given to completely eliminating the cost principle, after moving the proposed paragraph (c) to another cost principle, possibly 31.205–33(f) (Professional and consultant service costs).

Councils' response: Nonconcur. This cost principle has disallowed and should continue to disallow all selling costs not made specifically allowable by it or the other cited cost principles. In addition, this cost principle clarifying the allowability of selling and marketing costs is statutorily required by 10 U.S.C. 2324(f)(1)(J) and 41 U.S.C. 256(f)(1)(J).

General Reformatting of FAR Part 31.205

4. *Comment:* The respondent also recommended that the Councils consider a general reformatting of FAR Part 31, Contract Cost Principles and Procedures. Specifically, consideration should be given to establishing a uniform structure for the selected costs detailed in FAR Subpart 31.205, which the respondent believes will increase the clarity and understanding of the cost principles and thereby reduce misinterpretation.

Councils' response: Nonconcur. The Councils are unaware of any significant clarity problems with the current FAR cost principles and see no benefit in this recommendation. While it is true that the cost principles do not all share an identical format, it does not follow that this makes them difficult to understand. Moreover, such a comprehensive revision of the cost principles could actually increase disputes by substituting new wording for longstanding, court-tested language.

Of the 48 current FAR cost principles, 16 are only one paragraph long, and 11 more are only two or three paragraphs long. The Councils question the need to ''force-fit'' such short cost principles into a uniform format, particularly in the absence of any significant clarity problems. Not only would the recommended general reformatting of the cost principles be difficult to accomplish, but it would also offer no obvious benefit to either industry or the Government.

The Councils recommend instead that industry continue to identify those individual cost principles which it

views as problematic and to provide specific proposals for appropriate revisions. It should be noted that the continuing Defense Procurement and Acquisition Policy initiative to reduce accounting and administrative burdens in the cost principles, without jeopardizing the Government's interests, has resulted in significant changes or deletions involving more than 20 different cost principles to date, including the recent major revisions to the relocation cost principle (FAR 31.205–35) that made employee ''tax gross-ups'' and spouse employment assistance payments allowable for the first time, as well as increased the maximum allowable lump-sum amount for miscellaneous expenses from $1,000 to $5,000. In addition, cost principle streamlining cases are currently in process regarding compensation (FAR 31.205–6), training and education (FAR 31.205–44), depreciation (FAR 31.205–11), expanded relocation lump-sum (FAR 31.205–35), and travel (FAR 31.205–46) costs. The Councils continue to believe that such a case-by-case cooperative effort with industry offers the best opportunity for meaningful change in this often controversial area.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 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).

31.205–1 [Amended]

■ 2. Amend section 31.205–1 in paragraph (f)(1) by removing from the parenthetical ''31.205–38(c)'' and adding ''31.205–38(b)(5)'' in its place.

31.205–12 [Amended]

■ 3. Amend section 31.205–12 in paragraph (a) by removing the word ''generalized'' and adding ''general'' in its place.

■ 4. Amend section 31.205–33 by revising the first sentence of the introductory text of paragraph (f); and removing the parenthetical sentence. The revised text reads as follows:

31.205–33 Professional and consultant service costs.

* * * * *

(f) Fees for services rendered are allowable only when supported by evidence of the nature and scope of the service furnished (see also 31.205–38(c)). * * *

* * * * *

■ 5. Revise section 31.205–38 to read as follows:

31.205–38 Selling costs.

(a) ''Selling'' is a generic term encompassing all efforts to market the contractor's products or services, some of which are covered specifically in other subsections of 31.205. The costs of any selling efforts other than those addressed in this cost principle are unallowable.

(b) Selling activity includes the following broad categories:

(1) *Advertising.* Advertising is defined at 31.205-1(b), and advertising costs are subject to the allowability provisions of 31.205–1(d) and (f).

(2) *Corporate image enhancement.* Corporate image enhancement activities, including broadly targeted sales efforts, other than advertising, are included within the definition of public relations at 31.205–1(a), and the costs of such efforts are subject to the allowability provisions at 31.205–1(e) and (f).

(3) *Bid and proposal costs.* Bid and proposal costs are defined at 31.205–18 and are subject to the allowability provisions of that subsection.

(4) *Market planning.* Market planning involves market research and analysis and general management planning concerned with development of the contractor's business. Long-range market planning costs are subject to the allowability provisions of 31.205–12. Other market planning costs are allowable.

(5) *Direct selling.* Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such efforts as familiarizing a potential customer with the contractor's products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting efforts, individual demonstrations, and any other efforts having as their purpose the application or adaptation of the contractor's products or services for a particular customer's use. The cost of direct selling efforts is allowable.

(c) Notwithstanding any other provision of this subsection, sellers' or agents' compensation, fees, commissions, percentages, retainer or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business.

[FR Doc. 03–18538 Filed 7–23–03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 2001–15; FAR Case 2002–012; Item VII]

RIN 9000–AJ53

Federal Acquisition Regulation; Section 508 Micropurchase Exception Sunset Provision

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to convert this FAR case from an interim rule to a final rule without change. The final rule amends the FAR to extend the Electronic and Information Technology (section 508) micropurchase exception to October 1, 2004.

DATES: *Effective Date:* July 24, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900, or Ms. Angelena Moy, Case Manager, at (703) 602–1302. The TTY Federal relay number for further information is 1–800–877–8973. Please cite FAC 2001–15, FAR case 2002–012.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 67 FR 80321, December 31, 2002, that amended FAR 39.204(a) to extend the Electronic and Information Technology (EIT) micropurchase exception until October 1, 2004.

The 60-day comment period for the interim rule ended March 3, 2003. Public comments were received from four commenters. One commenter submitted comments that are not relevant and outside the scope of the rule. Another commenter, the American Foundation for the Blind (AFB), believes that the Government is not doing enough to resolve the small purchase problem so that an exception is not needed. The AFB also believes that the Government should create tools with questions and measurements for the Federal purchaser to utilize in determining accessibility.

The remaining two commenters fully support the rule. They also submitted their views on labeling products for micropurchases made using the Government purchase card, and one of the commenter also addressed how it accomplished its internal 508 training. Summaries of these views follow:

1. Suggested that many firms in the information technology industry are unwilling to make blanket statements on a product label regarding section 508 because interpretations of the standards and product information may vary, exposing companies to litigation under the False Claims Act.

2. Stated that creating a label that would provide sufficient information to Federal buyers would be difficult and expensive.

3. Stated that the majority of the Governmentwide purchase card purchases are generally made using the Internet or by phone, and it is unlikely that the Government buyer would see the label until after the purchase.

4. Recommended that, as an alternative to labeling, the Government purchaser use the Voluntary Product Accessibility Template (VPAT) as a tool in making an informed decision regarding accessibility.

5. Suggested that the VPAT assists the Government in meeting the Acquisition Planning and Market Research requirements established in FAR parts 7 and 10, respectively.

6. One commenter described their intensive efforts to train their sales forces to assist purchasers in making their accessibility determinations and to put in place systems that ensure engineers include accessibility as a key design requirement.

The above views will be considered before the Government formulates its next step regarding acquisition of electronic and information technology products and services under micropurchase procedures.

We applaud industry's efforts to build accessibility features into their products and their participation in making information about product features available by completing the VPAT. We encourage industry to continue to work toward a solution that will assist the Government purchase cardholder, who may have little technical knowledge regarding section 508, in purchasing products and services that meet the applicable accessibility standards.

The Federal Government is in continual collaboration with the Accessibility Forum to focus on long-term solutions that will assist the Government in making informed decisions about section 508-related procurements. We are hopeful that a solution can be found that will be agreeable to both industry and the Government.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because for purchases under $2,500 (a ''micropurchase''), no competitive quotations have to be obtained and micropurchases are no longer reserved exclusively for small firms.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 39, which was published in the **Federal Register** at 67 FR 80321, December 31, 2002, as a final rule without change.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 03–18539 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2001–15; Item VIII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update references and make editorial changes.

DATES: *Effective Date:* July 24, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202)

501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–15, Technical Amendments.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 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 19—SMALL BUSINESS PROGRAMS

■ 2. Amend section 19.1005 by revising paragraph (a) to read as follows:

19.1005 Applicability.

(a) *Designated industry groups.*

NAICS code	NAICS description
	1. Construction (Except Dredging) Subsector 236—Construction of Buildings
236115	New Single-Family Housing Construction (except Operative Builders).
236116	New Multi-Family Housing Construction (except Operative Builders).
236117	New Housing Operative Builders.
236118	Residential Remodelers.
236210	Industrial Building Construction.
236220	Commercial and Institutional Building Construction.
	Subsector 237—Heavy and Civil Engineering Construction
237110	Water and Sewer Line and Related Structures Construction.
237120	Oil and Gas Pipeline and Related Structures Construction.
237130	Power and Communication Line and Related Structures Construction.
237210	Land Subdivision.
237310	Highway, Street, and Bridge Construction.
237990	Other Heavy and Civil Engineering Construction (except dredging).
	Subsector 238—Specialty Trade Contractors
238110	Poured Concrete Foundation and Structure Contractors.
238120	Structural Steel and Precast Concrete Contractors.
238130	Framing Contractors.
238140	Masonry Contractors.
238150	Glass and Glazing Contractors.
238160	Roofing Contractors.
238170	Siding Contractors.
238190	Other Foundation, Structure, and Building Exterior Contractors.
238210	Electrical Contractors.
238220	Plumbing, Heating, and Air-Conditioning Contractors.
238290	Other Building Equipment Contractors.
238310	Drywall and Insulation Contractors.
238320	Painting and Wall Covering Contractors.
238330	Flooring Contractors.
238340	Tile and Terrazzo Contractors.
238350	Finish Carpentry Contractors.
238390	Other Building Finishing Contractors.
238910	Site Preparation Contractors.
238990	All Other Specialty Trade Contractors.
	2. Non-Nuclear Ship Repair
336611	Ship Building and Repairing.
PSC J998	Non-nuclear Ship Repair (East) Ship Repair (including overhauls and conversions) performed on non-nuclear propelled and non-propelled ships east of the 108th meridian.
PSC J999	Non-nuclear Ship Repair (West) Ship Repair (including overhauls and conversions) performed on non-nuclear propelled and non-propelled ships west of the 108th meridian.
	3. Architectural and Engineering Services (Including Surveying and Mapping)
541310	Architectural Services or;
541330	Engineering Services.
PSC C111 ...	Administrative and Service Buildings.
PSC C112 ...	Airfield, Communication and Missile Facilities.
PSC C113 ...	Educational Buildings.
PSC C114 ...	Hospital Buildings.
PSC C115 ...	Industrial Buildings.
PSC C116 ...	Residential Buildings.
PSC C117 ...	Warehouse Buildings.
PSC C118 ...	Research and Development Facilities.
PSC C119 ...	Other Buildings.
PSC C121 ...	Conservation and Development.

NAICS code	NAICS description
PSC C122 ...	Highways, Roads, Streets, Bridges and Railways.
PSC C123 ...	Electric Power Generation (EPG).
PSC C124 ...	Utilities.
PSC C129 ...	Other Non-Building Structures.
PSC C130 ...	Restoration.
PSC C211 ...	Architect-Engineering Services (including landscaping, interior layout, and designing).
PSC C212 ...	Engineering Drafting Services.
PSC C213 ...	A&E Inspection Services (non-construction).
PSC C214 ...	A&E Management Engineering Services.
PSC C215 ...	A&E Production Engineering Services (including Design and Control, and Building Programming).
PSC C216 ...	Marine Architect and Engineering Services.
PSC C219 ...	Other Architect and Engineering Services.
541360	Geophysical Surveying and Mapping Services or;
541370	Surveying and Mapping (except Geophysical) Services.
PSC T002 ...	Cartography Services.
PSC T004 ...	Charting Services.
PSC T008 ...	Photogrammetry Services.
PSC T009 ...	Aerial Photographic Services.
PSC T014 ...	Topography Services.
PSC R404 ...	Land Surveys, Cadastral Services (non-construction).
4. Refuse Systems and Related Services	
562111	Solid Waste Collection or;
562119	Other Waste Collection or;
562219	Other Nonhazardous Waste Treatment and Disposal.
PSC S205 ...	Trash/Garbage Collection Services—including Portable Sanitation Services.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–1 by revising the date of the provision and paragraph (i)(2)(ii)(B) to read as follows:

52.212–1 Instructions to Offerors–Commercial Items.

Instructions to Offerors—Commercial Items (July 2003)

* * * * *

(i) * * *

(2) * * *

(ii) * * *

(B) Through the DoDSSP Internet site at *http://dodssp.daps.mil.*

* * * * *

[FR Doc. 03–18540 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small entity compliance guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–15 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–15 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–15

Item	Subject	FAR case	Analyst
I	Elimination of Standard Form 129, Solicitation Mailing List Application	2001–032	De Stefano.
II	Energy-Efficient Standby Power Devices	2001–028	Smith.
III	Electronic Listing of Acquisition Vehicles Available For Use By More Than One Agency	2001–030	Zaffos.
IV	Compensation Cost Principle	2001–008	Loeb.
V	Leadership in Environmental Management (E.O. 13148)	2000–005	Goral.
VI	Selling Cost Principle	2001–024	Loeb.
VII	Section 508 Micropurchase Exception Sunset Provision	2002–012	Nelson.
VIII	Technical Amendments.		

Item I—Elimination of Standard Form 129, Solicitation Mailing List Application (FAR Case 2001–032)

This final rule removes the requirement for contracting offices to establish and maintain manual solicitation mailing lists and the need to use the Standard Form (SF) 129, Solicitation Mailing List Application. The purpose of the rule is to broaden use and reliance on e-business applications. It is expected that this rule will eliminate, in part, the need for contracting offices to maintain paper-based sources of contractor information.

Item II—Energy-Efficient Standby Power Devices (FAR Case 2001–028)

This final rule implements Executive Order 13221, of July 31, 2001, Energy-Efficient Standby Power Devices, by providing guidance on energy-efficient standby power devices. The rule also clarifies requirements for the purchase of recovered material. The requirements of this rule apply to contracting officers that purchase products that use external standby power devices or that contain an internal standby power function, and products that are composed of recovered material. Government contracting and technical personnel will need to ensure that proposed acquisitions comply with the Government preference for energy-efficient products.

Item III—Electronic Listing of Acquisition Vehicles Available For Use By More Than One Agency (FAR Case 2001–030)

This final rule provides the regulatory underpinning for the operation and use of an online directory to facilitate greater awareness of contracts available for multiple agency use. The rule—

1. Adds a new Subpart 5.6, Publicizing Multi-Agency Use Contracts, that—

(a) Provides the Internet address to access the database;

(b) Requires agencies to enter information into the database within ten days of award of a Governmentwide acquisition contract (GWAC), multi-agency contract, Federal Supply Schedule contract, or other procurement instrument intended for use by multiple agencies including blanket purchase agreements under Federal Supply Schedule contracts; and

(c) Requires contracting activities to enter information into the database by October 31, 2003, on all existing contracts and other procurement instruments intended for use by multiple agencies, except for those expiring on or before June 1, 2004.

2. Adds language at FAR 7.105(b)(1) to consider the sources contained in the database as prospective sources of supplies and services.

3. Adds language at FAR 10.002(b)(2)(iv) to encourage querying the database during market research for information relevant to agency acquisitions.

Item IV—Compensation Cost Principle (FAR Case 2001–0)

This final rule amends the FAR to revise the ''compensation for personal services'' cost principle by removing unnecessary and duplicative language and restructuring it. This rule is of particular interest to contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.,* price revision of fixed-price incentive contracts, terminated contracts, indirect cost rates.

Item V—Leadership in Environmental Management (E.O. 13148) (FAR Case 2000–005)

This final rule provides policies and procedures for obtaining contractor information so that agencies can implement environmental management systems and complete facility compliance audits. The rule implements Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management. The requirements of this rule apply to facilities owned or operated by Federal agencies, except those facilities located outside the United States and its outlying areas.

Item VI—Selling Cost Principle (FAR Case 2001–024)

This final rule amends the FAR to revise the ''selling costs'' cost principle by restructuring the paragraphs and removing unnecessary and duplicative language to increase clarity. The rule does not change the allowability of selling costs. The case was initiated at the request of the Aerospace Industries Association (AIA). This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.,* price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VII—Section 5 Micropurchase Exception Sunset Provision (FAR Case 2002–012)

The interim rule published in the **Federal Register** at 67 FR 80321, December 31, 2002, is converted to a final rule, without change, to extend the Electronic and Information Technology (Section 5) micropurchase exception to October 1, 2004.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR 19.1005 and 52.212–1.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–18541 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday,
July 24, 2003

Part V

Department of Transportation

14 CFR Part 399

Policy Statement Amendment and Withdrawal and Termination of Rulemaking Action; Final Rule and Notice

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Federal Aviation Administration

14 CFR Parts 21, 36, et al.

Disposition of Comments to Final Rules and Withdrawal of Proposed Rules and Policy Statement; Final Rule, Proposed Rule, and Notice

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Federal Highway Administration

23 CFR Part 945

Dedicated Short Range Communications in Intelligent Transportation Systems (ITS) Commercial Vehicle Operations; Proposed Rule

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Federal Motor Carrier Safety Administration

49 CFR Parts 391, 393, 395, and 396

Motor Carrier Safety Standards—Withdrawal of Proposed Rulemaking; Proposed Rules

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National Highway Traffic Safety Administration

49 CFR Parts 571 and 583

Motor Vehicle Safety Standards—Termination of Proposed Rulemaking; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–15243]

Withdrawal and Termination Actions

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of withdrawal and termination of rulemaking actions.

SUMMARY: The Department of Transportation (DOT) is announcing its decision to withdraw certain proposed rulemakings, a policy statement, and an interim final rule that it had published in the **Federal Register** and is also announcing its decision to terminate a number of rulemaking actions previously listed in its semiannual Regulatory Agenda for which no proposed rules have been published. These actions are part of a Secretarial initiative to move forward with decisions on long-pending regulatory proposals, either bringing them to completion or eliminating them from DOT's Regulatory Agenda if no further regulatory action is presently contemplated. They include both significant and nonsignificant rulemaking actions of various modal administrations within DOT and the Office of the Secretary. Most of the withdrawals are published separately in today's **Federal Register**; for those that are not, we have provided the **Federal Register** citations for those already published and the expected publication date for those to be published in the near future. We also have identified in this notice those actions that are being terminated and provided the reason for the termination.

FOR FURTHER INFORMATION CONTACT: Jennifer Abdul-Wali, Office of the General Counsel, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–4723; fax: (202) 366–9313; E-mail: *Jennifer.Abdul-Wali@ost.dot.gov.*

ADDRESSES: You may obtain a copy of this notice from the DOT public docket through the Internet at *http://dms.dot.gov,* docket number OST–03–15243. If you do not have access to the Internet, you may obtain a copy of the notice by United States mail from the Docket Management System, U.S. Department of Transportation, Room PL401, 400 Seventh Street, SW., Washington, DC 20590. You must identify docket number OST–03–15243 and request a copy of the notice entitled ''Notice of Withdrawal, Termination, and Deferral of Rulemaking Actions.'' You may also review the public docket in person in the Docket office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office is on the plaza level of the Department of Transportation. Additionally, you can also get a copy of this document from the **Federal Register** Web site at *www.gpo.gov.*

SUPPLEMENTARY INFORMATION:

Background

At the Department of Transportation, we have been engaged in a comprehensive effort to overhaul and expedite the Department's rulemaking process and to move long-pending rulemaking projects to completion. It is in the public interest for the Department to develop high quality rulemaking documents in a timely manner. Without compromising the numerous substantive and procedural legal requirements that must be addressed, and while stressing the importance of justifying the approach taken with a well-reasoned analysis, we have also emphasized that all rulemakings must be completed in a timely manner.

To achieve these goals, we have taken a number of steps. For example, we have created an effective tracking system for DOT's significant rulemakings to ensure that rules are either completed in a timely manner or that delays are identified and fixed. Through this tracking system, we have been able to prepare a monthly, internet-accessible report for the public providing the current status of these significant rulemakings. This not only provides the public with valuable information concerning our important rulemaking activity, but also provides them with the information necessary to evaluate the Department's progress in meeting its goal of completing rulemakings in a timely manner.

Our senior staff has also conducted a review of the current status of all rulemakings pending within the Department. This review helped to identify and resolve problems that have delayed older rulemakings, and has resulted in a significant increase in our rulemaking productivity.

We also identified a number of rulemaking proceedings on the Department's Regulatory Agenda for which it was clear, as a result of the review, that no further action was presently contemplated. Many of these were proceedings for which no action has been taken in many years. The reasons for inaction varied. We decided to make a concerted effort to ''clean up'' the Department's Regulatory Agenda by withdrawing or terminating those proceedings for which no further action is intended.

As a result, 53 DOT rulemaking actions, many of them long-pending proceedings, have been or are being withdrawn or terminated. For withdrawals of proposed rules and other actions on which we asked for public comment, we have prepared, or will prepare, separate documents that respond to the public comments that we received and explain why the actions are being withdrawn. Each of those withdrawals is identified in this notice, and we provide information on when the withdrawal was or will be published. Most are being published in today's **Federal Register**. This notice also identifies those previously anticipated actions that were announced in a DOT semi-annual Regulatory Agenda, but which never resulted in a proposed rule. This notice announces that those actions have been, or will be, terminated, and provides a short explanation for the termination. All of this information is provided in the tables below:

1. The following twelve (12) proposed rulemakings, one (1) policy statement, and one (1) interim final rule (IFR) are withdrawn by separate actions in today's **Federal Register**. For each one, we have provided the DOT agency, the regulation identification number (RIN), the title, the action being withdrawn, and the **Federal Register** citation and date for the action being withdrawn.

Agency—RIN	Title	Action	**Federal Register** cite
OST—2105–AA46	Policy statement on airline preemption	Interim final rule	44 FR 9948, 02/15/79.
FAA—2120–AA09	Objects affecting navigable airspace	Notice of proposed rulemaking	55 FR 31722, 08/03/90.
FAA—2120–AA50	Miscellaneous amendments	Notice of proposed rulemaking	48 FR 45214, 10/03/83.
FAA—2120–AC72	Improved water survival equipment	Notice of proposed rulemaking	53 FR 24890, 06/30/88.
FAA—2120–AE41	Type certificates for some surplus aircraft of the armed forces.	Notice of proposed rulemaking	59 FR 19114, 04/21/94.
FAA—2120–AG16	Revised precision approach landing systems policy.	Policy statement	54 FR 53231, 12/27/89.

Agency—RIN	Title	Action	Federal Register cite
FAA—2120–AH60	Procedures for reimbursement of airports, on-airport parking lots, and vendors of on-airfield direct services to air carriers for security mandates.	Notice of proposed rulemaking	66 FR 66238, 12/21/01.
FHWA—2125–AE63	Standards for dedicated short-range communications (DSRC) applications for use by commercial vehicles in intelligent transportation systems projects.	Notice of proposed rulemaking	64 FR 73674, 12/30/99.
FMCSA—2126–AA12	Parts and accessories necessary for safe operation; sleeper berths on motor coaches.	Advance notice of proposed rulemaking	59 FR 1706, 01/12/94.
FMCSA—2126–AA19	Parts and accessories necessary for safe operation; television receivers and data display units.	Notice of proposed rulemaking	61 FR 14733, 04/03/96.
FMCSA—2126–AA31	English language requirement; qualification of drivers.	Advance notice of proposed rulemaking	62 FR 45200, 08/26/97.
FMCSA—2126–AA36	Out-of-service criteria	Advance notice of proposed rulemaking	63 FR 38791, 07/20/98.
NHTSA—2127–AA03	Crashworthiness ratings	Notice of proposed rulemaking	46 FR 7025, 01/22/81.
NHTSA—2127–AA44	Flammability of interior materials; school buses.	Advance notice of proposed rulemaking	53 FR 44627, 11/04/88.

2. The following two (2) proposed rules were recently withdrawn through separate actions in the **Federal Register**. In addition to the information provided under table 1, we have also provided the **Federal Register** citation and date for the withdrawal.

Agency—RIN	Title	Action	Federal Register cite	
			(Proposal)	(Withdrawal)
FRA—2130–AA60	Local rail freight assistance to states.	Notice of proposed rulemaking.	55 FR 49648, 11/30/92	68 FR 16753, 04/07/03.
FTA—2132–AA68	Buy America requirements; permanent waiver for microcomputers.	Advance notice of proposed rulemaking.	64 FR 54855, 10/08/99	68 FR 9801, 02/28/03.

3. The following thirty-five (35) rulemaking actions have recently been terminated. For each one, we have provided the DOT agency, the RIN, the title, and the reason for the termination.

Agency—RIN	Title
OST—2105–AA73	Direct flights. *Reason:* Petition denied.
OST—2105–AC79	Electronic filing option in DOT proceeding. *Reason:* This action was inadvertently placed in the agenda.
FAA—2120–AF80	Bird strike. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—120–AH33	Design requirements for pressurization and pneumatic systems installed on transport category airplanes. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—2120–AH35	Reverse thrust and propeller pitch settings below the flight regime. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—2120–AH48	Modification of the dimensions of the Grand Canyon National Park special flight rules area and flight free zones. *Reason:* Environmental issues raised by National Park Service.
FAA—2120–AH71	Revised checked pitching maneuver for transport airplanes. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—2120–AH73	Revised requirements for gust and continuous turbulence design loads. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—2120–AH74	Harmonization of airworthiness standards flight rules, static lateral-directional stability, and speed increase and recovery characteristics. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—2120–AH80	Airworthiness standards; fire protection. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.

Agency—RIN	Title
FHWA—2125–AE91	Debt financing. *Reason:* Impact of reauthorization of the surface transportation program.
FMCSA—2126–AA24	Electronic filing of surety bonds, trust fund agreements, insurance certificates; cancellations. *Reason:* Optional electronic filing capability makes this rulemaking no longer necessary.
FMCSA—2126–AA39	Federal motor carrier safety regulations; zero-base revision. *Reason:* Regulatory changes would have been burdensome.
FMCSA—2126–AA50	Post-accident controlled substances and alcohol test results; reporting requirements for fatality analysis reporting system. *Reason:* Regulatory changes would have been burdensome.
FMCSA—2126–AA63	Rules of practice for administrative proceedings. *Reason:* Merging into RIN 2126–AA15.
NHTSA—2127–AB79	Procedures for considering environmental impacts. *Reason:* Other higher priorities.
NHTSA—2127–AG79	Hybrid III 95th percentile male. *Reason:* Other higher priorities.
NHTSA—2127–AH00	Political subdivision participation in state highway safety programs and state highway safety agency. *Reason:* Other higher priorities.
NHTSA—2127–AH27	Metric conversion—phase III. *Reason:* Other higher priorities.
NHTSA—2127–AH56	Use of universal child seats in aircraft. *Reason:* Other higher priorities.
NHTSA—2127–AH58	Exemption for inconsequential defect or noncompliance. *Reason:* Other higher priorities.
NHTSA—2127–AH63	Compliance and enforcement. *Reason:* Other higher priorities.
NHTSA—2127–AH89	Defect reporting and notification. *Reason:* Other higher priorities.
NHTSA—2127–AH97	Guidelines for states on enforcement of light transmission. *Reason:* Any action by NHTSA will not lead to a regulation.
NHTSA—2127–AI36	Seat belt fit. *Reason:* Rulemaking unnecessary because many vehicles have belts long enough to fit almost all users and optional longer belts or seat belt extenders are available for 87.5 percent of the fleet. Requiring manufacturers to provide longer belts or belt extenders may have negative safety consequences.
NHTSA—2127–AI40	Voluntarily installed seat belt assembly anchorages. *Reason:* Other higher priorities.
NHTSA—2127–AI78	Exemption for inconsequential defect or noncompliance. *Reason:* Other higher priorities.
FRA—2130–AB27	Crane safety standards. *Reason:* Under review by the Rail Safety Advisory Committee.
FRA—2130–AB30	Annual adjustment of monetary threshold for reporting rail equipment accidents/incidents. *Reason:* Related rulemaking issued under 2130–AB57.
FRA—2130–AB35	Revision to railroad safety enforcement procedures. *Reason:* Limited resources.
FRA—2130–AB36	Rules of practice. *Reason:* Limited resources.
FRA—2130–AB46	Minimum standards for temperature in the locomotive cab. *Reason:* Not cost effective.
RSPA—2137–AD57	Hazardous materials; frangible discs on tank cars. *Reason:* Other higher priorities.
RSPA—2137–AD75	Hazardous materials; transportation of division 1.5 explosives (blasting agents) and ammonium nitrate mixtures in bulk. *Reason:* Other higher priorities.
BTS—2139–AA01	Modernizing the passenger origin-destination survey. *Reason:* Will merge with RIN 2105–AC71.

4. The following is a future withdrawal action that will be published in the **Federal Register.** For this item, we have provided the DOT agency, the RIN, the title, and the projected withdrawal date, the action being withdrawn, and the **Federal Register** citation and date for the action being withdrawn.

RIN	Title—projected date of withdrawal	Action	**Federal Register** cite
OST—2105–AC45	Overbooking of flights: elimination of airport notice signs—07/03.	Notice of proposed rulemaking	61 FR 27818, 06/03/96.

5. The following is a future termination action. For this item, we have provided the DOT agency, the RIN, the title, the reason for the termination, and a projected termination date.

RIN	Title	Projected termination date
NHTSA—2127–AG16	Door latch exemption for vehicles equipped with wheelchair lifts and ramps ..... *Reason:* Recent changes in technology have eliminated the necessity for these modifications.	06/00/03.

Issued in Washington, DC, on July 9, 2003.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–18593 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. OST–2003–15592]

RIN 2105–AA46

Preemption in Air Transportation; Policy Statement Amendment

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This action ends a rulemaking commenced by the Civil Aeronautics Board in 1979, in which it announced interim policies to implement provisions of the Airline Deregulation Act of 1978 dealing with federal preemption. The Department of Transportation, which succeeded to various Civil Aeronautics Board functions, has concluded that the interim policy statement is of limited current value. Its major issue—continued intrastate economic regulation of air carriers—has long since been resolved. Its remaining subjects continue to evolve and are more appropriately addressed on a case-by-case basis rather than by a statement of general policy. The interim final policy is accordingly removed. The Department of Transportation will continue to monitor developments and to offer the proper interpretation of the statute's preemption provision in appropriate fact-specific circumstances.

EFFECTIVE DATE: July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Samuel Smith, Office of the Assistant General Counsel for Litigation, or Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9285 or 366–9342, respectively.

SUPPLEMENTARY INFORMATION: In February 1979, the former Civil Aeronautics Board (''CAB'' or ''Board'') adopted interim final policies devoted in the main to the authority of state and federal governments to regulate air carriers operating pursuant to federal authority. Policy Statement-83 (February 7, 1979) (''PS–83''); 44 FR 9951 (February 15, 1979); 14 CFR 399.110. The policy statement addressed questions arising about the preemption provision of the then-newly enacted Airline Deregulation Act of 1978 (Pub. L. 95–504, 92 Stat. 1707) (''ADA''), now codified at 49 U.S.C. 41713, and it asked for comment to aid in setting final policies. The major features of the interim preemption policy have been that states may not enact or enforce (1) any economic regulation of carriers having authority under Title IV of the Federal Aviation Act, including commuters and those registered as air taxis under 14 CFR Part 298; and (2) legal provisions governing such matters as air carrier capitalization, insurance, and bonding, in-flight amenities, and so forth. There has also been a short general statement concerning the authority of airport proprietors.

Comments were received in 1979 from the following parties: the Air Transport Association, the Airport Operators Council International, the Illinois Aeronautics Board, the Maryland Department of Transportation, the Massachusetts Port Authority, the Michigan Aeronautics Commission, the North Dakota Aeronautics Commission, the State of Oregon through its Public Utility Commissioner, the Texas Aeronautics Commission, the Nebraska Department of Aeronautics, the Delaware Transportation Authority, the New York Department of Transportation, and Chapparal Airlines.

The Air Transport Association and the Delaware Transportation Authority supported the interim policy statement. The remaining parties opposed all or parts of the statement. They contended that the policy either (1) unlawfully precluded state regulation of commuter air carriers and air taxis; (2) unlawfully curbed state oversight that did not amount to the regulation of airline rates, routes, and service precluded by the ADA; or (3) improperly restricted the rights of airport proprietors.

Most of the policy statement and many of the comments concern the first category above: the regulation of carriers that were governed by both the states and the federal government prior to passage of the ADA. This once-major issue has long since been resolved by courts and the passage of time. It is now well settled that carriers certificated by the federal government, as well as commuters and air taxis operating under federal authority, are not subject to economic regulation by the states. *See, e.g., Hughes Air Corporation* v. *Public Utility Commission*, 644 F.2d 2334 (9th Cir. 1981).

The second category above, indirect regulation of air transportation by states, is of a somewhat different nature. On the one hand, time and litigation have clarified to some extent the reach of federal preemption in this sphere. In 1979 the CAB declared that states ''could not interfere with the service that carriers offer in exchange for their rates and fares.'' PS–83 at 8. This included charges for headsets, excess baggage, and alcoholic beverages, as well as requirements for insurance coverage and capitalization. *Id.*; 14 CFR 399.110(d). Although some commenters considered this too restrictive of states' prerogatives, no court of which the Department is aware has held to the contrary with respect to interference with such matters. *See Hodges* v. *Delta Airlines*, 44 F.3d 334, 336 (5th Cir. 1995)(*en banc*) (airline ''service'' includes ticketing, the provision of food and drink, baggage handling, and boarding procedures). *Also generally Morales* v. *Trans World Airlines*, 503 U.S. 407 (1992) (preempting state-imposed fare advertising guidelines); *American Airlines* v. *Wolens*, 512 U.S. 1233 (1994) (preempting state-imposed restrictions on airline frequent flier programs). On the other hand, controversies about the application of the preemption provision have arisen about subjects and in contexts never even mentioned by the CAB. A prime example is the effect of the ADA on state tort law. *See Smith* v. *Comair, Inc.*, 134 F.3d 254 (4th Cir. 1998) (state tort claim may be preempted as ''related to'' airline ''service''), and *Charas* v. *Trans World Airlines,* 160 F.3d 1259 (9th Cir. 2000) (airline ''service'' read narrowly so as not to preempt state tort claim).

The Department appreciates that it is not possible in a general policy statement to anticipate and address all relevant potential issues. Preemption is a dynamic area, in which questions will likely continue to arise with some regularity in circumstances that cannot now be anticipated. It would be extraordinarily ambitious, and in the end probably futile, to attempt to maintain a policy statement that provides contemporary and meaningful guidance across a full spectrum of situations. Rather, ad hoc administrative determinations, guidance, enforcement activities, and intervention in significant legal actions seem better suited to ensuring the proper implementation of this preemption provision.

The final subject included in the interim policy statement, the ADA's effect on the authority of airport proprietors, garnered only a small amount of the Board's attention. There is but one paragraph in the preamble and only a single very broad provision in the interim statement, to the effect that airport proprietors must exercise their authority in reasonable and nondiscriminatory fashion as necessary to accomplish legitimate objectives. PS–83 at 9; 14 CFR 399.110(f). The CAB also expressly acknowledged that the ''full scope'' of proprietary rights and duties had ''yet to be developed.'' PS–83 at 9.

Some commenters felt that the Board had an overly narrow view of airport proprietors' authority. We disagree. This part of the interim policy statement remains an accurate statement of a fundamental principle of law: Airport proprietors clearly have rights, but those rights are not unfettered or unconstrained. They must be exercised in a reasonable, nondiscriminatory manner, and designed to achieve legitimate objectives. *Arapahoe County Public Airport Authority* v. *FAA*, 242 F.3d 1213, 1223 (10th Cir. 2001); *American Airlines* v. *DOT*, 202 F.3d 788, 806–08 (5th Cir. 2000); *National Helicopter Corp.* v. *City of New York*, 137 F.3d 81, 89 (2nd Cir. 1998). It is also true that airport proprietors may not impede federal airspace management interests or unreasonably interfere with interstate or foreign commerce. But these statements are so basic and so broad that they are of limited utility in any particular setting; they can only frame the proper inquiry. Questions about the scope and exercise of proprietary rights, like preemption generally, are most often fact-specific. *Arapahoe County*, 242 F.3d at 1223. Thus, litigation and administrative proceedings will likely continue to refine the contours of this authority, and no single policy statement is apt to comprehend or anticipate its precise parameters.

In sum, the interim policy statement either discusses subjects that have been overtaken by events in the last twenty-five years since the ADA was enacted, or offers statements so general in nature that their value is limited where, as here, new issues continue to evolve. The policy statement has provided assistance in the past, but it has increasingly become less helpful as the industry has changed and evolved over the years. In these circumstances the Department has decided to remove the interim policy statement at 49 CFR 399.110 and end this proceeding. We intend to continue to monitor developments, and to take action to apply the ADA's preemption provision when that is appropriate in individual fact-specific situations. This approach has proven itself in guarding against state and local government actions that improperly interfere with the deregulation of the airline industry. *See Wolens and Arapahoe County*, both *supra*.

Regulatory Analyses and Notices

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866, and therefore it was not reviewed by the Office of Management and Budget. This rule is not considered significant under the Department's regulatory policies and procedures. The change is being made solely for the purposes of eliminating an obsolete statement.

The Department also has determined that this rule has no economic impact. This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Executive Order 12612

The Department has analyzed this rule under the principles and criteria contained in Executive Order 12612 (''Federalism'') and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995.

Regulatory Flexibility Act

The Department has evaluated the effects of this rule on small entities. I certify this rule will not have a significant economic impact on a substantial number of small entities, because we are merely removing an obsolete policy statement.

List of Subjects in 14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small business.

■ For the reasons set forth in the preamble, the Department amends 14 CFR part 399 as follows:

PART 399—STATEMENTS OF GENERAL POLICY

■ 1. The authority citation for part 399 continues to read as follows:

Authority: 49 U.S.C. 40101 *et seq.*

§ 399.110 [Removed]

■ 2. Part 399, subpart J is amended by removing § 399.110.

Issued in Washington, DC on June 13, 2003, under the authority of 49 CFR part 1.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–18589 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 36, and 91

[Docket Nos. FAA–2000–7587, FAA–2002–12771, and FAA–1999–6411]

RIN 2120–AI01

Disposition of Comments to Final Rules: Noise Certification Standards for Subsonic Jet and Subsonic Transport Category Large Airplanes; Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia; and, Equivalent Safety Provisions for Fuel Tank System Fault Tolerance Evaluations (SFAR 88)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rules; disposition of comments.

SUMMARY: The FAA is providing response to public comments on three immediately adopted rules. The effect of this action is to close these rulemaking actions. This action is part of our effort to address recommendations of the Government Accounting Office and the Management Advisory Council to reduce the number of items in the Regulatory Agenda, and to accurately reflect agency initiatives.

FOR FURTHER INFORMATION CONTACT: Alicia K. Douglas, Office of Rulemaking (ARM–204), Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591, (202) 267–9681, *alicia.k.douglas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Noise Certification Standards for Subsonic Jet and Subsonic Transport Category Large Airplanes, RIN 2120–AH03

On July 8, 2002, the FAA published a final rule (67 FR 45193), entitled ''Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes''. This immediately adopted rule amended the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes. These changes were based on the joint effort of the FAA, the European Joint Aviation Authorities (JAA), and the Aviation Rulemaking Advisory Committee. The intent of the change was to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements for subsonic jet airplanes and subsonic transport category large airplanes to

simplify airworthiness approvals for import and export purposes. The FAA invited comments on revised 14 CFR 36.2 on the applicable noise requirements. The rule became effective August 7, 2002. The comment period closed on September 6, 2002.

The FAA received four responses to the request for comments. Of the four responses, two comments were outside the scope of the request for comments.

Two commenters agreed with the regulations and expressed appreciation for the FAA and JAA efforts to harmonize the noise certification standards. One of the commenters proposed a revision to 14 CFR 36.2 to incorporate the § 21.17(c) time periods for type certification applications. The rule harmonized the applicability requirements of 14 CFR 36.2 with the intent of International Civil Aviation Organization Annex 16, Chapter 1. For harmonization, the FAA chose to adopt the five-year time period specified in Annex 16.

In addition, commenters identified a typographical error, suggested we add a definition of the term, ''other standard'', and recommended a change in the location of the word ''notwithstanding'' in two paragraphs. We corrected the typographical error in the final rule correction notice, published on October 10, 2002 (67 FR 63194). We included an explanation of ''other standards'' in the part 36 advisory material. Placement of the word ''notwithstanding'' at the beginning of the paragraphs did not change the meaning. Therefore, we plan to make no substantive changes to the rule because of these comments.

Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia, RIN 2120–AH41

On July 15, 2002, the FAA published a final rule (67 FR 46568), entitled ''Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia''. This rule removed outdated language, revised several sections, and added one new section to the noise operating regulations. These revisions were to make the noise operating regulations consistent with statutory changes to the Airport Noise and Capacity Act (Act). The FAA invited comments to the new rule. The rule became effective July 15, 2002. The comment period closed on August 14, 2002.

The FAA received comments from the Raleigh-Durham Airport Authority . They noted cross-references to deleted sections and suggested we insert the word ''takeoff'' in certain definitions. They also asserted that the FAA exceeded its authority in allowing the intermix of engines under 14 CFR part 21.

After reviewing the authority's comments, the FAA has determined that the changes made by the final rule are consistent with the Act. Therefore, we plan to make no changes to the rule (67 FR 46568) because of these comments.

Equivalent Safety Provisions for Fuel Tank System Fault Tolerance Evaluations (SFAR 88), RIN 2120–AH85

On September 10, 2002, the FAA published a final rule (67 FR 57490), entitled ''Equivalent Safety Provisions for Fuel Tank System Fault Tolerance Evaluations (SFAR 88)''. This immediately adopted rule added a provision to the existing requirements for fuel tank system fault tolerance evaluations to allow type certificate holders to use equivalent safety provisions for demonstrating compliance. The FAA invited comments to the immediately adopted rule. The comment period closed on October 10, 2002.

The FAA received comments on this rule change from two manufacturers and a public interest group. None of the comments opposed the final rule or requested changes within the scope of the final rule. Therefore, the FAA does not intend to amend this rule.

Conclusion

After consideration of the comments submitted in response to the immediately adopted rules, the FAA has determined that no further rulemaking action is necessary. The following rulemaking activity is closed:

- Noise Certification Standards for Subsonic Jet and Subsonic Transport Category Large Airplanes, RIN 2120–AH03.
- Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia, RIN 2120–AH41.
- Equivalent Safety Provisions for Fuel Tank System Fault Tolerance Evaluations (SFAR 88), RIN 2120–AH85.

Closing these rulemaking actions does not preclude the FAA from issuing a notice on these subjects in the future or from committing to any future course of action.

Issued in Washington, DC, on July 11, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–18591 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 61, 65, 77, 107, 109, 121, 135, 145, and 154

[Docket Nos. 23781, 25642, 26305, 27699, and FAA–2001–11172]

RIN 2120–AI02

Withdrawal of Proposed Rules: Miscellaneous Amendments; Improved Water Survival Equipment; Objects Affecting Navigable Airspace; Type Certificates for Some Surplus Aircraft of the Armed Forces; Procedures for Reimbursement of Airports, On-Airport Parking Lot and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rules; disposition of comments and withdrawal.

SUMMARY: The FAA is withdrawing several previously published Notices of Proposed Rulemaking (NPRMs). This action is necessary because the proposed actions have been overcome by events, are no longer relevant, or will be addressed in future rulemaking. This action is part of our effort to address recommendations of the Government Accounting Office and the Management Advisory Council to reduce the number of items in the Regulatory Agenda, and to accurately reflect agency initiatives.

FOR FURTHER INFORMATION CONTACT: Alicia K. Douglas, Office of Rulemaking (ARM–204), Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591, (202) 267–9681, *alicia.k.douglas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Miscellaneous Amendments, RIN 2120–AA50

On October 3, 1983, the FAA published a Notice of Proposed Rulemaking (Notice No. 83–13, 48 FR 45214), entitled ''Miscellaneous Amendments''. This NPRM proposed to amend various sections of the regulations. Some of the changes were editorial corrections, including clarifications and reference corrections. Others included relaxing certain requirements. The proposal was in response to many complaints, suggestions, and petitions for exemptions from users of the National Airspace System concerning several regulations. These users stated that these regulations contained outdated references and vague, complex, and inadequate language. Also, they suggested that, in some instances, the benefits gained would not justify the cost of compliance. The comment period closed on December 2, 1983.

Since 1983, when the document was published, all the affected sections of 14 CFR have been amended, with the proposed changes incorporated and comments dispositioned in the amendments. We are withdrawing Notice No. 83-13 (48 FR 45214, October 3, 1983) because the proposed changes have been accomplished or are no longer necessary and comments have been addressed.

Improved Water Survival Equipment, RIN 2120–AC72

On June 30, 1988, the FAA published a Notice of Proposed Rulemaking (Notice No. 88–11, 53 FR 24890). This NPRM, issued in response to the Airport and Airway Safety and Capacity Expansion Act of 1987, proposed new requirements for water survival equipment carried onboard aircraft for both 14 CFR parts 121 and 135 operators. The comment period closed on November 28, 1988.

The FAA received 118 comments in response to the proposal. More than half of the commenters supported the proposal. Forty-six commenters, most from part 135 air carriers, opposed the proposal. They suggested the costs associated with the proposal far exceeded any potential safety benefits, and that a 1984 FAA study had concluded that water survival equipment requirements for the U.S. air carrier fleet were satisfactory.

We have considered these comments in the light of the overall improvement in emergency safety equipment with the passage of time. We find the costs of proceeding with this rulemaking as proposed exceed the benefits to the public and that existing water survival equipment requirements are satisfactory. Accordingly, the FAA finds it is in the public interest to withdraw this proposal. Therefore, the FAA withdraws Notice No. 88–11 (53 FR 24890, June 30, 1988).

Objects Affecting Navigable Airspace (Part 77 Revision), RIN 2120–AA09

On August 3, 1990, the FAA published a Notice of Proposed Rulemaking (Notice No. 90–18, 55 FR 31722) proposing to amend 14 CFR part 77. This NPRM proposed amendments to the scope, notice requirements, and standards applicable to aeronautical studies detailed in 14 CFR part 77. Statutory mandates of Public Law No. 100–223 and recommendations from the National Airspace Review committee triggered the proposed amendments. This notice was corrected in the following documents: 55 FR 32999, August 13, 1990; 55 FR 35152, August 28, 1990; and 55 FR 37287, September 10, 1990. The correction published on August 28, 1990, also changed Notice No. 90–18 to Notice No. 90–19. The comment period closed on December 31, 1990.

On October 16, 1995, the FAA issued a Supplemental Notice of Proposed Rulemaking (Notice No. 90–19A, 60 FR 53680), proposing an amendment to the application of obstruction standards for the construction or alteration of objects affecting the navigable airspace. This notice did not reopen the proposed action contained in Notice No. 90–19 or request further comments on its proposals. The comment period closed on November 30, 1995.

In response to these notices, we received over 70 comments from individuals, engineering and communications firms, and building associations. Because of advances in the telecommunications industry, many of the proposals, recommendations, and comments are no longer relevant. Further, the proposed regulations no longer completely reflect the needs of the FAA's obstruction evaluation program or the needs of the industry and the general public. Therefore, we are considering a new proposals which would reflect recent technology and update the current provisions. We will consider comments received in response to the earlier notices in preparing this new proposal, RIN 2120–AH31.

We believe withdrawal of these notices would best serve the public and the FAA. Therefore, we are withdrawing Notice No. 90–18 (55 FR 31722, August 3, 1990) and Notice No. 90–19A (60 FR 53680, October 16, 1995).

Type Certificates for Some Surplus Aircraft of the Armed Forces, RIN 2120–AE41

On April 21, 1994, the FAA published a Notice of Proposed Rulemaking (Notice 94–12, 59 FR 19114), entitled ''Type Certificates for Surplus Aircraft of the Armed Forces''. The NPRM proposed changes to remove certain regulations for issuing type certificates for surplus aircraft of the Armed Forces, Specifically, the amendment would remove references in 14 CFR 21.27 to obsolete airworthiness standards for type certification of surplus military aircraft that at the time the FAA considered no longer appropriate. The comment period closed on June 20, 1994.

Five hundred and ninety commenters responded to the NPRM. An

overwhelming majority of the commenters opposed elimination § 21.27. Opposing commenters stated that the proposal would have a negative economic impact, would provide inadequate safety and certification coverage, and was not justified from a safety perspective also, some commenters suggested the FAA should clarify the regulation.

Having considered the comments received to Notice No. 94–12, we have decided not to remove § 21.27 for the present. We may consider revisions to the language of the rule in a future rulemaking action when resources permit. If we do, we will consider all comments received to Notice No. 94–12 in any new rulemaking project. Therefore, we are withdrawing Notice No. 94–12 (59 FR 19114, April 21, 1994).

Procedures for Reimbursement of Airports, On-Airport Parking Lots and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates, RIN 2120–AH60

On December 21, 2001, the FAA published a Notice of Proposed Rulemaking (Notice No. 01–13, 66 FR 66238), entitled ''Procedures for reimbursement of Airports, On-Airport Parking Lots and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates''.

Because of the terrorist events of September 11, 2001, Congress passed the Aviation and Transportation Security Act (S. 1447, Security Act) to improve aviation security. In response to the legislation, the FAA and TSA imposed new security requirements for airports, airline operators, and others. The Security Act also authorized funds to pay for some of the costs of the new security requirements. This notice proposed to reimburse airport operators, on-airport parking lots, and vendors of on-airfield direct services to air carriers for direct costs incurred in complying with the security requirements. The comment period closed January 22, 2002.

Ten commenters responded to the NPRM. Seven of the commenters expressed concerns about the definitions. The remaining commenters expressed concerns with the limits of reimbursement, distribution of available funds, and the proof required for reimbursement.

We are withdrawing Notice No. 01–13 (66 FR 66238, December 21, 2001) because of funds for reimbursement of security costs have been appropriated.

Conclusion

The FAA withdraws the following proposed rules:

- Miscellaneous Amendments, RIN 2120–AA50
- Improved Water Survival Equipment, RIN 2120–AC72
- Objects Affecting Navigable Airspace (Part 77 Revision), RIN 2120–AA09
- Type Certificates for Some Surplus Aircraft of the Armed Forces, RIN 2120–AE41
- Procedures for Reimbursement of Airports, On-Airport Parking Lots and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates, RIN 2120–AH60

Withdrawal of these proposed rules does not preclude the FAA from issuing a notice on these subjects in the future or from committing to any future course of action.

Issued in Washington, DC, on July 11, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–18592 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RIN 2120–AG16

Precision Approach Landing Systems Policy

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy statement; withdrawal.

SUMMARY: The FAA is withdrawing a previously published policy statement on the implementation of the Microwave Landing System (MLS) for precision approach service in the National Airspace System (NAS). This action is necessary because the policy has been overcome by events and is no longer relevant. This action is part of our effort to address recommendations of the Government Accounting Office and the Management Advisory Council to reduce the number of items in the Regulatory Agenda, and to accurately reflect agency initiatives.

FOR FURTHER INFORMATION CONTACT: Alicia K. Douglas, Office of Rulemaking (ARM–204), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–9681, *alicia.k.douglas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1989, we published a policy statement entitled, ''Precision Approach Landing Systems Policy'' (54 FR 53231). This statement announced our transitioning from the Instrument Landing System to the MLS for precision approach service in the NAS. A delay in the MLS implementation occurred since publication of this policy statement. Meanwhile, Global Positioning System technology evolved and proved to have a greater potential to improve NAS capacity, efficiency, and safety than the MLS.

Reason for Withdrawal

We are withdrawing this policy statement, ''Precision Approach Landing Systems Policy'' (54 FR 53231), because it is no longer relevant.

Conclusion

Withdrawal of this policy statement, ''Precision Approach Landing Systems Policy'' (54 FR 53231), does not preclude the FAA from issuing a notice on this subject in the future or from committing to any future course of action.

Issued in Washington, DC, on July 11, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–18590 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 945

[FHWA Docket No. FHWA–99–5844]

RIN 2125–AE63

Dedicated Short Range Communications in Intelligent Transportation Systems (ITS) Commercial Vehicle Operations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of proposed rulemaking and closing of public docket.

SUMMARY: This document withdraws a proposed rulemaking to amend FHWA regulations to require the use of the FHWA Specification for ''Dedicated Short Range Communications (DSRC) for Commercial Vehicles.'' The FHWA undertook this rulemaking action to create a provisional standard for Intelligent Transportation Systems (ITS) commercial vehicle projects using Federal-aid highway funds. The final determination on this action was deferred until testing of the provisional standard was completed. This test program is still underway. However, the FHWA is withdrawing this NPRM action. Any further action to address national interoperability will be the subject of a separate rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Jones, ITS Joint Program Office (JPO), (202) 366–2128, e-mail address: *william.s.jones@fhwa.dot.gov;* or Mr. Wilbert Baccus, Office of the Chief Counsel, (HCC–40), (202) 366–0780, e-mail address: *wilbert.baccus@fhwa.dot.gov*, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Docket Facility, Room PL–401, by using the URL: *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web site at: *http://www.access.gpo.gov.*

Background

A notice of proposed rulemaking (NPRM) published at 64 FR 73674 on December 30, 1999, with a supplemental notice of proposed rulemaking (SNPRM) published at 65 FR 77534 on December 12, 2000, proposed adding a new part to title 23, Code of Federal Regulations. In these actions, the FHWA proposed to require the use of FHWA Specification for DSRC for Commercial Vehicles as a provisional standard for ITS commercial vehicle projects using highway trust funds.

At the time there were several different technologies that were being proposed for use on commercial vehicles for interfacing with the Commercial Vehicle Information System Network (CVISN). However, CVISN is a national system for all commercial vehicles and it is necessary that there be technical uniformity in the devices on vehicles to enable a nationally interoperable system.

To ensure success of the program, the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, 1998) (TEA–21) required the Secretary of Transportation to issue provisional standards when national interoperability was required. This authority was delegated to the Federal Highway Administrator. Since the industry could not agree on a standard, the FHWA proposed a Provisional Standard for use on commercial vehicles.

Comments Received in Response to the NPRM and SNPRM

The FHWA received 24 comments in response to the NPRM and we summarized and discussed these comments in detail in the SNPRM. In response to the SNPRM, the FHWA received 4 comments in response to the SNPRM.

The major objections to the original NPRM were voiced by the industry that manufactures the DSRC devices, and the private companies that are the service providers for States in the implementation of the CVISN roadside network. The manufacturers had been unable to agree on a common standard and most of the commenters were not in favor of the Provisional Standard. The major issue raised by other commenters concerned the timing of the NPRM. At the time, no equipment had been designed, built, or tested using the Provisional Standard. Many felt it was inappropriate to require the use of devices that had not been thoroughly tested and proven to work in the CVISN system.

In response to these concerns, the FHWA issued an SNPRM announcing that further consideration of this rulemaking would be postponed until the appropriate testing of equipment designed to the Provisional Standard could be completed.

In response to the SNPRM, the FHWA received four comments. Three of the comments were from the State of Oregon: The Oregon DOT, the Oregon Forest Products Association, and the Oregon Trucking Association. In addition, a comment was received from the Kentucky Transportation Center of the University of Kentucky.

The four commenters supported the need for national interoperability for CVISN and the FHWA efforts through rulemaking to achieve that goal. The commenters noted that since the initial FHWA NPRM, all deployments of CVISN systems had used a single technology, and this technology had become the de facto standard. In addition, these commenters urged the FHWA to act on the remaining barrier to national interoperability.

That barrier involves the policies of the companies that are the service providers to many of the States deploying CVISN systems.

The FHWA is currently in the process of testing devices manufactured to the Provisional Standard. When these tests are completed successfully, the FHWA will reevaluate the need for rulemaking.

Determination

The FHWA recognizes that a de facto standard has emerged within the States deploying CVISN. Further, it is recognized that national interoperability is no longer inhibited by the technology, but rather, the business practices within the service provider industry. Therefore, the FHWA will not pursue the existing rulemaking dealing with technical interoperability at this time. Any further action to address national interoperability for commercial vehicles would be the subject of a separate rulemaking if necessary.

Conclusion

For the reasons stated above, the FHWA is terminating this proposed rulemaking and closing the docket.

Authority: 23 U.S.C. 315 and 502 note; sec. 6053(b), Pub. L. 102–240, 105 Stat. 1914, at 2190; sec. 5206(e), Pub. L. 105–178, 112 Stat. 107, at 457; and 49 CFR 1.48.

Issued on: May 12, 2003.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 03–18594 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA 1997–2759]

RIN 2126–AA31 (Formerly RIN 2125–AE19)

English Language Requirement; Qualifications of Drivers; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); withdrawal.

SUMMARY: The FMCSA withdraws its advance notice of proposed rulemaking (ANPRM) requesting comments on potential changes to a provision in the Federal Motor Carrier Safety Regulations (FMCSRs) involving the English language. That provision requires that drivers of commercial motor vehicles (CMVs) operating in interstate commerce be able to ''read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals, respond to official inquiries, and make entries on reports and records.'' After analysis and review of the comments, FMCSA has concluded that at this time there is no quantifiable data on which to propose modifying the regulation to require a more stringent or definitive standard, or to require State motor vehicle agencies to administer a specific test for English proficiency.

DATES: The advance notice of proposed rulemaking published on August 26, 1997, at 62 FR 45200 is withdrawn as of July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Moehring, Driver and Carrier Operations Division, (202) 366–4001, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1997, the Federal Highway Administration (FHWA), predecessor agency to the FMCSA, published an ANPRM in the **Federal Register** (at 62 FR 45200) requesting comments on potential changes to 49 CFR 391.11(b)(2) of the FMCSRs. This provision requires that drivers of CMVs operating in interstate commerce be able to ''read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals, respond to official inquiries, and make entries on reports and records.''

The ANPRM was published in response to a letter from the American Civil Liberties Union (ACLU) to the U.S. Department of Transportation's Office of Civil Rights indicating that this English language requirement may conflict with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, as amended, that prohibits discrimination against applicants and beneficiaries in the administration of federally funded programs and activities based on race, color and national origin. In this letter, the ACLU also alleged that the regulation, as written, is overly broad and subject to arbitrary enforcement, causing potential interference with the constitutional guarantees of due process and equal protection.

In the ANPRM, the FHWA stated that § 391.11(b)(2), as promulgated by the former Interstate Commerce Commission (ICC) in 1936, was intended to be enforced through the motor carrier employer. As noted in the ANPRM, the ICC specifically stated that it was the motor carrier employer's responsibility to evaluate the driver's proficiency in the English language. In addition, FHWA noted that the regulation was not intended to be enforced at the roadside. The employer was presumed to know what communication skills may be necessary for the type of cargo handled, the route taken, and the public contact required. The FHWA went on to say that it had never made speaking the English language a specific pre-requisite for obtaining a Commercial Driver License (CDL), and in fact proposed, and later authorized, administration of the CDL test in foreign languages.

The ANPRM asked the following 5 questions:

''1. Are there known instances in which a safety problem occurred which could be attributed, in whole or in part, to the driver not being able to read and speak English sufficiently to understand traffic signs or written or verbal instruction relating to the operation, loading or unloading of the vehicle? * * *

2. Do any of the States require drivers who operate commercial motor vehicles exclusively in intrastate commerce to read and speak the English language? * * *

3. How do States typically determine whether or not a driver or motor carrier is in violation of § 391.11(b)(2) or an equivalent State provision? Are there particular English phrases or terms that are used to test the driver's comprehension of the English language? Are there specific highway signs or messages that are shown to the driver?

4. Are there any cases in which State officials, exercising their authority under State law, have placed drivers out of service for being unable to read or speak the English language, after making a determination that the driver's inability to comprehend the language created a safety risk that was too great to be ignored? * * *

5. How does one measure an individual's level of 'English proficiency' or whether that individual has a 'working knowledge of English'? * * *''

Comments

Fifty-eight comments were received. These came from 9 States, the U.S. Equal Employment Opportunity Commission (EEOC), the ACLU, individual citizens, associations representing various segments of the trucking industry, insurance associations, several trucking companies, individual drivers and trucking industry management, associations representing State and Provincial enforcement and motor vehicle administrators, associations and unions representing drivers, and safety advocates.

Very few of the comments addressed the questions asked in the ANPRM. The vast majority of those commenting viewed the ANPRM as a proposal to lower the current English proficiency standard. The comments from groups representing the trucking industry, labor groups representing drivers, insurance companies and associations, and individual companies and drivers all recommended retaining the current provision. Nine States submitted comments that either recommended retaining the current standard or promulgating a more stringent standard. Of the members of the public who commented, 20 commenters recommended that the FMCSA either retain the current English language standard or enact a more stringent standard.

Mr. Victor Morales submitted a copy of a motion filed by counsel on his behalf in the County Court for Palm Beach County, Florida requesting the Court to declare § 316.302, Florida Statutes (1997), relating to the English proficiency requirement for CMV drivers, unconstitutional on the basis that it was vague, overly broad, and subject to arbitrary enforcement. Two commenters believed that the agency should revise the regulation to require a performance-based standard. Representative Lincoln Diaz-Balart (who represented Congressional District 21 in

Florida) opposes FMCSA's current regulation at § 391.11(b)(2) ''due to a recurring problem in our state as it pertains to enforcement of this regulation.'' Representative Diaz-Balart states that his constituents have had their CDLs suspended due to enforcement of § 391.11(b)(2). Examples include, * * * ''traffic citations to CDL drivers for not commanding the English language to the satisfaction of the law enforcement officer, thereby giving him or her unfettered discretion; suspension of the licenses by judges, magistrates and/or officers of the peace of those drivers for not being able to communicate in English with the judge when appearing in Court; violation of due process and therefore the posing of many civil rights questions.'' Representative Diaz-Balart urged the agency to revise § 391.11(b)(2) to protect the constitutional and civil rights of drivers, and to end the arbitrary application of the regulation. Another member of Congress stated that the current regulation ought to be retained for safety reasons. The Advocates for Highway and Auto Safety stated its belief that a ''performance-based'' standard might result in unacceptably low levels of English proficiency that would directly endanger the traveling public.

The ACLU submitted comments explaining why, in its view, the current regulation has a discriminatory impact upon national and ethnic minorities, and invited discriminatory enforcement. The EEOC stated it shared the concern of the ACLU that as ''currently written, the FMCSRs' English fluency requirement may conflict with the Federal civil rights laws.'' The EEOC suggested drafting a qualification standard in broad terms that could be applied in a manner appropriate to a specific job for a specific employer.

Decision

The FMCSA has decided to withdraw the ANPRM. After analysis and review of the comments, FMCSA has concluded that at this time there is no quantifiable data on which to propose modifying the regulation either to require a more stringent or definitive standard or to require State motor vehicle agencies to administer a specific test for English proficiency.

The FMCSA appreciates the analysis provided by the EEOC and the ACLU relating to the requirements of Title VI. However, the information introduced in response to the ANPRM does not establish that the current regulation requires an unnecessarily high level of English fluency that has resulted in a discriminatory impact or effect based upon national origin, color or ethnicity. Accordingly, FMCSA believes that the regulation as currently written and properly enforced effectively balances issues of civil rights and highway safety.

In analyzing § 391.11(b)(2) in today's climate, the FMCSA believes that the regulation was, and remains, a requirement imposed to ensure that persons who drive commercial motor vehicles operate safely. As written, the regulation sets forth the qualifications of drivers of CMVs to read and speak the English language and allows each motor carrier employer the flexibility to determine the extent of proficiency needed to enforce it. It provides carriers with the flexibility to individually determine whether a driver has communication skills and English fluency to operate safely on the highway. There is no data available to suggest that this flexibility has caused discrimination or to conclude that motor carriers are employing the English language requirement in anything other than an evenhanded manner, tailored to the requirements of each particular company's operations. Nor do we have evidence to suggest that our State and local partners are subjecting limited English speakers to discrimination based on their race, color or national origin. The intent of the English-only regulation is not to discriminate, but to advance public safety and this is an essential aspect of our program.

Specifically, with regard to concerns about arbitrary or discriminatory enforcement, the FMCSA has found no evidence to suggest that enforcement officers routinely issue citations for lack of English proficiency. To the extent that such enforcement discretion is exercised, the FMCSA believes that such instances are exceedingly rare and may be occasioned by a misunderstanding of the provisions of § 391.11(b)(2). From the comments and the data available, the FMCSA believes that the discretion of enforcement officials to place a driver out of service when he or she constitutes a safety hazard is, and has been used judiciously.

Further, FMCSA finds no inconsistency in its authorization to States to offer CDL tests in languages other than English, while at the same time requiring motor carrier employers to ensure a level of English proficiency for drivers on our public highways. The tests, training and study manuals associated with obtaining a CDL are complex. Therefore, the administration of the CDL test in languages other than English is justified. However, in actual operation on the highway, the CDL driver must be able, based on the needs of the carrier's operation, to have a sufficient command of English to ensure that safety is not compromised.

After reviewing the comments, the FMCSA is also persuaded that the performance-oriented standard, based on required tasks, as suggested in the ANPRM and advocated by the ACLU and EEOC is, in fact, not substantively different than the current standard to which persons who drive commercial motor vehicles must already adhere. The FMCSA is mindful of the concerns voiced by safety groups and members of the enforcement community that drivers with limited English proficiency may pose a potential safety concern both on the roadway, as well as in situations in which an enforcement officer is conducting a vehicle inspection, weighing a vehicle, or in other routine law enforcement actions. At this time, however, as noted, the FMCSA has no quantifiable data on which to base a proposal that would modify the standards in or scope of the existing regulation at 49 CFR 391.11(b)(2).

One other matter requires comment here. Under Executive Order 13166, titled ''Improving Access to Services for Persons with Limited English Proficiency'' (65 FR 50121, September 16, 2000), and guidance issued on the same day by the Department of Justice (DOJ), titled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency'' (65 FR 50123), the Federal government must ensure that no person with limited English Proficiency (LEP) shall be discriminated against on the grounds of race, color or national origin under any program or activity that receives Federal financial assistance.

Consistent with the executive order, the DOJ guidance, and additional guidance issued by the Department of Transportation titled, ''DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries'' (66 FR 6733), we believe that the regulation at 49 CFR 391.11(b)(2) is fully consistent with FMCSA's commitment to provide meaningful access to programs and activities that persons with limited English proficiency would seek. We are confident that the rule fulfills its purpose of advancing safety in a manner wholly in keeping with the terms of the executive order and the corresponding guidance.

In view of the foregoing considerations, Docket No. FMCSA–1997–2759 is withdrawn.

Issued on: July 11, 2003.

Annette M. Sandberg,

Acting Adminstrator.

[FR Doc. 03–18597 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–1997–2213 (Formerly FHWA Docket No. MC–93–34]

RIN 2126–AA12 (formerly RIN 2125–AD25)

Parts and Accessories Necessary for Safe Operation; Sleeper Berths on Motorcoaches; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: The FMCSA withdraws its January 12, 1994 Advance Notice of Proposed Rulemaking (ANPRM) relating to the use and design of driver sleeper berths used by the motorcoach industry. Due to other regulatory priorities and minimal interest by the industry concerning this issue, no further action was taken by the FMCSA after publication of the ANPRM. At this time FMCSA chooses not to establish potentially design-restrictive regulatory standards for the use of sleeper berths on motorcoaches without authoritative research to guide their development. Accordingly, the January 12, 1994 ANPRM regarding the use and design of motorcoach sleeper berths is withdrawn.

DATES: The advance notice of proposed rulemaking published on January 12, 1994, at 59 FR 1706 is withdrawn as of July 24, 2003.

FOR FURTHER INFORMATION CONTACT: John Steinhoff, Chief, Commercial Passenger Carrier Safety Division, (202) 366–2174, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On January 12, 1994, the Federal Highway Administration (FHWA) (now FMCSA), issued an ANPRM requesting public comment on the use and design of driver sleeper berths used by the motorcoach industry (59 FR 1706). This action was taken in response to comments received in past years from the motorcoach industry, and ones offered specifically at a motorcoach industry Zero-Base Review (an initiative in which the agency presumed that no prior regulations existed, and started drafting from a clean slate, or as if we had ''zero'' regulations). The hearing was held in Miami, Florida, on January 20, 1993. There was some concern among the industry that when the current sleeper berth regulations at 49 CFR 393.76 were promulgated, the differences in design and operation between motorcoaches and trucks may not have been considered by the agency.

The FHWA received nine comments to the docket in response to the ANPRM. The comments varied as to whether the regulations should be amended and whether the agency should prohibit the placement of a sleeper berth in the baggage area (under the passenger compartment) of a motorcoach. The current regulation prohibits placement of the sleeper berth in the cargo compartment. Some commenters believed that specific sleeper berth standards for motorcoaches would improve safety by improving the physical well-being of the driver and by providing an opportunity for a relief driver to get adequate rest.

Due to other regulatory priorities and a minimal interest by the industry concerning this issue, no further action was taken by the FMCSA after these comments were received.

Operationally, the motorcoach industry rarely uses sleeper berths, choosing to transport replacement drivers to rely points for the few non-stop trips that are longer than 500 miles in length. The vast majority of motorcoach trips are broken into segments where less than 10 hours of driving are required. Therefore, FMCSA believes there is no urgent safety need for the agency to initiate regulatory action on this matter.

The FMCSA believes there is presently no research on which to base the development of new, motorcoach-oriented sleeper berth specifications. The current requirement in § 393.76 sets forth the minimum specifications for sleeper berths, and these are far exceeded by the present-day truck manufacturers. While § 393.76 is geared more toward sleeper berth installations in the truck environment, the basic principles set forth for trucks could also be adhered to by motorcoach manufacturers. These principles include: a prohibition from placing the sleeper berth in the cargo compartment (in this case, the luggage compartment), a requirement for an exit from the sleeper berth into the driver's compartment (in this case, the passenger compartment, which also includes the driver's location), and provision for occupant restraint meeting the spirit of paragraph (h) of § 393.76. When conducting roadside inspections and compliance reviews, FMCSA considers these principles in applying the language of § 393.76 to sleeper berths installed in motorcoaches.

At this time, the FMCSA chooses not to develop regulatory standards for the use of sleeper berths on motorcoaches without authoritative research to guide their development. This could result in design restrictive requirements. Rather, the agency intends to work with the motorcoach manufacturers, the motorcoach industry, and safety organizations, such as the Commercial Vehicle Safety Alliance, to explore the development of a voluntary industry standard for motorcoach sleeper berth manufacture and maintenance. The FMCSA intends to work with these organizations to determine how the principles of § 393.76 apply to current and future motorcoach design and operations.

For these reasons, the January 12, 1994 ANPRM is withdrawn.

Issued on: July 11, 2003.

Annette M. Sandberg,

Acting Administrator

[FR Doc. 03–18600 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–1997–2278 (Formerly Docket No. MC–96–5]

RIN 2126–AA19 (formerly RIN 2125–AD76)

Parts and Accessories Necessary for Safe Operation: Television Receivers and Data Display Units; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: The FMCSA withdraws its April 3, 1996, Notice of Proposed Rulemaking (NPRM) to rescind restrictions on the locations at which television receivers may be positioned within commercial motor vehicles (CMVs). After reviewing the public comments received in response to the NPRM, the agency no longer considers the restrictions to be obsolete and redundant. The agency believes that it is necessary to retain the rule to prohibit unsafe driver behavior, and that doing so is not likely to discourage the use of

Intelligent Transportation Systems (ITS)-related technologies such as collision-avoidance and traveler information systems which could be used to improve safety and efficiency, or other communications systems that employ display screens.

DATES: The notice of proposed rulemaking published on April 3, 1996, at 61 FR 14733 is withdrawn as of July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Larry Minor, Chief, Vehicle and Roadside Operations Division, (202) 366–8842, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1996, the Federal Highway Administration (FHWA) (now FMCSA) published an NPRM (61 FR 14733) to rescind 49 CFR 393.88. That regulation requires motor carriers to place television viewers or screens in the rear of the back of the driver's seat, if such viewer or screen is in the same compartment as the driver. Section 393.88 also requires the carrier to place the viewer or screen in a location that is not visible to the driver, while he/she is driving the CMV, with the operating controls for the television receiver also located in the back of the driver's seat so that the driver cannot operate them without leaving his/her seat.

As part of the President's Regulatory Reinvention Initiative, the agency reviewed § 393.88 and made a preliminary determination that the rule was obsolete and redundant. The agency stated that its approach differed from that of the former Interstate Commerce Commission (ICC). When the rule was originally adopted in 1951, the ICC believed that the absence of a Federal requirement would tempt people to install television receivers in commercial motor vehicles so that drivers could watch them while driving. This concern has not been borne out. The agency indicated that motor carriers recognize the inherent safety risks of allowing drivers to watch television while driving. In addition, the agency stated that the behavior that § 393.88 is intended to address, driver inattentiveness, is effectively covered by State laws and regulations.

With regard to the issue of whether the rule could potentially discourage the use of ITS-related technologies, the agency explained that some of the systems in question permit the use of in-vehicle display screens, which provide drivers with real-time map displays of areas of traffic congestion, construction, and accidents. Some satellite communications systems enable motor carriers to track CMVs en route to a destination, and to transmit written messages to drivers that appear on video terminals in the cab. Also, some collision-avoidance or warning systems display video images of traffic around the CMV.

The agency described how it relied on regulatory guidance to clarify the applicability of § 393.88, and intended the rescission to eliminate the potential need for a case-by-case interpretation on the various configurations of in-cab video display systems. The agency was concerned that such an interpretation or regulatory guidance process would become a de facto design approval program.

Discussion of Comments

The FMCSA received six comments in response to the NPRM. The commenters were: Advocates for Highway and Auto Safety (Advocates), the American Trucking Association (ATA), Federal Express Corporation (Federal Express), the Flxible Corporation (Flxible), Lancer Insurance Company (Lancer), and the Truck Manufacturers Association (TMA). Advocates, Lancer, and Federal Express generally opposed the agency's proposal, while ATA, Flxible, and TMA supported the removal of the current rule, primarily because of the potential for discouraging certain technologies. ATA suggested a revision of the rule to address the overall issue of devices that may distract a driver's attention from the roadway.

Advocates does not believe that State laws are an appropriate substitute for a Federal regulation applicable to interstate motor carriers. Advocates contends that an explicit Federal requirement is needed because it would be difficult to prove that a driver viewing a television screen caused an accident. Lancer also expressed concern about the proposed removal of § 393.88. Lancer indicated that the intercity bus industry, particularly charter and tour operators, already provide on-board video programming to passengers. Typically, the equipment used is a VCR located behind the driver's seat. None of the monitors are positioned so that the driver can view the images. The current restriction ensures that drivers do not divide their attention between driving and operating the video programming. Lacer agrees with the agency's efforts to be flexible in the use of ITS-related technology, but argues that there are potential safety problems with systems that would have drivers split their attention between driving and reading computer-generated messages.

Federal Express believes that rescinding § 393.88 could result in numerous States adopting different requirements. Federal Express recommends that the agency propose a new regulation that allows for new technologies, but prohibits devices that decrease the safety of operation of the commercial motor vehicles on which they used.

TMA and Flxible support the removal of § 393.88. TMA indicated that although the benefits provided by certain ITS-related technologies are not fully quantifiable because their cost-effectiveness and acceptance by drivers have not been documented, the usage of such devices should not be restricted by an outdated, obsolete regulation. Flexible explained that closed-circuit video surveillance equipment is sometimes installed on transit buses as a crime-fighting tool. The driver is able to observe passenger activity at all times, with the most advanced systems allowing the driver to lock-in on potential problem situations for continuous monitoring.

The ATA also support removal of § 393.88, but encourages government and the private sector (ITS America, Society of Automotive Engineers, equipment manufacturers, and motor carriers to work together to study the issue of driver workload, and develop new rules, if necessary, to respond to any safety issues identified by such research.

FMCSA Response to Comments

After reviewing the comments submitted in response to the NPRM, the FMCSA agrees with the commenters concerned with not having an explicit prohibition against positioning television receiver screens in a location that enables drivers to see the screen. Although the agency continues to believe that current State laws or regulations could be used to cite drivers who watch television while operating a commercial motor vehicle, we acknowledge that it is much easier for enforcement personnel to enforce an explicit prohibition rather than an agency's interpretation of the applicability of a general law or regulation concerning driver distraction of inattention. The FMCSA believes a more effective strategy for ensuring highway safety is to retain § 393.88 in its current form, at this time.

In response to commenters that support a rulemaking to respond to safety concerns about equipment and devices, other than television receivers, that may distract drivers' attention from

driving tasks, the agency does not believe it is necessary to take such action at this time. Currently, the safety benefits of such a rulemaking cannot be quantified, and there is no practicable means of estimating the potential costs in the event that such a rulemaking would necessitate equipment manufacturers to design systems now being sold. The agency will, however, certainly work with the private sector if specific safety problems are identified that they require Federal rules to effectively address the issue.

The FMCSA continues to consider § 393.88 to be applicable only to television receivers, and believes that the rule should not be construed as being applicable to any other device or technology unless such technology is capable of receiving a television broadcast signal. The agency believes that § 393.3 provides adequate guidance concerning other technology in that it prohibits equipment and accessories that decrease the safety of operation of the CMV on which it is used. The agency will continue to provide general regulatory guidance, as necessary, to clarify the applicability of § 393.3 to devices other than television receivers, while ensuring to the greatest extent practicable, that the regulatory guidance process does not become a de facto design approval or product endorsement process.

FMCSA Decision

In consideration of the comments and for the reasons given above, the FMCSA will retain § 393.88. The agency no longer believes that the regulation could discourage the use of certain technologies intended to improve the safety or efficiency of motor carrier operations, at least to the extent that action must be taken at this time. Furthermore, the safety benefits of retaining the rule, while admittedly undocumented, outweigh the potential safety risks that would result from motor carriers or drivers concluding that there are no regulatory obstacles to the watching of television while a CMV is being operated on public roads.

For these reasons, the NPRM of April 3, 1996 (61 FR 14733), is withdrawn.

Issued on: July 11, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–18598 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 395 and 396

[Docket No. FMCSA–98–3414]

RIN 2126–AA36

Withdrawal of Advance Notice of Proposed Rulemaking; Out-of-Service Criteria

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FMCSA withdraws the ANPRM published in the **Federal Register** of July 20, 1998, concerning the use of the North American Uniform Out-of-Service Criteria (the Criteria). FMCSA has determined that including the Criteria in the Federal Motor Carrier Safety Regulations (FMCSRs), either through codification of each criterion or through incorporation-by-reference of a specific edition of the Criteria, would not provide any discernible safety benefits to the public or resolve issues raised by parties seeking such action. Adoption of the Criteria into the FMCSRs would only have the effect of regulating FMCSA enforcement actions during roadside inspections. However, it would not necessarily preclude the States from continuing to use the uniform international tolerances. Accordingly, this rulemaking proceeding has been terminated.

FOR FURTHER INFORMATION CONTACT: Larry Minor, Chief of the Vehicle and Roadside Operations Division (MC–PSV), (202) 366–4009, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

ADDRESSES: The electronic file of this document is available from the DOT public docket at *http://dms.dot.gov,* docket number FMCSA–98–3414. It is also available from FMCSA's Web site at *http://www.fmcsa.dot.gov/rulesregs/fmcsr/rulemakings*; or the **Federal Register** Web site at *http://www.gpoaccess.gov.* If you do not have access to the Internet, you may request a copy of this document from the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the title and docket number of the document.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1998 (63 FR 38791), the Federal Highway Administration (FHWA) published an ANPRM requesting public comment concerning the use of the Criteria. During roadside inspections, Federal, State and local enforcement officials use the Criteria as a guide in determining whether a commercial motor vehicle (CMV) or driver should be placed out of service. The Criteria provides a list of violations of the safety regulations that are so unsafe that they must be corrected before operations can resume. Correction of other less severe violations may be deferred to a later date, but generally no later than 15 days from the date the violations were discovered (49 CFR 396.9(d)(3)).

Currently, the Criteria is published by the Commercial Vehicle Safety Alliance (CVSA), an association of Federal, State and Provincial official responsible for the administration and enforcement of motor carrier safety laws and regulations in the United States, Canada, and Mexico. Each year the CVSA reviews the Criteria through a committee process involving representatives from Federal, State, and Provincial governments and the motor carrier industry representatives, and adopts changes as necessary to reflect up-to-date information concerning the potential safety impacts of specific violations of motor carrier laws and regulations.

Discussion of Comments

Thirty comments were received in response to the ANPRM. These came from 12 States and Provinces, associations representing State and Provincial enforcement and motor vehicle administrators, associations representing various segments of the trucking industry, safety advocates, unions representing drivers, trucking companies, and individual citizens.

Most of the commenters expressed concern about incorporating the Criteria into the FMCSRs through codification of each criterion, or including the Criteria as an appendix to the FMCSRs. Generally, the commenters believes that subjecting the Criteria to the Federal rulemaking process would undermine the efforts of the States, Provinces and industry to work together through the CVSA's committee process to review and periodically revise the enforcement tolerances. However, most of the commenters who were opposed to codification of the criteria indicated that they would support incorporation-by-reference of the Criteria provided that such action would not delay, or

otherwise interfere with, the current process administered by the CVSA.

The American Trucking Associations, Inc., (ATA) believes that the development and maintenance of the Criteria would be severely hampered if it were subject to a notice and comment rulemaking process. ATA recommends incorporation by reference of the Criteria with the publication by FMCSA of a notice of availability and request for comments in January or February of each year. The comments would then be forwarded to CVSA for appropriate handling during CVSA's spring and fall meetings, and revised accordingly. Several other commenters had similar suggestions.

The Canadian Council of Motor Transport Administrators (CCMTA) indicated that Canadian governments have expressed concern about placing the Criteria in the Federal safety regulations. They believe doing so would have an adverse impact on the international collaborative nature of developing, revising and implementing the Criteria throughout North America. CCMTA indicated that it would not object to FMCSA referencing the Criteria in such a way that the CVSA process could continue to be used to update the document.

The International Brotherhood of Teamsters supports the formal adoption of the Criteria either through codification of each criterion or through incorporation-by-reference. The Teamsters believe the Criteria represent enforcement standards and that failure to adopt the Criteria through a notice and comment process may undermine the ability of the agency to pursue enforcement actions.

The Advocates for Highway and Auto Safety (Advocates), Owner-Operator Independent Drivers Association, Inc., (OOIDA), National Tank Truck Carriers, Inc., (NTTC) and the Iowa Department of Transportation support codification of the Criteria. Advocates does not belief the Criteria are legally binding on inspectors or their agencies since the document is not included in the FMCSRs. Advocates argues that the agency must assert the formal policy needed to bind field enforcement personnel by both directing and circumscribing the exercise of enforcement discretion through application of the Criteria. NTTC believes enforcement personnel treat the Criteria as substantive rules and that there are procedural and substantive deficiencies in the way the Criteria are structured and used. OOIDA believes the agency must adopt the Criteria as part of the FMCSRS because it represents the legal standard under which vehicles and drivers are placed out of service. Iowa DOT believes that including the Criteria in the regulations enhances the availability of the Criteria to motor carriers and drivers so that they will know which safety conditions will place them in jeopardy of not being able to complete their trip.

FMCSA Response to Comments

FMCSA believes the commenters have made compelling arguments against the agency taking any action that could adversely impact the current process for amending or revising the Criteria. The agency agrees with commenters that the current process for maintaining the Criteria provides an effective mechanism for Federal, State and Provincial officials and industry representatives from the U.S., Canada, and Mexico to work together to ensure uniform international enforcement tolerances. The agency believes that it is in the public interest to continue this process for ensuring highway safety, and facilitating international trade between the U.S., Canada, and Mexico.

However, the agency does not share commenters' belief that the mere act of adopting the Criteria into the Code of Federal Regulations would adversely impact the current process for maintaining the document. The adoption of the Criteria would amend the FMCSRs such that Federal personnel could use only those criterion included in the Federal regulations. The Federal version of the Criteria could only be amended or revised through notice-and-comment rulemaking. By contrast, each State would be responsible for taking the necessary actions to adopt compatible requirements under State laws and regulations, with the authority of State enforcement personnel being limited by those State laws and regulations, not the Federal regulations. Since States would be responsible for having a mechanism or process for adopting compatible laws and regulations, the States could adopt enforcement tolerances that differ from those used by the FMCSA if the State believes there is a safety problem that is not adequately addressed through the Federal enforcement tolerances.

Section 3114(c)(4) of Title 49 of the United States Code allows the States to adopt more stringent requirements than those specified in the FMCSRs. Under this provision, if the FMCSA determines that a State law or regulation is additional to or more stringent than a regulation prescribed under the authority of 49 U.S.C. 31136, the State law or regulation may be enforced unless the agency decides that (1) the State law or regulation has no safety benefit; (2) the State law or regulation is incompatible with the regulation prescribed by the agency; or (3) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce. This means that Federal requirements would not automatically preempt more stringent State requirements. Therefore, irrespective FMCSA's decision concerning the Criteria, the States could adopt more stringent enforcement tolerances than the FMCSA. This could include the States adopting criteria independently of the FMCSA's enforcement tolerances.

If the Criteria includes more stringent guidelines for determining when to place a driver or vehicle out of service than the Federal policy provides, the States would in effect, be adopting more stringent enforcement tolerances than those used by the FMCSA. Also, since State personnel conduct the overwhelming majority of the more than 2.7 million roadside inspections completed each year in the United States, FMCSA's adoption of the Criteria would not alter in any meaningful way, the enforcement tolerances that interstate motor carriers are subjected to during such inspections. Federal adoption would only increase the likelihood of creating inconsistencies between the enforcement tolerances used by Federal personnel and those used by State officials with no readily apparent benefit to motor carrier safety. Furthermore, such inconsistencies would only worsen the problems perceived by those persons who believe it is necessary to adopt the Criteria into the FMCSRs. Due to the success of the collaborative process currently used for amending or revising the Criteria, enforcement agencies throughout North America have achieved a level of uniformity that negates the need for separate enforcement tolerances for each jurisdiction.

With regard to commenters who believe that incorporation-by-reference of the Criteria would be less likely to disrupt the current process used to amend or revise the enforcement tolerances than including the text of the guidelines in the regulations, the FMCSA considers this to be a distinction without a meaningful difference. The Office of the Federal Register prescribes regulations (1 CFR part 51) concerning Federal agencies' incorporation-by-reference of publications prepared by non-Federal entities. Section 51.1 limits the incorporation to the specific edition approved by the Director of the Federal Register. Future amendments or revisions of the Criteria would not be

included. Incorporation of the Criteria would make it part of the regulations, regardless of whether the text appears in the Code of Federal Regulations. Also, material is incorporated as it exists on the date of the approval and a notice of any change in the materials must be published in the **Federal Register**. In terms of practical applications, codification of the Criteria would provide a means for the agency to request comments on only the criterion that would be amended or revised from year to year, as opposed to incorporation-by-reference which would typically be an all-or-nothing proposition—a new edition would either be accepted in its entirety or rejected in its entirety. Although the agency could incorporate-by-reference portions of the Criteria while rejecting specific items, this approach would almost certainly make understanding the reference unnecessarily difficult from both an enforcement perspective and an industry perspective. Therefore, the agency has concluded that incorporation-by-reference is not a practical alternative to codification of the Criteria text.

In response to commenters who offered legal arguments suggesting that the agency must adopt the Criteria, the FMCSA does not believe those arguments have merit. The Criteria represent enforcement tolerances, and should not be construed to be regulations. The FMCSRs require compliance with all applicable requirements at all times. There is nothing in the FMCSRs that makes operating a commercial motor vehicle in interstate commerce, while violating any of the requirements contained therein, an acceptable practice. The agency recognizes that violations do occur and does not expect that motor carrier operations cease completely until 100 percent compliance is achieved. However, certain violations represent such serious safety risks to the motoring public that they must be corrected immediately. The Criteria presents a list of such violations developed over a period of more than 20 years by Federal, State and Provincial safety professionals, with input from the motor carrier industry, vehicle and equipment manufacturers, researchers, and other interested parties. The use of the Criteria is a matter of policy within FMCSA, so that the decision by Federal personnel to place a vehicle out-of-service is not an arbitrary action based solely on the discretion of the inspector. Likewise, the use of the Criteria by State officials is covered through either a documented policy, or State laws and regulations. The actions of State officials are based on the authority vested in them under their State statutes and should not be construed as arbitrary determinations by individual inspectors.

FMCSA Decision

In consideration of the responses to the ANPRM, and for the reasons explained above, FMCSA has decided not to adopt the Criteria, either through codification of the text or through incorporation-by-reference, into the FMCSRs. FMCSA believes it is in the public interest that these enforcement tolerances be managed through a partnership between the Federal, State, and Provincial governments from the United States, Canada, and Mexico, with participation by the industry, motor vehicle and equipment manufacturers, researchers and other interested parties. The use of uniform international enforcement tolerances is necessary to ensure highway safety and to facilitate the efficient transportation of passengers and freight between States and Provinces, and between countries in North America.

Therefore, this rulemaking proceeding is terminated.

Issued on: July 11, 2003.

Annete M. Sandberg,

Acting Administrator.

[FR Doc. 03–18599 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2003–14306]

RIN 2127–AA44

Flammability of Interior Materials in School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of termination of proposed rulemaking.

SUMMARY: This notice terminates a rulemaking proceeding that NHTSA began in 1988 to consider upgrading Standard No. 302's flammability resistance requirements for school bus interiors. The rulemaking was initiated in response to a severe 1988 crash in Carrollton, Kentucky, in which a former school bus being used as a church activity bus burst into flames after colliding head-on with a pickup truck. After reviewing the available information and public comments, the agency has decided to terminate this rulemaking because: The risks presented by school bus fires pose a minimal safety problem; the agency's 1992 upgrade of Standard No. 217's emergency exit requirements to allow faster evacuation from school buses has reduced further the risks posed by fire; the bus involved in the Carrollton fire was built before upgraded Federal school bus standards went into effect in 1977 and did not meet the exit and fuel system integrity requirements; upgrading Standard No. 302 would result in significant costs; and further research would be necessary before the agency could propose a test protocol, utilizing scarce agency resources.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Charles Hott, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–0247. For legal issues: Mr. Christopher Calamita, Vehicle Safety Rulemaking and Harmonization Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590, Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION:

I. Background

In the late 1980s, school bus safety received substantial public and Congressional attention, especially in the aftermath of two catastrophic crashes. On May 14, 1988, in Carrollton, Kentucky, a former school bus [1] being used as a church activity bus burst into flames after colliding head-on with a pickup truck. This was a severe crash, with a combined impact speed exceeding 100 miles per hour. Twenty-seven of the 67 bus occupants died in the fire that ensued. On September 21, 1989, in Alton, Texas, a school bus became submerged in a water-filled pit after colliding with a tractor-semi trailer. Twenty-one of the 81 students in the bus drowned because they were unable to escape.

In its investigation of the Carrollton crash, the National Transportation Safety Board (NTSB) concluded:

[1] The bus was manufactured in 1977 shortly before April 1, 1977, prior to the effective date of a final rule improving Standard No. 217's emergency exit capacity requirements and Standard No. 301's fuel system integrity requirements. As a result, the Carrollton bus lacked safety features, such as fuel tank guards and improved access to emergency exits, required on most large school buses that were built after 1977.

Contributing to the severity of the accident was the puncture of the bus fuel tank and ensuing fire in the bus, the partial blockage by the rear bench seats of the area leading to the rear emergency door which impeded rapid passenger egress, and the flammability of the material in the bus seat cushions.[2]

The NTSB also determined that ''some fire-retardant and flame blocking materials * * * when tested, will reduce the rate of spread of fire from seat to seat over materials currently used.''[3]

In 1988, in response to the New Carrollton crash, NHTSA initiated two rulemaking proceedings to consider upgrading standards addressing school bus safety.

II. NHTSA Rulemaking Activity on School Bus Safety

A. 1988 ANPRM on Standard No. 217

On November 4, 1988, the agency issued an Advance Notice of Proposed Rulemaking (ANPRM) on the adequacy of Standard No. 217's requirements for school bus emergency exits.[4] Standard No. 217, ''Bus Emergency Exits and Window Retention and Release,'' establishes requirements for the retention of windows in buses and operating forces, opening dimensions, and markings for bus emergency exits. The purpose of the standard is to minimize the likelihood of occupants being thrown from a bus and to provide bus occupants a readily accessible means of emergency evacuation.

NHTSA ultimately revised Standard No. 217's requirements for school bus emergency exits and access to school bus emergency doors in a 1992 final rule.[5] That final rule set requirements for minimum emergency exit space based upon the seating capacity of each bus. Thus, the rule required larger school buses to have an increased number of emergency exits. The final rule also required school buses to provide improved access to side emergency doors and improved visibility of emergency exits.

B. 1988 ANPRM on Standard No. 302

Also on November 4, 1988, NHTSA issued an ANPRM announcing the agency's plans to consider upgrading Standard No. 302's requirements for the flammability of interior materials in buses.[6] Standard No. 302, ''Flammability of Interior Materials,'' specifies that the horizontal burn rate of certain specified materials (*e.g.*, seat cushions and seat backs) may not exceed four inches per minute. The purpose of the standard is to allow the driver time to stop the vehicle and, if necessary, evacuate the vehicle occupants before untenable conditions develop that could result in injuries or fatalities.

In the ANPRM, the agency requested comments on the safety need for a rulemaking to upgrade Standard No. 302, types of buses that should be covered, types of seating material available, toxicity of fumes emitted by burning seating materials, upgraded test procedures, and costs and benefits of such a rulemaking. The agency also noted that factors related to the risk of injuries from fire are often interrelated. Among these factors are a fire's source and magnitude, an occupant's ability to escape from a burning vehicle, the time needed to escape, the location and type of emergency exits, and the flammability resistance of the vehicle's interior materials.

In response to the ANPRM on Standard No. 302, NHTSA received 54 comments from bus manufacturers, seating and material manufacturers, State and local governments, trade associations, and individuals. The commenters generally agreed that measures could be taken to increase the flammability resistance of materials used in school buses. Commenters also addressed other issues raised in the ANPRM, including the rulemaking's scope, the availability of new flame-resistant materials, possible performance requirements to enhance flammability resistance, and the costs and benefits of the rulemaking. The comments were discussed in the agency's 1991 notice requesting comments on issues related to the flammability of interior materials in buses.[7] That notice is discussed below.

C. 1990 NIST Research Report

In January 1989, NHTSA commissioned the Center for Fire Research of the National Institute of Standards and Technology (NIST) to conduct a research program about the flammability resistance of various school bus seat assemblies. The research focused on factors such as ignitability, flame spread, rate of heat release, smoke generation, and toxicity of combustion products. In July 1990, NIST published its findings in a final report entitled ''Assessment of the Fire Performance of School Bus Interior Components.''[8] The major conclusions of the NIST report were:

1. No one simple small-scale test should be used to measure fire performance of a material.
2. A material's fire performance includes the examination of a combination of factors, such as ease of ignition, flame spread, rate of heat release, generation of gaseous species, smoke development, and toxicity of the combustion products. In addition, the heat exposure conditions and geometry of the school bus play a critical role.
3. A full-scale test procedure (testing a complete seat assembly) will provide the best basis for testing school bus seats.
4. While toxicity is a concern, it appears that heat and/or smoke generated by all likely school bus seating materials would cause incapacitation before toxicity became an issue.

D. 1991 Notice Requesting Comments on Standard No. 302

On February 26, 1991, NHTSA published a notice requesting comment on the NIST report and other issues to help the agency determine what appropriate measures, if any, were needed to address the fire resistance of materials used in school bus interiors. (56 FR 7826) The questions included the following:

1. Can the agency develop test protocols for improving the fire resistance of school bus interiors? What protocols and test criteria should be adopted?
2. How can the agency best define objective measures of tenability, *e.g.*, exposure to temperature, material ignitability, flame spread, rate of heat release, smoke generation, toxicity, etc.?
3. Does a small-scale (samples of seating materials) or full-scale (complete seat assemblies) test exist that would result in the use of seating materials that improve the fire resistance of school bus interiors? What tests are recommended?
4. Is it necessary to include toxicity in any test protocols designed to improve the fire resistance of school bus interiors? Are there alternative technical requirements that could be established that would result in negligible toxicity risks, such as establishing a temperature limit?
5. Are there any guidelines that could be adopted that would ensure that potentially carcinogenic materials are not utilized in the manufacture of fire retardant or fire resistant materials?

[2] Highway Accident Report—Pickup Truck/Church Activity Bus Head-on Collision and Fire Near Carrollton, Kentucky, May 14, 1988, Report No. NTSB/HAR/89/01 (March 28, 1989), at page 79.

[3] *Id.*, at page 69.

[4] 53 FR 44623, Docket No. 88–21, Notice 1.

[5] 57 FR 49413, November 2, 1992, Docket No. 88–21, Notice 3.

[6] 53 FR 44627, Docket No. 88–22, Notice 1.

[7] 56 FR 7826, February 26, 1991, Docket No. 88–22, Notice 3.

[8] A copy of this report was placed in Docket No. 88–22–GR.

6. Are there other changes or modifications that could be made to school buses, such as changes in the number, location, and size of emergency exits, that would affect the fire resistance requirements of school buses? Should there be a correlation between the fire resistance of materials and the amount of available emergency egress area?

7. What would the costs of upgrading the fire resistance of school bus interiors be? Would the costs affect the ability of school districts to replace older, less safe school buses or to order school buses with other safety features that could have potentially higher benefits?

E. Comments on the 1991 Notice

In response to the 1991 Notice, NHTSA received comments from State and local governments, school bus and seat manufacturers, trade associations, a test laboratory, and the NTSB.

1. The Need To Upgrade Standard No. 302

The commenters expressed differing views about the need to improve the fire resistance of school bus interiors. Several commenters, including the NTSB, American Medical Association (AMA), the Connecticut Department of Motor Vehicles (Connecticut), and the Delaware Department of Pupil Instruction (Delaware), believed that the flammability test in Standard No. 302 needed to be upgraded. Other commenters, including the National School Transportation Association (NSTA), Maryland Department of Education (Maryland), West Virginia Department of Education (West Virginia), Marysville Washington School District (Marysville), Blue Bird Corporation and Thomas Built Buses, Inc. (bus manufacturers), and Lichter Rubber Products Company (a manufacturer of school bus seats and seat backs) questioned the need for upgrading the flammability resistance requirements in Standard No. 302.

Marysville stated that NHTSA should direct its resources to other school bus safety matters because the Carrollton crash represented an extremely rare situation and because seat flammability was a very low causal factor to the occupant deaths and injuries in that crash. Thomas Built and Lichter Rubber believed that it was not realistic to require seating to withstand fuel-fed fires like the Carrollton fire, which Lichter Rubber characterized as an ''explosion.'' Maryland stated that during the past 30 years, its public school buses have transported students without a single student fatality related to fire.

2. Test Protocol

The commenters also expressed differing views about the form of an upgraded test protocol. Some commenters favored small-scale laboratory tests. Other commenters favored large-scale tests. Delaware recommended having both a small-scale and a large-scale test. The commenters did not provide any convincing information that would allow NHTSA to compare the desirability of requiring either small-scale or large-scale tests, or both. Similarly, while several commenters expressed concern about toxicity, no generally accepted protocol to establish acceptable toxicity levels was apparent from the comments.

3. Costs

Most commenters indicated that upgrading Standard No. 302 would result in significant costs. SFT, a foam manufacturer, stated that the cost of flame retardant foam cushioning for a 66-passenger bus could be $275 more than the cost of current foam cushioning. SFT also stated that equipping a bus with seat covers made of Kevlar-backed barrier fabric could increase the cost of a bus by $460, if this upgraded material were required. Thomas Built estimated that using fire block upholstery would increase the total seating cost for a bus by about $1,000, and requiring fire resistant seat foam and fire block seat covers could add $1,500 to $2,000 to the cost of bus. The Oregon Department of Education (Oregon) estimated that if NHTSA upgraded the fire resistance requirements in Standard No. 302 as well as the emergency exit requirements in Standard No. 217, the cost of a school bus could increase by $1,300 to $1,500.

4. Cost-Effectiveness

Several commenters, including NSTA and Blue Bird, stated that the costs of upgrading Standard No. 302 would be unjustified. Other commenters, including Arizona and Delaware, believed upgrading Standard No. 302 would be justified, notwithstanding the significant costs.

TAM–USA, a bus manufacturer, Blue Bird, and the Nebraska Department of Education (Nebraska) commented that even though increased flammability resistance was a desirable goal, other efforts, such as improving the emergency exit capacity requirements in Standard No. 217, would be more cost-effective. Similarly, NSTA recommended that the agency pursue requiring additional emergency exits rather than upgrading the flammability resistance requirements.

Maryland and TAM–USA stated that along with flammability, many other factors are involved in determining the risk from school bus fires. These factors include the type of fuel used, location and construction of the fuel tank, type of fire barriers between the engine and occupant compartments, and number and location of emergency exits.

III. Agency Decision

After reviewing the available information and public comments, NHTSA has decided to terminate the rulemaking to upgrade Standard No. 302's flammability requirements for school bus interiors for the following reasons: (1) The risks presented by school bus fires pose a minimal safety problem for current designs of school buses; (2) the agency's upgrade of Standard No. 217's emergency exit requirements to allow faster evacuation from school buses reduced further the risks posed by fire; (3) the bus involved in the Carrollton fire did not meet then current Federal standards; (4) upgrading Standard No. 302 would result in significant costs that would be disproportionate to minimal benefits; and (5) further research would be necessary before the agency could propose a test protocol, utilizing scarce agency resources.

A. Minimal Safety Problem

The agency notes that school bus fires are extremely rare. Most school bus fires are small-scale, non-crash engine fires that pose a low risk of injury because ample time is available to evacuate the bus. Large-scale, fuel-fed fires, like the Carrollton fire, are even more rare.

Other than the Carrollton fire, from 1975 through 2002, there were no school bus crashes in which fatalities were attributed to fire as the most harmful event. During this period, there were ten school bus-related fatalities in crashes in which fire was present. However, these fatalities were caused by the crash forces and were not attributed to fire.[9] The 1988 Carrollton crash resulted in 27 fatalities. Since that crash, there have been no fire-related fatalities in school buses.

B. Upgrade of Standard No. 217 Reduced Risks Associated With Fires

NHTSA believes that the limited risk posed by school bus fires was further reduced by the agency's issuance of the November 2, 1991 final rule upgrading Standard No. 217's emergency exit

[9] Nine of the ten fatalities resulted from a 1984 crash in Essex, Montana, in which a pre-1977 school bus was struck head-on by a tractor-semi trailer carrying jet fuel, which leaked from the trailer and caused the post-crash fire.

requirements to allow faster evacuation from school buses. Specifically, the final rule increased the number of emergency exits in larger school buses, improved access to side emergency doors, and improved the visibility of the emergency exits. These amendments have made possible shorter evacuation times from a school bus in case of fire or other emergency situations (*e.g.*, submersion in water). Thus, the benefits of the Standard No. 217 rulemaking are potentially broader than those that might have resulted from a Standard No. 302 rulemaking since the latter standard addresses only those emergencies involving fire.

NHTSA agrees with the comments of Blue Bird, TAM–USA, Nebraska, Maryland, and NSTA that the agency's improvement of the emergency exit capacity requirements in Standard No. 217 better addresses the risks associated with post-crash fires than upgrading the flammability resistance requirements in Standard No. 302 would. Accordingly, given that the agency's upgrade of Standard No. 217 has reduced the already minimal risk posed by school bus fires, the agency believes that upgrading Standard No. 302 is not warranted.

The agency also notes that the NTSB has accepted NHTSA's upgrade of Standard No. 217 as an acceptable alternative to upgrading Standard No. 302. In a December 17, 1998 letter to NHTSA's Administrator, the Chairman of the NTSB stated:

> Safety Recommendation H–89–4 was issued to NHTSA as a result of the Safety Board's investigation of the truck and bus collision near Carrollton, Kentucky on May 14, 1988.
>
> Safety Recommendation H–89–4 asked NHTSA to incorporate in FMVSS 302 the recommendations of the National Institute of Standards and Technology concerning the new material acceptance criteria to reduce the rate of fire spread in all buses.
>
> The Safety Board commends NHTSA for changing the emergency exit requirements so that school buses are required to have emergency exits. * * * As a result of NHTSA's efforts to upgrade the emergency exit requirements for school buses, thus reducing the need to upgrade the flammability requirements for school bus seats, Safety Recommendation H–89–4 has been classified ''Closed '' Acceptable Alternate Action.''[10]

C. Carrollton Bus Did Not Meet the Then Current Federal Standards

The agency also notes that the bus involved in the Carrollton fire did not meet the then current Federal motor vehicle safety standards. That bus was built before April 1, 1977, prior to the effective date of the final rule improving Standard No. 217's emergency exit capacity requirements and Standard No. 301's fuel system integrity requirements.[11] As a result, the Carrollton bus lacked safety features, such as fuel tank guards and improved access to emergency exits, required on large school buses that were built after 1977.

If the Carrollton bus had been built after 1977, and thus had been equipped with a fuel tank guard, the post-crash fire might never have occurred. According to the NTSB report, a puncturing of the bus' fuel tank caused the fire.[12]

Finally, the agency agrees with the comments of Thomas Built, Lichter Rubber, and Blue Bird that even if the Carrollton bus had complied with a hypothetical upgraded Standard No. 302, the increased flammability resistance might not have increased the survivability of a Carrollton-type crash. As noted above, the Carrollton crash was extremely severe, with a combined impact speed exceeding 100 miles per hour, and the fire that ensued was fuel-fed and explosive in nature.

D. Significant Costs of Upgrading Standard No. 302

While NHTSA believes that the weighing of regulatory costs and benefits should not be the only basis for a decision, and while the costs of improving flammability resistance are not definitive since performance levels and compliance test procedures were not specifically defined in the agency's earlier notices, these costs would have been substantial and disproportionate to the minimal benefits. The commenters' estimated costs ranged from $275 to equip a 66-passenger bus with only fire retardant foam cushioning, to $2,000 to equip a bus with fire retardant foam cushions and fire block upholstery. The agency's own range of estimates is from $300 for fire retardant foam to $850 for fire block upholstery.

Based on its estimates, the agency believes that the costs of upgrading Standard No. 302 could exceed the costs associated with other school bus-related rulemakings. For example, the agency estimated that the costs of upgrading Standard No. 217's emergency exit requirements were $557 per bus. Accordingly, NHTSA concludes that the low level of risk posed by school bus fires, which was even further reduced by the agency's upgrade of Standard No. 217, does not justify the significant additional costs that would result from upgrading Standard No. 302's flammability resistance requirements.

The agency notes that an upgrade of Standard No. 302 would increase the costs of school buses, forcing States and local school districts to spend more funds. The agency believes that these funds would be better spent on other school bus safety programs and devices that could save more lives and reduce more injuries, such as purchasing school buses complying with the upgraded emergency exit requirements or retrofitting school buses with stop signal arms and improved mirror systems.

E. Test Protocol

Finally, the agency does not believe it could propose a test protocol and criteria regarding conditions vital for survivability in a fire without first conducting further research evaluating the flammability of school bus interiors during high intensity fires. Similarly, additional research would be necessary to develop a protocol for toxicity tests if it were determined that toxicity is an important component of upgrading flammability. While the absence of an existing test protocol would not, by itself, justify terminating this rulemaking, NHTSA notes that the additional costs and time involved in developing such a protocol contributed to the agency's decision to terminate this rulemaking.

IV. Conclusion

For the reasons set forth above, NHTSA has decided to terminate this rulemaking action.

Although NHTSA has decided not to upgrade Standard No. 302, the agency notes that States and local school districts may purchase school buses with interiors that exceed the minimum Federal requirements. At the 11th National Conference on School Transportation in May 1990, the State delegates voted to recommend a large-scale test procedure for measuring flammability resistance with performance levels exceeding those required by Standard No. 302. The Conference's recommendations were re-affirmed at the 12th National Conference, which was held in May 1995, and the 13th National Conference, which was held in May 2000. While the 11th National Conference's

[10] A copy of this letter has been placed in the docket.

[11] Standard No. 301, ''Fuel System Integrity,'' specifies fuel spillage limitations after each of several crash tests. The purpose of the standard is to reduce the probability of injuries and fatalities in post-crash fires. School buses were not required to comply with Standard No. 301 until April 1, 1977. See 41 FR 36026, August 26, 1976.

[12] Highway Accident Report—Pickup Truck/Church Activity Bus Head-on Collision and Fire Near Carrollton, Kentucky, May 14, 1988, Report No. NTSB/HAR/89/01 (March 28, 1989).

recommendations only provide guidance to most State school transportation personnel, a number of local school districts and States, including Connecticut, Mississippi, North Dakota, Tennessee, South Carolina, and Utah, have adopted the *Body and Chassis* specifications issued by the 11th Conference. Therefore, some school buses will be equipped with more flame-resistant interiors, notwithstanding NHTSA's decision not to upgrade Standard No. 302.[13] In addition, the agency's decision not to upgrade Standard No. 302's requirements does not preclude States from adopting flammability resistance requirements that impose a higher performance requirement than the Federal standard for vehicles procured for the State's own use. If a State is disposed to regulate in this area concerning public school buses, it may do so.

Issued: July 11, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–18595 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–59–P

[13] To assure that school districts are aware of the ability to procure buses with more flame-resistant interiors, NHTSA wrote to the heads of State Pupil Transportation Services on November 24, 1995, to inform them of the availability of these materials.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. NHTSA 03–15125; Notice 1]

RIN 2127–AA03

Crashworthiness Ratings

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of proposed rulemaking.

SUMMARY: This document terminates a proposed rulemaking in which we had considered establishing a crashworthiness performance ratings program for new motor vehicles. Under the contemplated program, for which the agency issued a notice of proposed rulemaking in 1981, information would have been developed by manufacturers on the ability of their vehicles to protect occupants in high speed crashes and made available to the public via window stickers on new motor vehicles. The NPRM raised the alternative possibility that the agency, instead of the manufacturers, would generate the information.

We are terminating this proposed rulemaking because it has been overtaken by events. During the years since 1981, we have continued to develop and expand our New Car Assessment Program (NCAP). Under the NCAP program, the agency generates the kinds of information that would have been provided by the proposed crashworthiness performance ratings program. Ratings are available for front and side impact crashworthiness. They are also now available for rollover resistance. Additional ratings are under development for dynamic rollover, braking and lighting.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590:

For technical issues: Mary Versailles, Office of Rulemaking, telephone (202) 366–2057.

For legal issues: Edward Glancy, Office of the Chief Counsel, telephone (202) 366–2992.

SUPPLEMENTARY INFORMATION: On January 22, 1981, we published (46 FR 7025) a notice of proposed rulemaking (NPRM) to establish a new vehicle crashworthiness performance ratings program. We already had a regulation requiring that consumers be provided with crash avoidance information, *e.g.*, braking performance, but did not have any comparable measures for providing crashworthiness information. The idea underlying the proposal was to supplement the agency's minimum crashworthiness standards with a program using market forces to encourage the manufacture of safer automobiles. It was anticipated that the information would not only aid consumers in making better informed purchasing decisions, but also competition among automobile manufacturers in the design of safer products. We noted several studies indicating that consumers were significantly interested in vehicle crashworthiness performance and that their purchasing decisions would be influenced by information about the performance of different models.

Under the contemplated program, information would have been developed by manufacturers on the ability of their new vehicles to protect occupants in high-speed crashes and made available to the public via window stickers. The primary element of the proposed regulation was to be a requirement for manufacturers to disclose to prospective purchasers whether or not their vehicles conform to the belted occupant protection criteria of Standard No. 208, *Occupant Crash Protection*, when tested under the frontal fixed rigid barrier crash procedures of that safety standard, but at a speed of 35 mph instead of the 30 mph speed specified in the standard.

Since publishing the NPRM for crashworthiness ratings in 1981, we have retained an entry for this rulemaking in the Regulatory Agenda. However, this rulemaking has long been overtaken by events.

Since 1981, we have significantly developed and expanded our New Car Assessment Program (NCAP). As part of this program, the agency, not the manufacturers, annually subjects selected cars, light trucks, sport utility vehicles, and vans to frontal and side crash tests, with particular focus on models that are new, popular, redesigned, or have improved safety equipment. These vehicles are then rated on how well they protect drivers and passengers during those frontal and side collisions. We use a five star system for rating vehicles. We provide the ratings to the public through a variety of means, including press releases, the NHTSA website, and an annual publication titled ''Buying a Safer Car.'' That publication provides the public with a variety of valuable information on crash tests, safety features and buying tips.

Through the expanded NCAP program, we are accomplishing the goals we sought in proposing the crashworthiness performance ratings program. Our monitoring of test scores and ratings from year to year indicates that the manufacturers do modify their vehicles in response to the NCAP ratings and sometimes prominently feature those ratings in their advertising.

During the 1990's, we expanded our Regulatory Agenda entry for the crashworthiness ratings rulemaking to include a discussion of our publication of a request for comments summarizing a 1996 study by the National Academy of Sciences (NAS) titled ''Shopping for Safety—Providing Consumer Automotive Safety Information.'' (62 FR 27648, May 20, 1997.) The NAS study made a number of recommendations to NHTSA on ways to improve automobile safety information for consumers. Our 1997 notice requested comments on our response to the recommendations of the NAS study and on programs we had begun or were considering to address those recommendations.

For the long term, the NAS study recommended the development of an overall measure combining the relative

importance of crashworthiness [1] and crash avoidance [2] features for a vehicle. The study recognized that, for the foreseeable future, summary measures of crashworthiness and crash avoidance must be presented separately due to differences in current levels of knowledge, and differences in the roles of vehicle and driver in the two areas. For the immediate future, the NAS study recommended that the agency develop a summary measure of a vehicle's crashworthiness that incorporates quantitative information supplemented with the professional judgment of automotive experts, statisticians, and decision analysts. According to the recommendation, NHTSA should provide information with this measure to reflect the range of uncertainty in those judgments. For crash avoidance, the study recommended the development of a checklist of features for the near future.

In our 1997 Request for Comments, we said we would study the possibility of combining frontal NCAP and side impact NCAP ratings into a single rating, as a first step toward a summary crashworthiness rating. We requested comments on a number of possible approaches to exploring the NAS study recommendation that a comprehensive crashworthiness rating be developed. These approaches included:

- A Federal Advisory Committee to develop a method that the agency or others could use to ''rate'' new vehicles. Such method would indicate what quantitative information should be used (both from NHTSA and from other sources), how such information should be combined, and how such information would be supplemented with expert judgement.
- A negotiated rulemaking under which NHTSA would agree to propose a new consumer information regulation.
- Development of a standard means by which manufacturers would establish the degree to which a specific vehicle make/model exceeded the minimum requirements in the safety standards.

We also indicated that we believed the development of some comparative crash avoidance information was possible.

Commenters on the 1997 Request for Comments indicated little support for combining the frontal NCAP and side impact NCAP scores into a single rating. They expressed concerns about the compatibility of the two ratings programs, since frontal NCAP scores cannot be combined across weight classes, while side impact NCAP scores can. As a result, we did not pursue this option any further.

Commenters also expressed concern about other aspects of the NAS study recommendation for a summary rating. In particular, commenters generally did not support the use of expert judgment to supplement gaps in available quantitative information.

Since the publication of the 1997 Request for Comments, we have greatly expanded the scope of information that consumers can use to evaluate the relative safety of new vehicles. Ratings are available for not only front and side impact crashworthiness, but also rollover resistance. Additional ratings are under development for dynamic rollover, braking and lighting. Information on safety features in the ''Buying a Safer Car'' brochure has expanded from four features with the first issue to 22 features in the 2002 issue. Information on an additional four features is available on NHTSA's website, which has been greatly expanded and improved since the 1997 Request for Comments. In addition, the brochure and web site provide information on the importance of vehicle weight and on the relative rate of occurrence of front and side crashes to help consumers weigh the relative importance of the available information without a summary rating.

With the introduction of Rollover Resistance Ratings in 2001, we once again began looking at the idea of a summary rating, to see if the addition of this quantitative information would address some of the commenter concerns from 1997. However, with Congress' mandate to conduct research on a dynamic rollover rating to supplement the Rollover Resistance Ratings, we decided to postpone beginning work on a possible summary rating until after that research was completed. Until we finish research on dynamic rollover, braking and lighting, we will not return to consideration of a summary rating.

While we may develop a summary rating in the future, it will not be in the context of the 1981 proposal. Any summary rating that might be developed would be vastly different than what would have been done under that proposal. First, it would likely include consideration of factors beyond crash protection. Second, such a rating would be developed and distributed by NHTSA rather than by vehicle manufacturers. Consumer research conducted over the years indicates that consumers are more likely to take into consideration safety information provided by a neutral party, with the government being regarded as a source that is unbiased and trustworthy.

For all of the reasons discussed above, we are terminating the 1981 proposed rulemaking for a vehicle crashworthiness performance ratings program.

Issued: July 11, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–18596 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–59–P

[1] Crashworthiness refers to a vehicle's ability to protect occupants from serious injury or death when a crash occurs.

[2] Crash avoidance refers to a vehicle's ability to prevent a crash from occurring.

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