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Rules and Regulations

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

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

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 562

[No. 2003–45]

RIN 1550–AB54

Regulatory Reporting Standards: Qualifications for Independent Public Accountants Performing Audit Services for Voluntary Audit Filers

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting as final an interim final rule that amended its annual independent audit requirements for small, non-public, highly rated savings associations that voluntarily obtain independent audits. This change made OTS's requirements more consistent with those of the other federal banking agencies and avoided the potential regulatory burden from imposing unnecessary additional restrictions.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Christine Smith, Project Manager, (202) 906–5740, Examination Policy Division, or Teresa A. Scott, Counsel (Banking & Finance), (202) 906–6478, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

Savings associations that are publicly traded,[1] have assets of $500 million or more[2], or have a 3, 4, or 5 CAMEL rating[3] must obtain and file an annual independent audit. Small, non-public, 1- or 2-rated savings associations are not required to obtain an independent audit. OTS regulations had required that public accountants conducting these independent audits (whether required or voluntary) follow the SEC independence rules, including those governing outsourcing of non-audit services. 12 CFR 562.4 (d) and (e) (2002).

On July 30, 2002, Congress passed the Sarbanes-Oxley Act of 2002.[4] Title II of that act sets forth standards for auditor independence. The standards include section 201(g)(5), which prohibits a registered public accountant from performing an audit for a public company contemporaneously with providing that company with delineated non-audit services, including internal audit outsourcing services. This congressional mandate affected a change in the SEC independence rules.

As reflected in the interim final rule, OTS believed that if its rules remained unchanged, a savings association obtaining a voluntary audit may not use its external auditors to perform non-auditing services.[5] Although OTS encourages non-publicly held savings associations that voluntarily file audits with the agency to follow the prohibition from Sarbanes-Oxley, OTS was concerned that an absolute prohibition in this manner may be unnecessarily detrimental to some voluntary filers. Specifically, OTS believed that small institutions with less complex operations and limited staff, may, in some instances, use their independent public accountant to perform both an external audit and some or all of an audit client's non-audit activities consistent with the OTS's safety and soundness objectives. Some of these institutions may not have access to a full range of qualified public accountants such that they could engage both an external auditor and a different outside firm to perform non-audit functions. Other institutions may reasonably have determined that the costs of having a full time in-house staff to perform those services exceed the benefits.

Since OTS issued the interim rule, the SEC, based on provisions from the Sarbanes-Oxley Act, added new provisions to its independence rules, including ones governing prohibited non-audit services (such as the prohibition on internal audit outsourcing), pre-approval requirements, auditor partner rotation, auditor reports to the audit committee, and conflict of interest. Without the OTS rule change, voluntary filers would also be subject to these SEC provisions on independence. The OTS is equally concerned that these additional SEC independence rules may unnecessarily burden voluntary filers.

Moreover, none of the other banking agencies require that institutions that file voluntary audits follow the SEC independence rules. OTS believed that requiring savings associations to do so might place these savings associations at an unnecessary competitive disadvantage as these requirements became more restrictive.

For all of these reasons, OTS is finalizing its interim rule that amended its regulation to eliminate the requirement that institutions voluntarily filing audits comply with the SEC independence rules while retaining the requirement that institutions filing voluntary audits comply with the AICPA Professional Conduct Code, including those sections that address independence.[6]

Discussion of Comments

OTS received two public comments, both from trade associations. Both trade associations strongly supported the interim rule, noting that the rule change encourages voluntary filers to continue to file audits with the OTS. Moreover, the commenters heralded the fact that the same rule that applies to smaller banks by other federal banking regulators would now apply to smaller savings associations.

[1] 17 U.S.C. 78m (West 2002). Generally, federally-chartered publicly traded savings associations file annual audits with OTS, while generally publicly traded federally-chartered thrift holding companies file audits with the Securities and Exchange Commission (SEC).

[2] 12 CFR 363.2 (2002). These institutions file annual audits with the Federal Deposit Insurance Corporation and OTS.

[3] 12 CFR 562.4(b). These savings associations file annual audits with OTS.

[4] Sarbanes-Oxley Act of 2002, Pub. L. 107–204, section 201, 116 Stat. 745 (2002).

[5] These services include bookkeeping, financial information systems design, appraisal, valuation, and actuarial services, and internal audit outsourcing services. For a complete list of prohibited activities, *see id.* at section 201.

[6] OTS understands that passage of the Sarbanes-Oxley Act may place increased responsibilities on small publicly held savings associations, including the prohibitions against outsourcing internal non-audit services to the association's external auditor. Nothing in this rule affects those requirements.

Findings and Certifications

A. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a significant regulatory action for the purposes of Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, OTS must either provide an Initial Regulatory Flexibility Analysis (IRFA) with this final rule, or certify that the rule would not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. It removes a requirement that could, if left unchecked, inadvertently lead to potential additional regulatory burden. The final rule, which is written in plain language, reduces regulatory burden.

C. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. OTS has determined that the effect of this rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Rather, the rule imposes no new requirements and makes only burden reducing amendments to current OTS regulations. Accordingly, OTS has not prepared a budgetary impact statement for this rule or specifically addressed the regulatory alternatives considered.

D. Effective Date

For the reasons stated in the interim rule, published on November 25, 2002 (67 FR 70529), OTS is making this final rule effective immediately.

E. Paperwork Reduction Act

The OTS has determined that this interim final rule does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 562

Accounting, Reporting and recordkeeping requirements, Savings associations.

PART 562—REGULATORY REPORTING STANDARDS

■ Accordingly, the Office of Thrift Supervision adopts as final, without change, the interim rule published on November 25, 2002 at 67 FR 70529 amending part 562 in Title 12, Chapter V, Code of Federal Regulations.

Dated: *September* 2, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–22779 Filed 9–5–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–53–AD; Amendment 39–13294; AD 2003–18–03]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that requires inspecting the hydraulic brake hose (hose) for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose, if necessary. This amendment also requires inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary. This amendment is prompted by a report of a hose compression due to interference with a clamp that attaches the emergency flotation gear pipe. The actions specified by this AD are intended to prevent failure of the hose, resulting in failure of hydraulic pressure to the brakes on the affected landing gear wheel, and subsequent loss of control of the helicopter during a run-on landing.

DATES: Effective October 14, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 14, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for Eurocopter Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3 helicopters was published in the **Federal Register** on April 7, 2003 (68 FR 16735). That action proposed to require, within the next 10 hours time-in-service (TIS), inspecting the hose for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose before further flight, if necessary. It also proposed to require, at the next 100-hour TIS inspection, inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3. The DGAC advises of receiving a report of a hose compression due to interference with a clamp that attaches the emergency flotation gear pipe.

Eurocopter has issued Alert Telex No. 32.00.09, for Model AS 365N, N1, N2, and N3 helicopters, and Alert Telex No. 32A004, for Model EC 155B helicopters, both dated July 31, 2002. These alert telexes specify checks of the condition of the hose, as well as ensuring that there is no interference between the hose and the emergency flotation gear pipe when the landing gear is retracted. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–475–007(A) for Model EC 155 B helicopters, and AD No. 2002–474–058(A), for Model AS 365 N, N1, N2, and N3 helicopters, both dated September 18, 2002, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the

proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

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. 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.

The FAA estimates that 44 helicopters of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per helicopter to accomplish the inspection and 5 work hours to replace any parts, as necessary, and that the average labor rate is $60 per work hour. Required parts will cost approximately $459 for the hose. If replacing the hose on two sides is required, the cost will be approximately $918. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,518 per helicopter, or $50,094 for the entire fleet, assuming 75 percent of the fleet (33 helicopters) is equipped with emergency flotation gear and the hoses are replaced on all 33 helicopters.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–18–03 Eurocopter France: Amendment 39–13294. Docket No. 2002–SW–53–AD.

Applicability: Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3 helicopters, with emergency flotation gear installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hose, resulting in failure of hydraulic pressure to the brakes on the affected landing gear wheel and subsequent loss of control of the helicopter during a run-on landing, accomplish the following:

(a) Within 10 hours time-in-service (TIS), inspect the hose for crazing, pinching, distortion, or leaks as illustrated in Area A of Figure 1 of Eurocopter Alert Telex No. 32.00.09, for Model SA–365N and N1, AS–365N2, and AS 365 N3 helicopters, and Alert Telex No. 32A004, for Model EC 155B helicopters, both dated July 31, 2002 (Alert Telexes).

(b) If crazing, pinching, distortion, or leaks exist, replace the hose with an airworthy hose before further flight.

(c) At the next 100-hour TIS inspection, inspect the hose and the emergency flotation gear pipe to ensure adequate clearance and adjust the landing gear leg, if necessary, in accordance with the Operational Procedure, paragraph 2.B.2., of the applicable Alert Telexes.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Safety Management Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Safety Management Group.

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

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

(f) The inspections and adjustments, if necessary, shall be done in accordance with Eurocopter Alert Telex No. 32.00.09, for Model SA–365N and N1, AS–365N2, and AS 365 N3 helicopters, and Alert Telex No. 32A004, for Model EC 155B helicopters, both dated July 31, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 14, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2002–475–007(A) and AD No. 2002–474–058(A), both dated September 18, 2002.

Issued in Fort Worth, Texas on August 26, 2003.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–22619 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–30–AD; Amendment 39–13295; AD 2003–18–04]

RIN 2120–AA64

Airworthiness Directives; Wytwornia Sprzetu Komunikacyjnego (WSK) PZL–10W Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Wytwornia Sprzetu Komunikacyjnego

(WSK) PZL–10W turboshaft engines. This AD requires a one-time inspection of the four engine-to-gearbox pin retaining joints for loose or improperly crimped retaining nuts and damaged bolts on certain serial number engines. This AD is prompted by reports of loose or improperly crimped engine-to-gearbox pin joint retaining nuts found during overhaul. We are issuing this AD to prevent loss of nut torque and loosening of engine-to-gearbox pin joint retaining nuts, which could result in misalignment of the engine to the gearbox, causing loss of drive to the gearbox, power turbine overspeed, and uncontained power turbine disc failure.

DATES: Effective September 23, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 23, 2003.

We must receive any comments on this AD by November 7, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–30–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You can get the service information referenced in this AD from Wytwornia Sprzetu Komunikacyjnego ''PZL—Rzeszow'' S. A., ul. Hetmanska 120, 35–078 Rzeszow, P.O. Box 340, Poland, telephone 011–48–17–85–46–100; fax 011–48–17–620–750.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Polish General Inspectorate of Civil Aviation, which is the airworthiness authority for Poland, recently notified the FAA that an unsafe condition may exist on Wytwornia Sprzetu Komunikacyjnego (WSK) PZL–10W turboshaft engines. The Polish General Inspectorate of Civil Aviation advises that reports have been received of loose or improperly crimped engine-to-gearbox pin joint retaining nuts and damaged bolts found during overhaul.

Relevant Service Information

We have reviewed and approved the technical contents of Wytwornia Sprzetu Komunikacyjnego Obligatory Service Bulletin (OSB) No. E–19W096/2000, (original issue—2000), that describes procedures for performing a one-time inspection of the four engine-to-gearbox pin retaining joints for loose or improperly crimped retaining nuts and damaged bolts on the serial number PZL–10W engines listed in the OSB. The Polish General Inspectorate of Civil Aviation classified this OSB as mandatory and issued AD No. SP–0008–2001–B, dated October 2, 2001.

Bilateral Airworthiness Agreement

This engine model is manufactured in Poland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the Polish General Inspectorate of Civil Aviation has kept the FAA informed of the situation described above. We have examined the findings of the Polish General Inspectorate of Civil Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

Although no helicopters that are registered in the United States use these PZL–10W turboshaft engines, the possibility exists that the PZL–10W turboshaft engines could be used on helicopters that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other WSK PZL–10W turboshaft engines of the same type design. We are issuing this AD to prevent loss of nut torque and loosening of engine-to-gearbox pin joint retaining nuts, which could result in misalignment of the engine to the gearbox, causing loss of drive to the gearbox, power turbine overspeed, and uncontained power turbine disc failure. This AD requires performing a one-time inspection of the four engine-to-gearbox pin retaining joints for loose or improperly crimped retaining nuts and damaged bolts on the serial number PZL–10W engines listed in OSB No. E–19W096/2000, (original issue—2000). You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–30–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the 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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–30–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under 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. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–18–04—Wytwornia Sprzetu Komunikacyjnego: Amendment 39–13295. Docket No. 2003–NE–30–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 23, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Wytwornia Sprzetu Komunikacyjnego (WSK) PZL–10W turboshaft engines listed by serial number in Wytwornia Sprzetu Komunikacyjnego Obligatory Service Bulletin (OSB) No. E–19W096/2000, (original issue—2000). These PZL–10W turboshaft engines are installed on, but not limited to PZL–SOKOL helicopters.

Unsafe Condition

(d) This AD was prompted by reports of loose or improperly crimped engine-to-gearbox pin joint retaining nuts and damaged bolts found during overhaul. We are issuing this AD to prevent loss of nut torque and loosening of engine-to-gearbox pin joint retaining nuts, which could result in misalignment of the engine to the gearbox, causing loss of drive to the gearbox, power turbine overspeed, and uncontained power turbine disc failure.

Compliance

(e) You are responsible for having the actions required by this AD performed before further flight after the effective date of this AD, unless the actions have already been done.

Inspection

(f) Inspect the four engine-to-gearbox pin retaining joints for loose or improperly crimped retaining nuts and damaged bolts on the serial number engines listed in WSK Obligatory Service Bulletin (OSB) No. E–19W096/2000, (original issue—2000), and replace loosened or improperly crimped nuts, damaged bolts and washers. Use Chapter II of Accomplishment Instructions of OSB No. E–19W096/2000, (original issue—2000) to do these actions.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(h) Special flight permits are prohibited.

Material Incorporated by Reference

(i) You must use Wytwornia Sprzetu Komunikacyjnego Obligatory Service Bulletin No. E–19W096/2000, (original issue—2000) to perform the inspection required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Wytwornia Sprzetu Komunikacyjnego ''PZL—Rzeszow'' S. A., ul. Hetmanska 120, 35–078 Rzeszow, P.O. Box 340, Poland, telephone 011–48–17–85–46–100; fax 011–48–17–620–750. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Related Information

(j) Polish General Inspectorate of Civil Aviation AD No. SP–0008–2001–B, dated October 2, 2001, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on August 28, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–22620 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 250

[Docket No. OST–96–1255]

RIN 2105–AC45

Oversales Signs

AGENCY: Office of the Secretary (OST), (DOT).

ACTION: Final rule.

SUMMARY: This document amends the regulation on oversales by changing the reference to an outdated legal authority and other language because of several new statutory provisions. This action also makes certain other editorial changes.

EFFECTIVE DATE: October 8, 2003.

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–96–1255.

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 may obtain a copy of this document from the **Federal Register** Web site at *http://www.gpoaccess.gov/fr/index.html.*

FOR FURTHER INFORMATION CONTACT: Tim Kelly, Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, Office of the General Counsel, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, telephone (202) 366–5952, e-mail *tim.kelly@ost.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1996, the Department of Transportation published a Notice of Proposed Rulemaking (61 FR 27818) that proposed to eliminate the

Department's requirement (pursuant to 14 CFR part 250) that a consumer notice about airline oversales appear on signs at airports, city ticket offices, and travel agencies. The basis for the NPRM was that the information would continue to be available through other means. This NPRM also proposed certain updates to the Department's oversales rule to reflect the recodification of statutory provisions and the Department's acquisition of responsibility for this rule from the Civil Aeronautics Board.

The Department received two comments in response to the NPRM. Southwest Airlines supported the proposal to eliminate the oversales sign. Southwest also concurred in one particular element of the proposal which would require ''ticketless'' carriers (*i.e.*, airlines that use electronic ticketing as opposed to conventional paper tickets) to continue to post the oversales sign if the carrier does not distribute the oversales notice in writing to every passenger as is required for passengers with paper tickets. The American Society of Travel Agents opposed the Department's proposal; it stated that signs are a more efficient method of communicating the oversales information than individual notices. ASTA asserted that the Department should keep the sign requirement and eliminate the requirement for individual ticket notices.

A major basis for the Department's proposal was the fact that the oversales rule requires that oversales information to assist consumers must appear both on signs and on a notice that is to accompany every ticket. Due to the significant growth of electronic ticketing in the period since this proposal was issued, the Department cannot rely to the same extent on advance distribution of the oversales ticket notice. Indeed, in 1997 (62 FR 19473) the Department issued a Statement of Compliance Policy in which it afforded additional flexibility to carriers in distributing ticket notices to electronically ticketed passengers.

Therefore, based on the above discussion, we have decided not to eliminate the requirement for an oversales airport sign at this time. Additionally, it is our decision that ASTA's proposal to eliminate ticket notices is beyond the scope of this proceeding. However, in this final rule, we will finalize the administrative updates of Part 250 that were proposed in the NPRM (*e.g.*, statutory references) by amending certain terms to more accurately reflect current law.

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. This rule only makes editorial changes, and updates reference to a legal authority and other language because of several statutory changes.

The Department also has determined that the economic impact of the rule is so minimal that no further analysis is necessary. This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Executive Order 13132

The Department has analyzed this rule under the principles and criteria contained in Executive Order 13132 (''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 making editorial changes and updating references to a legal authority and other language because of several statutory changes.

List of Subjects in 14 CFR Part 250

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department amends 14 CFR part 250 as follows:

PART 250—OVERSALES

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 49 U.S.C. 401, 411, 413, and 417.

■ 2. In 14 CFR 250.1, the definition of ''Carrier'' is revised to read as follows:

§ 250.1 Definitions.

* * * * *

Carrier means: (1) A direct air carrier, except a helicopter operator, holding a certificate issued by the Department of Transportation pursuant to 49 U.S.C. 41102 (formerly sections 401(d)(1), 401(d)(2), 401(d)(5) and 401(d)(8) of the Federal Aviation Act of 1958), or an exemption from 49 U.S.C. 41101 (formerly section 401(a) of the Act), authorizing the transportation of persons, or

(2) A foreign route air carrier holding a permit issued by the Department pursuant to 49 U.S.C. 41301 through 41306 (formerly section 402 of the Act), or an exemption from the appropriate provision of 49 U.S.C. 41301 through 41306, authorizing the scheduled foreign air transportation of persons.

* * * * *

■ 3. In § 250.2, the words ''or overseas'' are removed.

■ 4. In § 250.2b(b), in the last sentence, the word ''Board'' is removed and the term ''DOT'' is added in its place.

■ 5. In § 250.5(a), in the last sentence, the words ''and overseas'' are removed.

■ 6. In § 250.9(b), in the subsection entitled Compensation for Denied Boarding, in the second sentence, the phrase ''Civil Aeronautics Board'' is removed and the phrase ''Department of Transportation'' is added in its place, and in the subsection entitled Amount of Denied Boarding Compensation, in the second paragraph, the phrase ''the CAB'' is removed and the term ''DOT'' is added in its place.

Issued this 19th day of August, 2003 at Washington DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–22093 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–62–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB97

Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; Past Performance Issues; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; correction.

SUMMARY: The Commodity Futures Trading Commission (Commission) published in the **Federal Register** of August 8, 2003, a document providing additional relief for certain persons excluded from the commodity pool operator (CPO) definition, providing

exemptions from registration as a CPO or commodity trading advisor (CTA), and facilitating communications by CPOs and CTAs (Final Rules). This document contains corrections to the final rules.

DATES: Effective September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, or Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone numbers: (202) 418–5450 or (202) 418–5445, respectively; facsimile number: (202) 418–5528; and electronic mail: *bgold@cftc.gov* or *ccummings@cftc.gov,* respectively.

SUPPLEMENTARY INFORMATION: The Commission published the Final Rules in the **Federal Register** of August 8, 2003 (68 FR 47221). The Final Rules affect CPOs and CTAs and persons excluded or exempted from registering as such. As published, however, the Final Rules contain errors that may be misleading and need clarification. In addition to correcting typographical errors and clarifying certain rules referenced in Appendix A, as is discussed below, the Commission is clarifying the right of redemption of a pool participant and the right of termination of a CTA client.

Rules 4.13(b)(2) and 4.14(a)(8)(iii)(B), respectively, address the situation where a CPO qualifies for exemption from registration in connection with all of the pools it operates or a CTA qualifies for exemption from registration in connection with providing advice to all of its clients. In such a situation, these rules provide that where a registered CPO or CTA intends to claim the exemption and to withdraw from registration, the CPO or CTA must, among other things, provide pool participants or advisory clients with a right of redemption or right of termination, as the case may be.

Rules 4.13(e)(2) and 4.14(c)(2), respectively, address the situation where a registered CPO qualifies for exemption from registration in connection with some of the pools it operates or a registered CTA qualifies for exemption from registration in connection with providing advice to some of the clients it advises. In such a situation, these rules provide that the CPO or CTA may treat the pools or clients for which it would otherwise qualify for exemption from registration as if it were in fact exempt from registration.

The Commission is clarifying that where a CPO or CTA seeks relief, all pool participants and clients have the same right to redemption or termination regardless of whether their CPO or CTA (1) intends to withdraw from registration (the first situation discussed above), or (2) remains registered and treats them as if the CPO or CTA had in fact withdrawn from registration (the second situation discussed above). Thus, the Commission is clarifying that, regardless of registration status, the obligations of the CPO or CTA to pool participants or clients are the same in this context.

■ In rule FR Doc. 03–20094 published on August 8, 2003, 68 FR 47221, make the following corrections:

■ 1. On page 47233, in the first column, in § 4.13(e)(2)(i)(B), in the third line, delete the word ''and'' and in paragraph (e)(2)(ii), in the second line, delete ''.'' and insert ''; and'' and add new paragraph (e)(2)(iii) to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(e) * * *

(2) * * *

(iii) Provides to each existing participant in a pool that the person elects to operate as described in paragraph (a)(3) or (a)(4) of this section a right to redeem the participant's interest in the pool, and informs each such participant of that right no later than the time the person commences to operate the pool as described in paragraph (a)(3) or (a)(4) of this section.

* * * * *

§ 4.14 [Corrected]

■ 2. On the same page, in the third column, in § 4.14(a)(8)(iii)(A)(*2*), in the third and fourth lines, ''(*i.e.*, § 4.14(a)(8)(i) or (a)(8)(ii), or both (a)(8)(i) and (a)(8)(ii))'' is corrected to read ''(*i.e.*, under § 4.14(a)(8)(i))''.

■ 3. On page 47234, in the third column in paragraph (c)(2), in the eleventh line, before the period, insert the following text: ''; *Provided Further*, That the person provides to each existing client described in paragraph (a) of this section a right to terminate its advisory agreement, and informs such client of that right no later than the time the person commences to provide commodity interest trading advice to the client as if the person was exempt from registration''.

§ 4.22 [Corrected]

■ 4. On page 47235, in the first column, in § 4.22(c), in the ninth line, the word ''on'' is corrected to read ''of''.

■ 5. On the same page, in the second column, paragraph (j) introductory text is redesignated as (j)(1), paragraphs (j)(A) and (B) are redesignated as (j)(1)(i) and (ii) respectively, and paragraph (j)(ii) is redesignated as paragraph (j)(2).

Appendix A to Part 4—[Corrected]

■ 6. On page 47236, in the second column, in the first paragraph ''*Application*,'' in the last line, ''Rule 4.13(a)(3)'' is corrected to read ''Rule 4.13(a)(3)(ii)(A).''

■ 7. On the same page, in the second column, in paragraph ''3. *Situation*,'' in the seventh line, and in the next paragraph ''*Application*,'' in the last line, ''Rule 4.13(a)(3)(i)(A)'' is corrected to read ''Rule 4.13(a)(3)(ii)(A)'' in each instance.

■ 8. On the same page, in the third column, in the paragraph ''*Application*,'' in the fifth line and in the seventh line, ''Rule 4.13(a)(3)(i)'' is corrected to read ''Rule 4.13(a)(3)(ii)'' in each instance.

Issued in Washington, DC, on September 2, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–22755 Filed 9–5–03; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7554–1]

Prevention of Significant Deterioration; Notice of Partial Delegation of Authority; Nevada Division of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Partial Delegation of PSD permitting authority.

SUMMARY: This document is to inform interested parties that, by a Delegation Agreement dated June 3, 2003, the Air Division Director of EPA, Region 9, is implementing a partial delegation of authority to issue Federal Prevention of Significant Deterioration (PSD) permits to the Nevada Division of Environmental Protection (NDEP).

DATES: The Delegation Agreement with NDEP is effective on June 3, 2003.

ADDRESSES: You can inspect a copy of the partial PSD Delegation Agreement at our Region IX office during normal business hours. Due to security procedures, please call Roger Kohn at 415–972–3973 at least one day in advance of inspecting this document at our office: Permits Office (AIR–3), Air Division, U.S. Environmental Protection

Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You may also see copies of the partial Delegation Agreement at the following location: Nevada Division of Environmental Protection, Bureau of Air Pollution Control, 333 West Nye Lane, Carson City, NV 89706.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, (415) 972–3974, or send email to *rios.gerardo@epa.gov.*

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

I. Background

In 1978, EPA published final regulations at 40 CFR 52.21, implementing the PSD program required under part C of the Clean Air Act, 42 U.S.C. 7475–7479. *See* 43 FR 26403 (June 19, 1978). The PSD regulations provide authority to EPA to delegate the responsibility for conducting PSD source review to a State or local air pollution control agency. 40 CFR 52.21(u). In general, delegations are implemented through agreements between EPA Regions and State or local air pollution control agencies. These agreements between the Agency and permitting agencies set out the responsibilities of each in carrying out the federal PSD program for that jurisdiction. The specific elements of delegation agreements vary to take into consideration particular circumstances, such as legal restrictions that may apply in a specific jurisdiction.

Pursuant to its authority under § 52.21(u), Region 9 entered into a PSD delegation agreement with the Nevada Division of Environmental Protection (NDEP) on May 27, 1983. Region 9 published a notice of the delegation agreement in the **Federal Register,** (*see* 48 FR 28269, June 21, 1983).

On December 31, 2002, EPA published its Final Rule significantly revising 40 CFR 52.21. 67 FR 80186 (December 31, 2002). The revised rules were effective on March 3, 2003.

Since publication of the revised PSD rules, Region 9 has consulted with NDEP, who indicated that changes to Nevada law would be necessary for them to fully implement the revisions to 40 CFR 52.21.

As NDEP did not believe that current law would allow it to fully implement revised 40 CFR 52.21, Region 9 withdrew the 1983 delegation agreement for issuing Federal PSD permits on March 3, 2003.

NDEP has advised EPA that it is on schedule to adopt State regulations consistent with the revised Federal PSD regulations and intends to submit those to EPA for approval into the Nevada State Implementation Plan (SIP) as a SIP revision. NDEP expects to have adopted such State regulations by January 2004.

NDEP and EPA desire to continue to have NDEP implement and enforce the Federal PSD regulations to the extent possible while NDEP proceeds with adopting State regulations to fully implement the revised PSD regulations. Accordingly, on June 3, 2003, the EPA and NDEP entered into the partial Delegation Agreement to issue Federal Prevention of Significant Deterioration (PSD) permits. A copy of the agreement delegating partial PSD permitting authority is available for inspection and copying at the addresses provided above.

As part of the transition process for implementing the new provisions, NDEP and EPA intend to allow permit applicants the opportunity to re-evaluate their projects in light of the new Federal PSD requirements if they so choose.

II. EPA Action

Pursuant to 40 CFR 52.21(u), EPA delegates to NDEP responsibility for implementing and enforcing part of the Federal PSD regulations for all sources located in the State of Nevada under NDEP jurisdiction. NDEP is delegated to implement and enforce the Federal PSD regulations for any new major stationary source and for any modification of a major source that is a major modification. Region 9 has retained the authority to make applicability determinations under the revised PSD provisions effective March 3, 2003. Both EPA and NDEP acknowledge that under certain circumstances the State PSD regulations and Federal PSD regulations have different applicability criteria and that obtaining an exemption under one set of PSD regulations does not relieve a facility from compliance with the other PSD regulations.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Reporting and recordkeeping requirements.

Dated: August 21, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 03–22648 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV 045–0070a; FRL–7547–9]

Revisions to the Nevada State Implementation Plan, Clark County Air Quality Management Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Clark County Air Quality Management Board (CCAQMB) portion of the Nevada State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM–10) from residential wood combustion. We are approving the local rules (building code provisions) that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on November 7, 2003 without further notice, unless EPA receives adverse comments by October 8, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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

You can inspect a copy of the submitted rules (building code provisions) and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rules (building code provisions) and TSD at the following locations:

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

Nevada Division of Environmental Protection, 333 West Nye Lane, Room 138, Carson City, NV 89706.

Clark County Air Quality Management Board, 500 South Grand Central Parkway, Las Vegas, NV 89155.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date they were revised by the local air agencies and submitted by the Nevada Division of Environmental Protection (NDEP).

TABLE 1.—SUBMITTED RULES

Local agency	Rule (building code section #)	Rule (building code provision) title	Adopted	Submitted
Clark County	(3708)	Fireplaces in New Construction and New Fireplaces in Existing Construction (Ordinance No. 1249).	11/20/90	11/19/02
City of Las Vegas	(3708)	Fireplaces in New Vegas Construction and New Fireplaces in Existing Construction (Ordinance No. 3538).	11/21/90	11/19/02
City of North Las Vegas	(13.16.150)	Fireplaces in New Construction and New Fireplaces in Existing Construction (Ordinance No. 1020).	09/18/91	11/19/02
City of Henderson	(15.40.010)	Fireplaces in New Construction and New Fireplaces in Existing Construction (Ordinance No. 1697).	10/15/96	11/19/02

On May 18, 2003, this submittal was deemed complete by operation of law in accordance with 40 CFR part 51, appendix V.

B. Are There Other Versions of These Rules?

There are no previous versions of these rules (building code provisions) approved into the SIP.

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

The purpose of the building code provisions is to require that fireplaces being constructed in new or existing dwelling units be fuelled with natural gas, conform to EPA emission requirements, contain an insert that meets EPA emission requirements, or their equivalent, or be decorative electrical appliances.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the CAA) and must not relax existing requirements (*see* sections 110(l) and 193). Section 189(b) of the CAA requires serious PM–10 nonattainment areas with significant or major PM–10 sources to adopt best available control measures (BACM), including best available control technology (BACT). Clark County is a serious PM–10 nonattainment area. *See* 40 CFR 81.330.

EPA's guidance for serious PM–10 nonattainment areas provides that BACM/BACT is required to be implemented for all source categories unless the State demonstrates that a particular source category does not contribute significantly to PM–10 levels in excess of the NAAQS. *See* 57 FR 13498, 13540 (April 16, 1992) (''General Preamble'') and 59 FR 41998 (August 16, 1994) (''Addendum''). The activities regulated by the above rules (building code provisions) contribute an insignificant (*de minimis*) 0.02% of the total PM–10 emissions in Clark County according to the *PM–10 State Implementation Plan for Clark County for the Las Vegas Valley Nonattainment Area,* Nevada Division of Environmental Protection (June 19, 2001). Therefore, the rules (building code provisions) need not fulfill the requirements of BACM/BACT. We are evaluating these rules (building code provisions) only to ensure that they do not relax the SIP in violation of CAA sections 110(l) and 193, and that they meet enforceability and other general SIP requirements of section 110.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *PM–10 Guideline Document,* EPA–452/R–93–008.
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 57 FR 13498, 13540 (April 16, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998, 42011 (August 16, 1994).
- *PM–10 State Implementation Plan for Clark County for the Las Vegas Valley Nonattainment Area,* Nevada Division of Environmental Protection (June 19, 2001).

B. Do the Rules Meet the Evaluation Criteria?

The submitted rules (building code provisions) are consistent with the relevant policy and guidance regarding enforceability and stringency and should be approved. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) and 110(k)(6) of the CAA, EPA is fully approving the submitted rules (building code provisions) because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules (building code provisions). If we receive adverse comments by October 8, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 7, 2003. This will incorporate these rules (building code provisions) into the federally-enforceable SIP.

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

III. Background Information

Why Were These Rules Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA

requires States to submit regulations that control PM–10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
November 15, 1990	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: July 29, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(41) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(41) Regulations for the following agencies were submitted on November 19, 2002 by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Air Quality Management Board.

(*1*) Clark County Building Code, section 3708, adopted on November 20, 1990.

(*2*) City of Las Vegas Building Code, section 3708, adopted on November 21, 1990.

(*3*) City of North Las Vegas Building Code, section 13.16.150, adopted on September 18, 1991.

(*4*) City of Henderson Building Code, section 15.40.010, adopted on October 15, 1996.

[FR Doc. 03–22647 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7553–3]

RIN 2060–AJ27

Protection of Stratospheric Ozone: Phaseout of Chlorobromomethane Production and Consumption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of July 18, 2003, a document that adds chlorobromomethane (CBM) to the list of substances subject to production and consumption controls under the Clean Air Act (CAA) and EPA's implementing regulations. This document corrects the numbering for a provision added in that document.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Jabeen Akhtar, 202–564–3514; E-mail: *akhtar.jabeen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Does This Correction Do?

The EPA published a document in the Federal Register of July 18, 2003 (68 FR 42883), which added a paragraph of trade restrictions of CBM to 40 CFR 82.4. This paragraph is incorrectly numbered as 40 CFR 82.4(l)(5). This correction amends the paragraph numbering from 40 CFR 82.4(l)(5) to 40 CFR 82.4(l)(6).

II. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of potentially regulated entities
1. Industrial organic chemicals, NEC	2869	325199	Producers, importers, or exporters of CBM.
2. Pharmaceutical preparations	2834	325412	Transformers of CBM.
3. Pesticides and agricultural chemicals, NEC	2879	32532	Transformers of CBM.
4. Chemicals and allied products, NEC	5169	42269	Lab suppliers of CBM.
5. Testing laboratories, except veterinary	8734	54138	Lab users of CBM.
6. Medical and diagnostic laboratories	8071	6215	Lab users of CBM.
7. Research and development in the physical, engineering and life sciences	8731, 8733	54171	Lab users of CBM.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., could be regulated by this action, you should carefully examine the applicability criteria in § 82.1(b) of Title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Docket.* Materials relevant to this action are contained in Docket No. A–92–13, Section XII. The EDOCKET number is OAR–2003–0077, with the legacy identifier noted as A–2000–49. The docket is located at U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, NW., Room: B108, Mail Code 6102T, Washington, DC 20004. The materials may be inspected from 8 am until 5:30 pm, Monday through Friday. The telephone number is (202) 566–1742. The fax number is (202) 566–1741. The docket may charge a reasonable fee for copying docket materials. 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.

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/fedregstr.* An electronic version of the public docket is also available through EPA's new electronic public docket, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/rpas/* to access the index listing of the contents of the official public docket for this action, as well as access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket identification number that EPA has established for this action. Certain types of information will not be placed in the EPA Docket. 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, either. The 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 from in the official public docket. To the extent feasible, publicly available supporting materials for this action will be made available in EPA's electronic public docket. When a document is selected from the index list in the EPA Docket, the system will identify whether the document is available for viewing the 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 Center identified in this notice. The EPA intends to work toward providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

IV. Why Is This Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections and do not change the requirements of the rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) (*see* also the final sentence of section 307(d)(1) of the Clean Air Act, 42 U.S.C. 7607(d)(1), indicating that the good cause provisions of the APA continue to apply to this type of rulemaking under the Clean Air Act).

Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. Because today's changes do not change the requirements of the rule, we find good cause to make these technical corrections effective immediately.

V. Do Any of the Executive Order and Statutory Reviews Apply to This Correction?

This final rule implements a technical correction to the Code of Federal Regulations, and it does not otherwise impose or amend any requirements.

1. *Executive Order 12630.* The EPA has complied with Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings) (53 FR 8859, March 15, 1988) by examining the takings implications of this technical correction in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

2. *Executive Order 12866.* Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this technical correction is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget (OMB). This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

3. *Executive Order 12898.* This technical correction does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environment Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

4. *Executive Order 12988.* In issuing this technical correction, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, Civil Justice Reform (61 FR 4729, February 7, 1996).

5. *Executive Order 13045.* This technical correction is not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

6. *Executive Order 13132.* This technical correction does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132, Federalism (64 FR 43255, August 10, 1999).

7. *Executive Order 13175.* This technical correction does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000).

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

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

10. *National Technology Transfer and Advancement Act.* This technical correction action does not involve changes to technical standards. Thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

11. *Regulatory Flexibility Act.* Because EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

12. *Unfunded Mandates Reform Act.* This technical correction contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Public Law 104–4), for State, local, or tribal governments or the private sector because the correction imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus the correction is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

13. *Congressional Review Act.* The Congressional Review Act (CRA) (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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 8, 2003. The 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**.

The EPA's compliance with these Executive Orders and statutes of the underlying rule is discussed in the July 18, 2003, **Federal Register** document containing the Phaseout of Chlorobromomethane Production and Consumption final rule (68 FR 42884).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Government procurement, Imports, Labeling, Reporting and recordkeeping requirements.

Dated: August 28, 2003.

Jeffrey R. Holmstead,

Assistant Administrator for the Office of Air and Radiation.

■ For the reasons stated in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC ZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

■ 2. In the **Federal Register** of July 18, 2003, page 42891, third column, amendatory instruction 3.c. is corrected to read ''Adding and reserving paragraph (l)(5) and adding paragraph (l)(6)'' and paragraph (l)(5) in the third column at the end of amendatory instruction 3. is redesignated as (l)(6).

[FR Doc. 03–22639 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 74 and 92

Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is revising its grants management regulations in order to bring the entitlement grant programs it administers under the same regulations that already apply to non-entitlement programs for grants and cooperative agreements to State, local, and tribal governments.

DATES: This rule is effective September 8, 2003. Implementation shall be phased in by incorporating the provisions into awards made after the start of the next Federal entitlement program year.

FOR FURTHER INFORMATION CONTACT: Marc R. Weisman, Acting Deputy Assistant Secretary for Grants and Acquisition Management, HHS, Room 336–E, 200 Independence Avenue, SW., Washington, DC 20201; FAX (202) 690–6902; Telephone (202) 690–8554. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On March 11, 1988, HHS joined other Federal agencies in publishing a final grants management ''common rule'' which provides a uniform system for the administration of grants and cooperative agreements, and by subawards thereunder, to State, local, and tribal governments. Prior to that date, administrative requirements for awards and subawards under all HHS programs were codified under 45 CFR part 74. HHS implemented the Common Rule at 45 CFR part 92. At the time, entitlement grant programs of the Social Security Act (the Act) administered by HHS and the Department of Agriculture were excepted from the common rule, because it was believed that the States operated entitlement programs differently than non-entitlement programs. Therefore, subpart E was reserved in the rule to subsequently address provisions specific to entitlement programs. Pending the publication of subpart E to part 92, the HHS entitlement programs have remained under part 74. As cited in 45 CFR 92.4, these programs included:

(1) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G));

(2) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(3) Foster Care and Adoption Assistance (Title IV-E of the Act);

(4) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act);

(5) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B);

(6) State Children's Health Insurance Program (Title XXI of the Act); and

(7) Certain grant funds awarded under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980.

Experimental, pilot, or demonstrations involving the above programs also remained under Part 74.

This rule will expand the scope of 45 CFR part 92 to include the entitlement grant programs cited above and remove such programs from the scope of part 74. Therefore, both entitlement and non-entitlement awards to State, local, and tribal governments will be under the same administrative rules. This will enable State, local, and tribal grantees and other affected parties, such as auditors, to use the same administrative rules for the vast majority of their Federal programs. This action will also reduce unnecessary confusion and inefficiency in program administration.

On November 15, 2000, HHS published a Notice of Proposed Rulemaking (Proposed Rule) (65 FR 68969) as the first step in developing a single set of grant and subgrant administrative rules for all types of organizations operating HHS entitlement programs. HHS received no comments on the proposed rule.

Technical Amendments

Section 92.4(a)

HHS is making a technical change in § 92.4(a) to recognize the revisions made to the USDA grants management regulations at 7 CFR part 3016 bringing USDA administered entitlement grant programs under the common rule.

Regulatory Impact Analysis

Executive Order 12866

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this rule because it is not a significant regulatory action as defined in Executive Order 12866.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary has reviewed this rule before publication and, by approving it, certifies that it will not have a significant impact on a substantial number of small entities. This rule does not affect the amount of funds provided in the covered programs but, instead, modifies and updates the administrative and procedural requirements.

Unfunded Mandates Reform Act

The Department has determined that this rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.,* because it will not result in State, local, or tribal government expenditures of $100 million or more.

Paperwork Reduction Act of 1995

The reporting and recordkeeping requirements of this rule are the same as those required by OMB Circulars A–102 and A–110 and have already been cleared by OMB. Therefore, HHS believes this rule will not impose additional information collection

requirements on grantees and subgrantees.

List of Subjects

45 CFR Part 74

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Indians, Intergovernmental relations, Nonprofit organizations, and Reporting and recordkeeping requirements.

45 CFR Part 92

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and record keeping requirements.

(Catalog of Federal Domestic Assistance number does not apply.)

Dated: July 29, 2003.

Tommy G. Thompson,

Secretary.

■ For the reasons discussed in the preamble, the Department amends title 45 of the Code of Federal Regulations as follows:

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS

■ 1. The authority citation for part 74 is revised to read as follows:

Authority: 5 U.S.C. 301.

■ 2. Revise the heading for part 74 to read as shown above.

■ 3. In § 74.1 remove paragraph (a)(3).

PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL, AND TRIBAL GOVERNMENTS

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 2. Revise the heading for part 92 to read as shown above.

■ 3. In § 92.4:

■ a. Paragraphs (a)(3) through (8) are removed and paragraphs (a)(9) and (10) are redesignated as (a)(3) and (4).

■ b. Paragraph (b) is removed and reserved.

■ 4. Remove Subpart E, Entitlement.

[FR Doc. 03–22513 Filed 9–5–03; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 105, 107 and 171

[Docket No. RSPA–03–15372 (RSP–5)]

RIN 2137–AD71

Hazardous Materials Regulations: Penalty Guidelines and Other Procedural Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, we (RSPA) are increasing to $32,500 and $275, respectively, the maximum and minimum civil penalties for a knowing violation of Federal hazardous materials transportation law or a regulation issued under that law. We are publishing revised baseline assessments for frequently cited violations to provide the regulated community and the general public with more current information on RSPA's hazardous material penalty assessment process. The revisions to RSPA's baseline penalty assessments consider the increase in the maximum civil penalty to $32,500. We are also advising the public that, in proposing or assessing a civil penalty, we will not normally consider a prior violation in a case that was initiated in a calendar year more than six years prior to the year in which the current proceeding is initiated.

In addition, we are updating the address to which civil penalty payments must be sent, and we are making editorial changes to our procedural regulations for issuing an administrative determination of preemption.

EFFECTIVE DATE: This rule is effective on September 30, 2003.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell, Jr., Office of Hazardous Materials Enforcement, (202) 366–4700; or Frazer C. Hilder, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Increase in Maximum and Minimum Civil Penalties

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) requires each Federal agency to periodically adjust civil penalties it administers to consider the effects of inflation. (The Act is set forth in the note to 28 U.S.C. 2461.) According to Section 5 of the Act, a maximum civil penalty (or the range of minimum and maximum civil penalties) must be increased based on a ''cost-of-living adjustment'' determined by the increase in the Consumer Price Index (CPI–U) for the month of June of the calendar year preceding the adjustment as compared to the CPI–U for the month of June of the calendar year in which the last adjustment was made. The Act also specifies that the amount of the adjustment must be rounded to the nearest multiple of $5,000, for a penalty between $10,000 and $100,000, and that the first adjustment to a civil penalty is limited to 10%. Any increased civil penalty amount applies only to violations that occur after the date the increase takes effect.

In a final rule published in the **Federal Register** on January 21, 1997, RSPA increased the maximum civil penalty from $25,000 to $27,500 for a knowing violation of the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, or RSPA's regulations in subchapters A and C of 49 CFR, Chapter I. 62 FR 2970. Accordingly, we are now increasing the maximum civil penalty by $5,000, to $32,500, based on the increase in the CPI–U from June 1997 (160.3) to June 2002 (179.9), or 12.2%, times $27,500 equals $3,355, which must be rounded to $5,000. We have not previously adjusted the $250 minimum penalty amount specified in 49 U.S.C. 5123(a)(1), so we are increasing the minimum civil penalty by $25, to $275, because of the 10% limitation for the first adjustment.

To implement these adjustments, we are amending 49 CFR 107.329 and 171.1(c) to specify that the higher maximum and minimum civil penalties will apply to a violation of the Federal hazardous materials transportation law, a regulation or order issued under that law, or an exemption issued under subpart B of 49 CFR Part 107 that occurs after September 30, 2003. We are also making a similar change to the reference to the maximum penalty in Section IV.C. of Appendix A to Part 107, subpart D.

II. Revisions to Civil Penalty Guidelines

RSPA's hazardous material transportation enforcement civil penalty guidelines are published in Appendix A to 49 CFR Part 107, subpart D. These guidelines were first published in the **Federal Register** on March 6, 1995, in response to a request contained in Senate Report 03–150 that accompanied the Department of Transportation and

Related Agencies Appropriations Act of 1994. *See* the final rule in Docket No. HM–207D, 60 FR 12139. Revisions to these guidelines have been published on January 21, 1997, and August 28, 2001, in the final rules in Docket Nos. HM–207F, 62 FR 2970, and HM–189S, 66 FR 45177, respectively. Publication of these guidelines provides the regulated community and the general public with information concerning the manner in which RSPA generally begins its hazmat penalty assessment process and the information that respondents in enforcement cases should provide to justify reduction of proposed penalties.

These guidelines, which are periodically updated, are used by RSPA's enforcement personnel and attorneys as a means of determining a proposed civil penalty for violations of Federal hazardous material transportation law and the regulations issued under that law. As a general statement of agency policy and practice, these guidelines are not finally determinative of any issues or rights, and do not have the force of law. They are informational, impose no requirements, and constitute a statement of agency policy for which no notice of proposed rulemaking is necessary. *See also* the discussion of the nature and RSPA's use of these penalty guidelines in the preamble to the final rules published on March 6, 1995, 60 FR 12139–40, and January 21, 1997, 62 FR 2970–71.

These penalty guidelines remain subject to revision, and, in any particular case, RSPA's Office of Hazardous Materials Enforcement (OHME) and Office of the Chief Counsel will use the version of the guidelines in effect at the time a matter is referred by OHME for possible issuance of a notice of probable violation. Questions concerning RSPA's penalty guidelines and any comments or suggested revisions may be addressed to the persons identified above, in **FOR FURTHER INFORMATION CONTACT**.

A. Baseline Penalty Amounts

This final rule publishes the latest revisions that RSPA has made to the List of Frequently Cited Violations and their baseline assessments. These revisions to Part II of the guidelines are the result of revisions to the requirements in RSPA's regulations and our overall review of the penalty guidelines during the past two years. These revisions consider the increase in the maximum civil penalty to $32,500, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, as discussed above.

In the List of Frequently Cited Violations, we list the section number(s) of 49 CFR for each violation, except the word ''Various'' is used when a generally stated violation may be covered by more than one section of the regulations (*e.g.*, the testing requirements applicable to the manufacture of each different DOT specification cylinder are contained in different sections of 49 CFR Part 178). In those instances where the baseline assessment is stated as a range (*e.g.*, $5,000 to $10,000), the factors generally considered in determining an amount within that range are indicated within the description of the violation (*e.g.*, the length of time that a continuing violation has lasted). Otherwise, we generally apply the top, middle, or bottom of the range depending on the Packing Group of the hazardous material involved in a violation, or we use the middle of the range for the ''normal'' type of violation.

RSPA created and uses these penalty guidelines to promote consistency and provide a standard for imposing similar penalties in similar cases. When a violation not described in the guidelines is encountered, RSPA often determines a baseline assessment by analogy to a similar violation in the guidelines. However, as emphasized in Parts III and IV of the guidelines, the baseline assessments are only the starting point for assessing a penalty for a violation. Because no two cases are identical, rigid use of the guidelines would produce arbitrary results and, most significantly, would ignore the statutory mandate to consider several specific assessment criteria set forth in 49 U.S.C. 5123 and 49 CFR 107.331. Therefore, regardless of whether or not the guidelines are used to determine a baseline amount for a violation, RSPA enforcement and legal personnel must apply the statutory assessment criteria to all relevant information in the record concerning any alleged violation and the apparent violator. Consideration of these criteria often warrants a final penalty that is lower or higher than the initial baseline assessment.

B. Increasing Penalties for Prior Violations

Section 5123(c) of 49 U.S.C. provides that ''any history of prior violations'' must be considered in determining the amount of a civil penalty for a violation of Federal hazardous material transportation law or a regulation or order issued under that law. As set forth in Section IV.E of the penalty guidelines, our general standard is to increase the baseline penalty for a violation by 25% for each prior case, up to a maximum increase of 100%. We are revising this section of the guidelines to clarify that we apply an increase of 10% for each prior ticket against the same company or individual.

Until this year, RSPA has generally limited to five years the time that it will ''look back'' for prior violations, although we recognize that there may be circumstances in which it would be appropriate to ''look back'' for a longer period of time. We have measured the five year period according to the calendar years in which the prior case and the new case are initiated. For example, the violations in a prior case initiated any time during 1997 or later were generally considered as an aggravating factor in a new case in which a Notice of Probable Violation was issued at any time during 2002.

We are revising Section IV.E. of the penalty guidelines to advise the public that, starting in 2003, RSPA will ''look back'' six years (rather than five) for prior violations from the calendar year in which the new case is initiated. Thus, as a general rule, we will disregard prior violations in any civil or criminal hazardous materials enforcement case (or ticket) that was initiated in a calendar year more than six years before the year in which the case is initiated. For example, in any case in which RSPA issues a Notice of Probable Violation during 2003, we will normally consider prior violations in cases and tickets with a number beginning in ''97'' or later in proposing and assessing a civil penalty for the new violations; in the absence of unusual circumstances, we would not consider prior violations in cases initiated in 1996 or earlier in proposing and assessing a civil penalty for violations in a case initiated during 2003.

III. Editorial Revisions

A. Preemption

In the Homeland Security Act of 2002 (the Act) (Pub. L. 107–296), Congress has made it clear that security is a part of the safe transportation of hazardous materials in commerce. Section 1711 of the Act amended the preemption provisions in 49 U.S.C. 5125(a) and (b) to specify that the Federal hazardous material transportation law preempts non-Federal requirements that conflict with Federal hazardous material transportation law, a regulation issued under that law, ''or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security.'' RSPA is revising its procedural regulations in subpart C of 49 CFR Part 107 accordingly. In other sections, RSPA is removing references

to a non-Federal requirement being preempted ''under * * * regulations issued'' under the Federal hazardous material transportation law to clarify that, while a non-Federal requirement that conflicts with RSPA's regulations is preempted under the preemption criteria in 49 U.S.C. 5125, it is preempted by that Federal law and not by the regulations issued pursuant to that law.

RSPA is also revising the definition of ''Regulations issued under Federal hazardous material transportation law'' in 49 CFR 105.5 (and removing and reserving § 107.201(c)) to explain that, in addition to Subchapters A and C of Title 49, regulations issued by the Federal Motor Carrier Safety Administration and the Transportation Security Administration in Title 49 and regulations issued by the United States Coast Guard in Title 46 are also issued under Federal hazardous material transportation law. In addition, RSPA is providing a facsimile number and an email address (in addition to a mail address) for submission of an application for a preemption determination or for a waiver of preemption).

B. Enforcement

Section 107.315 of 49 CFR contains the address of the Financial Operations Division of the Federal Aviation Administration (FAA) which processes the payment of civil penalties in RSPA's enforcement cases. This rule updates the FAA office code and Post Office box number listed in paragraphs (b) and (c) of that section.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact of this final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). Because this final rule carries out a statutory mandate without interpretation, revises an informational appendix without imposing any requirements, and makes editorial changes, preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous materials, some of which are small entities; however, there is no economic impact on any person who complies with Federal hazardous materials law and the regulations and orders issued under that law.

D. Paperwork Reduction Act

There are no new information requirements in this final rule.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Act of 1995. It does not result in annual costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the rule.

F. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous Waste, Imports, Penalties, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

■ 1. The authority citation for part 105 continues to read:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 105.5(b), revise the definition of ''*Regulations issued under Federal hazardous materials transportation law*'' to read as follows:

§ 105.5 Definitions.

* * * * *

(b) * * *

Regulations issued under Federal hazardous material transportation law include this subchapter A (parts 105–110) and subchapter C (parts 171–180) of this chapter, certain regulations in chapter I (United States Coast Guard) of title 46, Code of Federal Regulations, and in chapters III (Federal Motor Carrier Safety Administration) and XII (Transportation Security Administration) of subtitle B of this title, as indicated by the authority citations therein.

* * * * *

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 3. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

■ 4. In § 107.201, revise paragraphs (a)(1) and (a)(2), and remove and reserve paragraph (c) to read as follows:

§ 107.201 Purpose and scope.

(a) * * *

(1) Any person, including a State, political subdivision, or Indian tribe, directly affected by a requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under 49 U.S.C. 5125.

(2) A State, political subdivision, or Indian tribe may apply for a waiver of preemption with respect to any requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted by 49 U.S.C. 5125, or that has been determined by a court of competent jurisdiction to be so preempted.

* * * * *

(c) [Reserved]

* * * * *

■ 5. In § 107.202, revise paragraphs (a) introductory text, (b)(1), and (b)(2) to read as follows:

§ 107.202 Standards for determining preemption.

(a) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision thereof or an Indian tribe that concerns one of the following subjects and that is not substantively the same as any provision of the Federal hazardous materials transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security that concerns that subject, is preempted:

* * * * *

(b) * * *

(1) It is not possible to comply with a requirement of the State, political subdivision, or Indian tribe and a requirement under the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security.

* * * * *

■ 6. In § 107.203, revise paragraphs (b)(1), (b)(3), and (c) to read as follows:

§ 107.203 Application.

* * * * *

(b) * * *

(1) Be submitted to the Associate Administrator:

(i) By mail addressed to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001;

(ii) By fax to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at 202–366–5713; or

(iii) Electronically to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at *aahms-preemption@rspa.dot.gov*.

* * * * *

(3) Specify each requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security with which the applicant seeks the State or political subdivision or Indian tribe requirement to be compared;

* * * * *

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security.

* * * * *

■ 7. In § 107.209, revise paragraph (d) to read as follows:

§ 107.209 Determination.

* * * * *

(d) A determination issued under this section constitutes an administrative determination as to whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Federal hazardous materials transportation law. The fact that a determination has not been issued under this section with respect to a particular requirement of a State or political subdivision or Indian tribe carries no implication as to whether the requirement is preempted under the Federal hazardous materials transportation law.

■ 8. In § 107.215, revise the first sentence in paragraph (a), and paragraphs (b)(1), (b)(4), and (b)(5) to read as follows:

§ 107.215 Application.

(a) With the exception of requirements preempted under 49 U.S.C. 5125(c), any State or political subdivision thereof, or Indian tribe may apply to the Associate Administrator for a waiver of preemption with respect to any requirement that the State or political subdivision thereof or an Indian tribe acknowledges to be preempted under the Federal hazardous materials transportation law, or that has been determined by a court of competent jurisdiction to be so preempted. * * *

* * * * *

(b) * * *

(1) Be submitted to the Associate Administrator:

(i) By mail addressed to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001;

(ii) By fax to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at 202–366–5713; or

(iii) Electronically to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at *aahms-preemption@rspa.dot.gov*.

* * * * *

(4) Contain an express acknowledgment by the applicant that the State, political subdivision, or Indian tribe requirement is preempted under Federal hazardous materials transportation law, unless it has been so determined by a court of competent jurisdiction or in a determination issued under § 107.209;

(5) Specify each requirement of the Federal hazardous materials transportation law that preempts the State, political subdivision, or Indian tribe requirement;

* * * * *

■ 9. In § 107.219, revise paragraphs (c)(1) and (c)(2) to read as follows:

§ 107.219 Processing.

* * * * *

(c) * * *

(1) The applicant State or political subdivision thereof or Indian tribe expressly acknowledges in its application that the State or political subdivision or Indian tribe requirement for which the determination is sought is inconsistent with the requirements of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security.

(2) The State or political subdivision thereof or Indian tribe requirement has been determined by a court of competent jurisdiction or in a ruling issued under § 107.209 to be inconsistent with the requirements of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security

regulations or directives issued by the Secretary of Homeland Security.

* * * * *

■ 10. In § 107.221, revise paragraph (e) to read as follows:

§ 107.221 Determination.

* * * * *

(e) A determination under this section constitutes an administrative finding of whether a particular requirement of a State or political subdivision thereof or Indian tribe is preempted under the Federal hazardous materials transportation law, or whether preemption is waived.

§ 107.315 [Amended]

■ 11. In § 107.315, in paragraphs (c) and (d), the words ''Financial Operations Division (AMZ–320), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25880, Oklahoma City, OK 73125'' are revised to read: ''Financial Operations Division (AMZ–120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125''.

§ 107.329 [Amended]

■ 12. In § 107.329, in paragraphs (a) and (b), the words ''$25,000 ($27,500 for a violation occurring after January 21, 1997) and not less than $250 for each violation.'' are revised to read: ''$32,500 and not less than $275 for each violation. (For a violation that occurred after January 21, 1997, and before October 1, 2003, the maximum and minimum civil penalties are $27,500 and $250, respectively.)''

Subpart D, Appendix A [Amended]

■ 13. In part I of appendix A to subpart D of part 107, the parenthetical phrase ''(as of January 18, 1997)'' is revised to read: ''(as of October 1, 2003)''.

■ 14. Appendix A to subpart D of part 107 is amended by revising the List of Frequently Cited Violations (Part II) to read as follows:

II.—LIST OF FREQUENTLY CITED VIOLATIONS

Violation description	Section or cite	Baseline assessment
General Requirements		
A. Registration requirements:		
Failure to register as an offeror or carrier of hazardous material and pay registration fee.	107.608, 107.612	$1,000 + $500 each additional year.
B. Training requirements:		
1. Failure to provide initial training to hazmat employees (general awareness, function-specific, safety, and security awareness training):.	172.702.	
a. more than 10 hazmat employees		$700 and up each area.
b. 10 hazmat employees or fewer		$400 and up each area.
2. Failure to provide recurrent training to hazmat employees (general awareness, function-specific, safety, and security awareness training).	172.702.	
a. more than 10 hazmat employees		$400 and up each area.
b. 10 hazmat employees or fewer		$250 and up each area.
3. Failure to provide in depth security training (when a security plan is required).	172.702.	
a. no security plan developed		included in penalty for no security plan $2,500.
b. security plan developed but employee not trained.		
4. Failure to create and maintain training records	172.704.	
a. more than 10 hazmat employees		$800 and up.
b. 10 hazmat employees or fewer		$500 and up.
C. Security plans:		
1. Failure to develop a security plan; failure to adhere to security plan.	172.800..	
a. No security plan at all; no adherence		$6,000 and up.
b. Incomplete security plan or incomplete adherence (one or more of three required elements missing).		$2,000 and up for each element.
2. Failure to update a security plan to reflect changing circumstances.	172.802(b)	$2,000 and up.
3. Failure to put security plan in writing; failure to make all copies identical.	172.800(b)	$2,000 and up.
D. Notification to a foreign shipper:		
Failure to provide information of HMR requirements applicable to a shipment of hazardous materials within the United States, to a foreign offeror or forwarding agent at the place of entry into the U.S.	171.12(a)	$1,500 to $7,500 (corresponding to violations by foreign offeror or forwarding agent).
E. Expired Exemption:		
Offering or transporting a hazardous material, or otherwise performing a function covered by an exemption, after expiration of the exemption.	171.2(a), (b), (c), Various	$1,000 + $500 each additional year.
Offeror Requirements—All hazardous materials		
A. Undeclared Shipment:		
Offering for transportation a hazardous material without shipping papers, package markings, labels, or placards.	172.200, 172.300, 172.400, 172.500	$15,000 and up.
B. Shipping Papers:		

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
1. Failure to provide a shipping paper for a shipment of hazardous materials.	172.201	$3,000 to $6,000.
2. Failure to follow one or more of the three approved formats for listing hazardous materials on a shipping paper.	172.201(a)(1)	$1,200.
3. Failure to retain shipping papers for 375 days after a hazardous material (or 3 years for a hazardous waste) is accepted by the initial carrier.	172.201(e)	$1,000.
4. Failure to include a proper shipping name in the shipping description or using an incorrect proper shipping name.	172.202	$800 to $1,600.
5. Failure to include a hazard class/division number in the shipping description.	172.202	$1,000 to $2,000.
6. Failure to include an identification number in the shipping description.	172.202	$1,000 to $2,000.
7. Using an incorrect hazard class/identification number:	172.202.	
a. that does not affect compatibility requirements		$800.
b. that affects compatibility requirements		$3,000 to $6,000.
8. Using an incorrect identification number:	172.202..	
a. that does not change the response information		$800.
b. that changes the response information		$3,000 to $6,000.
9. Failure to include the Packing Group, or using an incorrect Packing Group.	172.202	$1,200.
10. Using a shipping description that includes additional unauthorized information (extra or incorrect words).	172.202	$800.
11. Using a shipping description not in required sequence.	172.202	$500.
12. Using a shipping description with two or more required elements missing or incorrect:.	172.202.	
a. such that the material is misdescribed		$3,000.
b. such that the material is misclassified		$6,000.
13. Failure to include the total quantity of hazardous material covered by a shipping description.	172.202(c)	$500.
14. Failure to list an exemption number in association with the shipping description.	172.203(a)	$800.
15. Failure to indicate ''Limited Quantity'' or ''Ltd Qty'' following the basic shipping description of a material offered for transportation as a limited quantity.	172.203(b)	$500.
16. Failure to include ''RQ'' in the shipping description to identify a material that is a hazardous substance.	172.203(c)(2)	$500.
17. Failure to include a required technical name in parenthesis for a listed generic or ''n.o.s.'' material.	172.203(k)	$1,000.
18. Failure to include the required shipper's certification on a shipping paper.	172.204	$1,000.
19. Failure to sign the required shipper's certification on a shipping paper.	172.204	$800.
C. Emergency Response Information Requirements:		
1. Providing or listing incorrect emergency response information with or on a shipping paper.	172.602.	
a. No significant difference in response		$800.
b. Significant difference in response		$3,000 to $6,000.
2. Failure to include an emergency response telephone number on a shipping paper.	172.604	$2,600.
3. Failure to have the emergency response telephone number monitored while a hazardous material is in transportation or listing multiple telephone numbers (without specifying the times for each) that are not monitored 24 hours a day.	172.604	$1,300.
4. Listing an unauthorized emergency response telephone number on a shipping paper.	172.604	$2,600 to $4,200.
5. Listing an incorrect or non-working emergency response telephone number on a shipping paper.	172.604	$1,300.
6. Failure to provide required technical information when the listed emergency response telephone number is contacted.	172.604	$1,300.
D. Package Marking Requirements:		
1. Failure to mark the proper shipping name on a package or marking an incorrect shipping name on a package.	172.301(a)	$800 to $1,600.
2. Failure to mark the identification number on a package.	172.301(a)	$1,000 to $2,000.

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
3. Marking a package with an incorrect identification number.	172.301(a).	
a. that does not change the response information		$800.
b. that changes the response information		$3,000 to $6,000.
4. Failure to mark the proper shipping name and identification number on a package.	172.301(a)	$3,000 to $6,000.
5. Marking a package with an incorrect shipping name and identification number.	172.301(a).	
a. that does not change the response information		$1,500 to $3,000.
b. that changes the response information		$3,000 to $6,000.
6. Failure to include the required technical name(s) in parenthesis for a listed generic or ''n.o.s.'' entry.	172.301(c)	$1,000.
7. Marking a package as containing hazardous material when it contains no hazardous material.	172.303(a)	$800.
8. Failure to locate required markings away from other markings that could reduce their effectiveness.	172.303(a)(4)	$800.
9. Failure to mark a package containing liquid hazardous materials with required orientation marking.	172.312	$2,500 to $3,500.
10. Failure to mark ''RQ'' on a non-bulk package containing a hazardous substance.	172.324(b)	$500.
E. Package Labeling Requirements:		
1. Failure to label a package	172.400	$5,000.
2. Placing a label that represents a hazard other than the hazard presented by the hazardous material in the package.	172.400	$5,000.
3. Placing a label on a package that does not contain a hazardous material.	172.401(a)	$800.
4. Failure to place a required subsidiary label on a package.	172.402	$500 to $2,500.
5. Placing a label on a different surface of the package than, or away from, the proper shipping name.	172.406(a)	$800.
6. Placing an improper size label on a package	172.407(c)	$800.
7. Placing a label on a package that does not meet color specification requirements (depending on the variance).	172.407(d)	$600 to $2,500.
8. Failure to provide an appropriate class or division number on a label.	172.411	$2,500.
F. Placarding Requirements:		
Failure to properly placard a freight container or vehicle containing hazardous materials:.	172.504.	
a. when Table 1 is applicable		$1,000 to $9,000.
b. when Table 2 is applicable		$800 to $7,200.
G. Packaging Requirements:		
1. Offering a hazardous material for transportation in an unauthorized non-UN standard or nonspecification packaging (includes failure to comply with the terms of an exemption authorizing use of a nonstandard or nonspecification packaging).	Various.	
a. Packing Group I (and § 172.504 Table I materials).		$9,000.
b. Packing Group II		$7,000.
c. Packing Group III		$5,000.
2. Offering a hazardous material for transportation in a self-certified packaging that has not been subjected to design qualification testing:.	178.601 & Various.	
a. Packing Group I (and § 172.504 Table I materials).		$10,800.
b. Packing Group II		$8,400.
c. Packing Group III		$6,000.
3. Offering a hazardous material for transportation in a packaging that has been successfully tested to an applicable UN standard but is not marked with the required UN marking.	178.503(a)	$3,600.
4. Failure to close a UN standard packaging in accordance with the closure instructions.	173.22(a)(4)	$2,500.
5. Offering a hazardous material for transportation in a packaging that leaks during conditions normally incident to transportation:	173.24(b).	
a. Packing Group I (and § 172.504 Table I materials).		$12,000.
b. Packing Group II		$9,000.
c. Packing Group III		$6,000.

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
6. Overfilling or underfilling a package so that the effectiveness is substantially reduced:	173.24(b).	
a. Packing Group I (and § 172.504 Table I materials).		$9,000.
b. Packing Group II		$6,000.
c. Packing Group III		$3,000.
7. Offering a hazardous material for transportation after October 1, 1996, in a unauthorized non-UN standard packaging marked as manufactured to a DOT specification:	171.14.	
a. packaging meets DOT specification		$3,000.
b. packaging does not meet DOT specification		$5,000 to $9,000.
8. Failure to mark an overpack with a statement that the inside packages comply with prescribed specifications or standards when specification or standard packaging is required.	173.25(a)(4)	$3,000.
9. Filling an IBC or a portable tank (DOT, UN, or IM) that is out of test and offering hazardous materials for transportation in that IBC or portable tank.	173.32(a), 180.352, 180.605.	
a. All testing overdue		$3,500 to $7,000.
b. Only periodic (5 year) test overdue		$3,500.
c. Only intermediate periodic (2.5 year) tests overdue.		$3,500.
10. Failure to provide the required outage in a portable tank that results in a release of hazardous materials.	173.32(f)(6)	$6,000 to $12,000.
Offeror Requirements—Specific hazardous materials		
A. Cigarette Lighters:		
Offering for transportation an unapproved cigarette lighter, lighter refill, or similar device, equipped with an ignition element and containing fuel.	173.21(i)	$7,500.
B. Class 1—Explosives:		
1. Failure to mark the package with the EX number for each substance contained in the package or, alternatively, indicate the EX number for each substance in association with the description on the shipping description.	172.320	$1,200.
2. Offering an unapproved explosive for transportation:		173.54,
a. Div. 1.3 and 1.4 fireworks meeting the chemistry requirements (quantity and type) of APA Standard 87–1.	173.56(b)	$5,000 to $10,000.
b. All other explosives (including forbidden)		$10,000 and up.
3. Offering a leaking or damaged package of explosives for transportation.	173.54(c)	$10,000 and up.
4. Packaging explosives in the same outer packaging with other materials.	173.61	$2,500 to $5,000.
C. Class 7—Radioactive Materials:		
1. Failure to include required additional entries, or providing incorrect information for these additional entries.	172.203(d)	$1,000 to $3,000.
2. Failure to mark the gross mass on the outside of a package of Class 7 material that exceeds 110 pounds.	172.310(a)	$800.
3. Failure to mark each package in letters at least 13 mm (½inch) high with the words ''Type A'' or ''Type B'' as appropriate.	172.310(b)	$800.
4. Placing a label on Class 7 material that understates the proper label category.	172.403	$5,000.
5. Placing a label on Class 7 material that fails to contain (or has erroneous) entries for the name of the radionuclide(s), activity, and transport index.	172.403(g)	$2,000 to $4,000.
6. Failure to meet one or more of the general design requirements for a package used to ship a Class 7 material.	173.410	$5,000.
7. Failure to comply with the industrial packaging (IP) requirements when offering a Class 7 material for transportation.	173.411	$5,000.
8. Failure to provide a tamper-indicating device on a Type A package used to ship a Class 7 material.	173.412(a)	$2,000.
9. Failure to meet the additional design requirements of a Type A package used to ship a Class 7 material.	173.412(b)–(i)	$5,000.

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
10. Failure to meet the performance requirements for a Type A package used to ship a Class 7 material..	173.412(j)–(l)	$8,400.
11. Offering a DOT specification 7A packaging without maintaining complete documentation of tests and an engineering evaluation or comparative data:	173.415(a), 173.461	
a. Tests and evaluation not performed		$8,400.
b. Complete records not maintained		$2,000 to $5,000.
12. Offering any Type B, Type B(U), Type B(M) packaging that failed to meet the approved DOT, NRC or DOE design, as applicable.	173.416	$9,000.
13. Offering a Type B packaging without holding a valid NRC approval certificate:	173.471(a).	
a. Never having obtained one		$3,000.
b. Holding an expired certificate		$1,000.
14. Failure to meet one or more of the special requirements for a package used to ship uranium hexafluoride.	173.420	$10,800.
15. Offering Class 7 material for transportation as a limited quantity without meeting the requirements for limited quantity.	173.421(a)	$4,000.
16. Offering a multiple-hazard limited quantity Class 7 material without addressing the additional hazard.	173.423(a)	$500 to $2,500.
17. Offering Class 7 low specific activity (LSA) materials or surface contaminated objects (SCO) with an external dose rate that exceeds an external radiation level of 1 rem/hr at 3 meters from the unshielded material.	173.427(a)(1)	$6,000.
18. Offering Class 7 LSA materials or SCO as exclusive use without providing specific instructions to the carrier for maintenance of exclusive use shipment controls.	173.427(a)(6)	$1,000.
19. Offering in excess of Type A quantity of a Class 7 material in a Type A packaging.	173.431	$12,000.
20. Offering a package that exceeds the permitted limits for surface radiation or transport index.	173.441	$10,000 and up.
21. Offering a package without determining the level of removable external contamination, or that exceeds the limit for removable external contamination.	173.443	$5,000 and up.
22. Storing packages of radioactive material in a group with a total transport index more than 50.	173.447(a)	$5,000 and up.
23. Offering for transportation or transporting aboard a passenger aircraft any single package or overpack of Class 7 material with a transport index greater than 3.0.	173.448(e)	$5,000 and up.
24. Exporting a Type B, Type B(U), Type B(M), or fissile package without obtaining a U.S. Competent Authority Certificate or, after obtaining a U.S. Competent Authority Certificate, failing to submit a copy to the national competent authority of each country into or through which the package is transported.	173.471(d)	$3,000.
25. Offering special form radioactive materials without maintaining a complete safety analysis or Certificate of Competent Authority.	173.476(a), (b)	$2,500.
D. Class 2—Compressed Gases in Cylinders:		
1. Filling and offering a cylinder with compressed gas when the cylinder is out of test.	173.301(a)(6)	$4,200 to $10,400.
2. Failure to check each day the pressure of a cylinder charged with acetylene that is representative of that day's compression, after the cylinder has cooled to a settled temperature, or failure to keep a record of this test for 30 days.	173.303(d)	$5,000.
3. Offering a limited quantity of a compressed gas in a metal container for the purpose of propelling a nonpoisonous material and failure to heat the cylinder until the pressure is equivalent to the equilibrium pressure at 130°F, without evidence of leakage, distortion, or other defect.	173.306(a)(3), (h)	$1,500 to $6,000.
Manufacturing, Reconditioning, Retesting Requirements		
A. Third-Party Packaging Certifiers (General):		

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
Issuing a certification that directs the packaging manufacturer to improperly mark a packaging (e.g., steel drum to be marked UN 4G).	171.2(e), 178.2(b), 178.3(a), 178.503(a).	$500 per item.
B. Packaging Manufacturers (General):		
1. Failure of a manufacturer or distributor to notify each person to whom the packaging is transferred of all the requirements not met at the time of transfer, including closure instructions.	178.2(c)	$2,500.
2. Failure to insure a packaging certified as meeting the UN standard is capable of passing the required performance testing.	178.601(b).	
a. Packing Group I (and § 172.504 Table 1 materials).		$10,800.
b. Packing Group II		$8,400.
c. Packing Group III		$6,000.
3. Certifying a packaging as meeting a UN standard when design qualification testing was not performed.	178.601(d).	
a. Packing Group I (and § 172.504 table 1 materials).		$10,800.
b. Packing Group II		$8,400.
c. Packing Group III		$6,000.
4. Failure to conduct periodic retesting on UN standard packaging (depending on length of time and Packing Group).	178.601(e)	$2,000 to $10,800.
5. Failure to properly conduct testing for UN standard packaging (*e.g.*, testing with less weight than marked on packaging; drop testing from lesser height than required; failing to condition fiberboard boxes before design test):.		
a. Design qualification testing	178.601(d)	$2,000 to $10,800.
b. Periodic retesting	178.601(e)	$500 to $10,800.
6. Marking, or causing the marking of, a packaging with the symbol of a manufacturer or packaging certifier other than the company that actually manufactured or certified the packaging.	178.2(b), 178.3(a), 178.503(a)(8)	$7,200.
7. Failure to maintain testing records	178.601(l).	
a. Design qualification testing		$1,000 to $5,000.
b. Periodic retesting		$500 to $2,000.
8. Improper marking of UN certification	178.503	$500 per item.
9. Manufacturing DOT specification packaging after October 1, 1994 that is not marked as meeting a UN performance standard.	171.14.	
a. If packaging does meet DOT specification		$3,000.
b. If packaging does not meet DOT specification		$6,000 to $10,800.
C. Drum Manufacturers & Reconditioners:		
1. Failure to properly conduct production leakproofness test on a new or reconditioned drum.	178.604(b), (d), 173.28(b)(2)(i).	
a. Improper testing		$2,000.
b. No testing performed		$3,000 to $5,000.
2. Marking an incorrect registration number on a reconditioned drum.	173.28(b)(2)(ii).	
a. Incorrect number		$800.
b. Unauthorized use of another reconditioner's number.		$7,200.
3. Representing, marking, or certifying a drum as a reconditioned UN standard packaging when the drum does not meet a UN standard.	173.28(c), (d)	$6,000 to $10,800.
4. Representing, marking, or certifying a drum as altered from one UN standard to another, when the drum has not actually been altered.	173.28(d)	$500.
D. IBC and Portable Tank Requalification:		
1. Failure to properly mark an IBC or portable tank with the most current retest and/or inspection information.	180.352(e), 178.703(b), 180.605(k)	$500 per item.
2. Failure to keep complete and accurate records of IBC or portable tank retest and reinspection.	180.352(f), 180.605(l).	
a. No records kept		$4,000.
b. Incomplete or inaccurate records		$1,000 to $3,000.
3. Failure to make reinspection and retest records available to a DOT representative upon request.	180.352(f), 49 U.S.C. 5121(b)(2)	$1,000.
E. Cylinder Manufacturers & Rebuilders:		

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
1. Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency.	Various	$7,500 to $15,000.
2. Failure to have a registration number or failure to mark the registration number on the cylinder.	Various	$800.
3. Marking another company's number on a cylinder	Various	$7,200.
4. Failure to mark the date of manufacture or lot number on a DOT–39 cylinder.	178.65(i)	$3,000.
5. Failure to have a chemical analysis performed in the U.S. for a material manufactured outside the U.S./failure to obtain a chemical analysis from the foreign manufacturer.	Various	$5,000.
6. Failure to meet wall thickness requirements	Various	$7,500 to $15,000.
7. Failure to heat treat cylinders prior to testing	Various	$5,000 to $15,000.
8. Failure to conduct a complete visual internal examination.	Various	$2,500 to $6,200.
9. Failure to conduct a hydrostatic test, or conducting a hydrostatic test with inaccurate test equipment.	Various	$2,500 to $6,200.
10. Failure to conduct a flattening test	Various	$7,500 to $15,000.
11. Failure to conduct a burst test on a DOT–39 cylinder	178.65(f)(2)	$5,000 to $15,000.
12. Failure to have inspections and verifications performed by an inspector.	Various	$7,500 to $15,000.
13. Failure to maintain required inspector's reports	Various.	
a. No reports at all		$5,000.
b. Incomplete or inaccurate reports		$1,000 to $4,000.
14. Representing a DOT–4 series cylinder as repaired or rebuilt to the requirements of the HMR without being authorized by the Associate Administrator.	180.211(a)	$6,000 to $10,800.
F. Cylinder Requalification:		
1. Failure to remark as DOT 3AL an aluminum cylinder manufactured under a former exemption.	173.23(c)	$800.
2. Certifying or marking as retested a nonspecification cylinder.	180.205(a)	$800.
3. Failure to have retester's identification number (RIN)	180.205(b)	$4,000.
4. Failure to have current authority due to failure to renew a retester's identification number (RIN).	180.205(b)	$2,000.
5. Failure to have a retester's identification number and marking another RIN on a cylinder.	180.205(b)	$7,200.
6. Marking a RIN before successfully completing a hydrostatic retest.	180.205(b)	$800.
7. Representing, marking, or certifying a cylinder as meeting the requirements of an exemption when the cylinder was not maintained or retested in accordance with the exemption.	171.2(c), (e), 178.205(c), Applicable Exemption.	$2,000 to $6,000.
8. Failure to conduct a complete visual external and internal examination.	180.205(f)	$2,100 to $5,200.
9. Failure to conduct visual inspection or hydrostatic retest.	180.205(f) & (g)	$4,200 to $10,400.
10. Performing hydrostatic retesting without confirming the accuracy of the test equipment.	180.205(g)(3)	$2,100 to $5,200.
11. Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion.	180.205(g)(5)	$3,100.
12. Failure to perform a second retest, after equipment failure, at a pressure increased by the greater of 10% or 100 psi (includes exceeding 90% of test pressure prior to conducting a retest).	180.205(g)(5)	$3,100.
13. Failure to condemn a cylinder when required (*e.g.*, permanent expansion of 10% [5% for certain exemption cylinders], internal or external corrosion, denting, bulging, evidence of rough usage).	180.205(i)	$6,000 to $10,800.
14. Failure to properly mark a condemned cylinder or render it incapable of holding pressure.	180.205(i)(2)	$800.
15. Failure to notify the cylinder owner in writing when a cylinder has been condemned.	180.205(i)(2)	$1,000.
16. Failure to perform hydrostatic retesting at the minimum specified test pressure.	180.209(a)(1)	$2,100 to $5,200.
17. Marking a star on a cylinder that does not qualify for that mark.	180.209(b)	$2,000 to $4,000.

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
18. Marking a ''+'' sign on a cylinder without determining the average or minimum wall stress by calculation or reference to CGA Pamphlet C–5.	173.302a(b)	$2,000 to $4,000.
19. Marking a cylinder in or on the sidewall when not permitted by the applicable specification.	180.213(b)	$6,000 to $10,800.
20. Failure to maintain legible markings on a cylinder	180.213(b)(1)	$800.
21. Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp.	180.213(c)(2)	$6,000 to $10,800.
22. Improper marking of the RIN or retest date on a cylinder.	180.213(d)	$800.
23. Marking an FRP cylinder with steel stamps in the FRP area of the cylinder such that the integrity of the cylinder is compromised.	Applicable Exemption	$6,000 to $10,800.
24. Failure to maintain current copies of 49 CFR, DOT exemptions, and CGA Pamphlets applicable to inspection, retesting, and marking activities.	180.215(a)	$600 to $1,200.
25. Failure to keep complete and accurate records of cylinder reinspection and retest.	180.215(b).	
a. No records kept		$4,000.
b. Incomplete or inaccurate records		$1,000 to $3,000.
26. Failure to report in writing a change in name, address, ownership, test equipment, management, or retester personnel.	171.2(c) & (e), Approval Letter	$600 to $1,200.
Carrier Requirements		
A. Incident Notification:		
1. Failure to give immediate notification of a reportable hazardous materials incident.	171.15	$3,000.
2. Failure to file a written hazardous material incident report within 30 days following an unintentional release of hazardous materials in transportation (or other reportable incident).	171.16	$500 to $2,500.
B. Shipping Papers:		
Failure to retain shipping papers for 375 days after a hazardous material (or 3 years for a hazardous waste) is accepted by the initial carrier.	174.24(b), 175.30(a)(2), 176.24(b), 177.817(f).	$1,000.
C. Stowage/transportation Requirements:		
1. Transporting packages of hazardous material that have not been secured against movement.	Various	$3,000.
2. Failure to properly segregate hazardous materials	Various	$7,500 and up.
3. Transporting explosives in a motor vehicle containing metal or other articles or materials likely to damage the explosives or any package in which they are contained, without segregating in different parts of the load or securing them in place in or on the motor vehicle and separated by bulkheads or other suitable means to prevent damage.	177.835(i)	$5,200.
4. Transporting railway track torpedoes outside of flagging kits, in violation of DOT–E 7991.	171.2(b) & (e)	$7,000.
5. Transporting Class 7 (radioactive) material having a total transport index greater than 50.	177.842(a)	$5,000 and up.
6. Transporting Class 7 (radioactive) material without maintaining the required separation distance.	177.842(b)	$5,000 and up.
7. Failure to comply with requirements of an exemption authorizing the transportation of Class 7 (radioactive) material having a total transportation index of 50.	171.2(b) & (e).	
a. Failure to have the required radiation survey record.		$5,000.
b. Failure to have other required documents		$500 each.
c. Other violations		$5,000 and up.

■ 15. In part IV of appendix A to subpart D of part 107, under Section IV.C. (''Penalty Increases for Multiple Counts''), the words in the first sentence ''up to $25,000 ($27,500 for a violation occurring after January 21, 1997)'' are revised to read: ''up to $32,500 ($27,500 for a violation occurring after January 21, 1997, and before October 1, 2003).''

■ 16. In part IV of appendix A to subpart D of part 107, the text to Section IV.E. entitled ''Penalty Increases for Prior Violations'' is revised to read as follows:

The baseline penalty presumes an absence of prior violations. If prior violations exist, generally they will serve to increase a proposed penalty.

The general standards for increasing a baseline proposed penalty on the basis of prior violations are as follows:

1. For each prior civil or criminal enforcement case—25% increase over the pre-mitigation recommended penalty.

2. For each prior ticket—10% increase over the pre-mitigation recommended penalty.

3. A baseline proposed penalty will not be increased more than 100% on the basis of prior violations.

4. A case or ticket of prior violations initiated in a calendar year more than six years before the calendar year in which the current case is initiated normally will not be considered in determining a proposed penalty for the current violation(s).

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 17. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

§ 171.1 [Amended]

■ 18. In § 171.1, in paragraph (c), the words ''$25,000 ($27,500 for a violation that occurs after January 21, 1997) and not less than $250 for each violation.'' in the first sentence are revised to read: ''$32,500 and not less than $275 for each violation. (For a violation that occurred after January 21, 1997, and before October 1, 2003, the maximum and minimum civil penalties are $27,500 and $250, respectively.)''

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Issued in Washington, DC on August 25, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 090203A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA is 20,421 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003)

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 19,400 mt, and is setting aside the remaining 1,021 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22781 Filed 9–3–03; 3:25 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 173
Monday, September 8, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–03–301]

RIN 0581–AB63

Revision of Fees for the Fresh Fruit and Vegetable Terminal Market Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing by approximately 15 percent certain fees charged for the inspection of these products at destination markets. The fees for inspecting multiple lots of the same product during inspections will be increased from $14.00 to $45.00, and the per package fees for dock-side inspections will be changed from a three interval schedule, based on weight, to a two interval schedule based on different weight thresholds. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946 (AMA of 1946). The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937 and for imported peanuts under section 1308 of the Farm Security and Rural Investigation Act of 2002.

DATES: Comments must be postmarked, courier dated, or sent via the internet on or before October 8, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments are to be sent to the U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Programs, Fresh Products Branch, 1400 Independence Ave., SW., Room 2049–S, Washington, DC 20250–0240, faxed to (202) 720–5136, or sent via email to *FPB.DocketClerk@usda.gov.* Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rita Bibbs-Booth, USDA, 1400 Independence Ave., SW., Room 2049–S, Washington, DC 20250–0240, or call (202) 720–0391.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be ''non-significant'' for the purposes of Executive Order 12866, and has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The proposed action described herein is being taken for several reasons, including that additional user fee revenues are needed to cover the costs of: (1) Providing current program operations and services; (2) improving the timeliness with which inspection services are provided; and (3) improving the work environment.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The Fresh Products Branch (FPB) has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. However, even with these efforts, FPB's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for FPB's destination market inspection work during FY–03 are $12.0 million with costs projected at $18.3 million and an end-of-year reserve of $14.8 million. However, this reserve balance is due to appropriated funding received in October 2001, for infrastructure, workplace, and technological improvements. FPB's costs of operating the destination market program are expected to increase to approximately $18.9 million during FY–04 and to approximately $19.4 million during FY–05. The current fee structure with the infusion of the appropriated funding is expected to fund the terminal market inspection services until FY–2006, when FPB will fall below the Agency's mandated four-month reserve level.

This proposed fee increase should result in an estimated $1.8 million in additional revenues per year (effective in FY 04, if the fees are implemented by October 1, 2003). This will not cover all of FPB's costs. FPB will need to continue to increase fees bi-yearly in order to cover the program's operating cost and maintain the required reserve balance. FPB believes that increasing fees incrementally is appropriate at this time. Additional fee increases beyond FY–2004 will be needed to sustain the program in the future.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 4.02 to 4.87 percent depending on locality, effective January 2003, has significantly increased program costs. This salary adjustment will increase FPB's costs by over $700,000 per year. Increases in health and life insurance premiums, along with workers compensation will also increase program costs. Since FPB's last fee increase, many employees have converted to or were hired under the Federal Employees Retirement System (FERS), which has also contributed to the increase in program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by over $600,000 per year.

Additional funds of approximately $155,000 are necessary in order for FPB to continue to cover the costs associated with additional staff and to maintain office space and equipment. Additional revenues are also necessary to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began in 2001, developing (with appropriated funds) an automated system recently named the Fresh Electronic Inspection Reporting/Resource System (FEIRS) to replace its manual paper and pen

inspection reporting process. Approximately $200,000 in additional funds are needed to complete the development and deployment of FEIRS, and it will take approximately $10,000 per month to maintain the system. This system has been put in place to enhance FPB's fruit and vegetable inspection processes.

This proposed rule should increase user fee revenue generated under the destination market program by approximately $1.8 million or 15 percent. While most of the fees will increase by approximately 15 percent, the fee for inspections of multiple lots of the same product during inspections, commonly referred to as ''sublots,'' would be increased from $14 to $45 because FPB's current fee does not nearly cover the costs of performing these inspections (between 30 to 35 percent of the destination market inspections conducted by FPB involve sublots). In addition, the per package rates for dock-side inspections would be increased and changed from a three interval schedule (based on package weight) to a two interval schedule (based on different weight thresholds). The two interval schedule would be simpler to administer and more appropriate given current packaging trends. This action is authorized under the Agricultural Marketing Act of 1946 (AMA of 1946) (See 7 U.S.C. 1622(h)), which provides that the Secretary of Agriculture may assess and collect ''such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *'' There are more than 2,000 users of FPB's destination market grading services (including applicants who must meet import requirements [1]—inspections which amount to under 2.5 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). There would be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this proposed rule. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 51 have been approved previously by OMB and assigned OMB No. 0581–0125. FPB has not identified any other Federal rules which may duplicate, overlap or conflict with this proposed rule.

The destination market grading services are voluntary (except when required for imported commodities) and the fees charged to users of these services vary with usage. However, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is not excessive and should not significantly affect these entities. Finally, except for those persons who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Proposed Action

The AMA of 1946 authorizes official inspection, grading, and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA of 1946 provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This proposed rule would amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

The Agricultural Marketing Service (AMS) regularly reviews its user-fee programs to determine if the fees are adequate. While the Fresh Products Branch (FPB) of the Fruit and Vegetable Programs, AMS, continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for destination market inspection work during FY–03 are $12.0 million with costs projected at $18.3 million and an end-of-year reserve of $14.8 million. However, this reserve balance is due to appropriated funding received from Congress in October of 2001. These funds were established to build up the terminal market inspection reserve fund and for infrastructure improvements including development and maintenance of the inspector training center, workplace and technological improvements, including digital imaging and automation of the inspection process. However, by FY–07, without increasing fees, FPB's trust fund balance for this program will be below the agency mandated four-months of operating reserve (approximately $4.6 million) deemed necessary to provide an adequate reserve balance in light of increasing program costs. Further, FPB's costs of operating the destination market program are expected to increase to approximately $18.9 million during FY–04 and to approximately $19.4 million during FY 05. These cost increases (which are outlined below) will result from inflationary increases with regard to current FPB operations and services (primarily salaries and benefits), increased inspection demands, and the acquisition and maintenance of computer technology (*i.e.,* FEIRS).

This proposed rule should increase user fee revenue generated under the destination market program by approximately $1.8 million or 15 percent per year. While most of the fees will increase by approximately 15 percent, the fee for inspections of multiple lots of the same product during inspections, commonly referred to as ''sublots,'' would be increased from $14 to $45 because FPB's current fee does not nearly cover the costs of performing these inspections (between 30 to 35 percent of the destination market inspections conducted by FPB involve sublots). In addition, the per package rates for dock-side inspections would be increased and changed from a three interval schedule (based on package weight) to a two interval schedule (based on different weight thresholds). The two interval schedule would be simpler to administer and more appropriate given current packaging trends.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees,

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply during those periods when domestic marketing order regulations are in effect. Section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), 7 U.S.C. 7958, required USDA among other things to develop new peanut quality and handling standards for imported peanuts marketed in the United States.

Currently, there are 14 commodities subject to 8e import regulations: avocados, dates (other than dates for processing), filberts, grapefruit, kiwifruit, olives (other than Spanish-style green olives), onions, oranges, potatoes, prunes, raisins, table grapes, tomatoes and walnuts. A current listing of the regulated commodities can be found under 7 CFR Parts 944, 980, 996, and 999.

ranging from 4.02 to 4.87 percent depending on locality, effective January 2003, has significantly increased program costs. This salary adjustment will increase FPB's costs by over $700,000 per year. Increases in health and life insurance premiums, along with workers compensation will also increase program costs. Since FPB's last fee increase, many employees have converted to or were hired under the Federal Employees Retirement System (FERS), which has also contributed to the increase in program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by over $600,000 per year.

Additional revenues (approximately $155,000) are necessary in order for FPB to continue to cover the costs associated with additional staff and to maintain office space and equipment. Additional revenues are also necessary to continue to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began in 2001, developing (with appropriated funds) an automated system recently named the Fresh Electronic Inspection Reporting/ Resource System (FEIRS) to replace its manual paper and pen inspection reporting process. Approximately $200,000 in additional revenue is needed to complete the development and deployment of FEIRS, and it will take approximately $10,000 per month to maintain the system. This system has been put in place to enhance FPB's fruit and vegetable inspection processes.

Based on the aforementioned analysis of this program's increasing costs, AMS proposes to increase the fees for destination market inspection services. The following table compares current fees and charges with the proposed fees and charges for fresh fruit and vegetable inspection as found in 7 CFR 51.38. This table also reflects the change to the per package fees for dock-side inspections that are currently on a three interval schedule based on weight, to a two interval schedule based on different weight thresholds. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 51.38 are:

Service	Current	Proposed
Quality and condition inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$86.00	$99.00
—Half carlot equivalent or less of each product	$72.00	$83.00
—For each additional lot of the same product*	$14.00	$45.00
Condition only inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$72.00	$83.00
—Half carlot equivalent or less of each product	$66.00	$76.00
—For each additional lot of the same product*	$14.00	$45.00
Quality and condition and condition only inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
—For each product	$43.00	$45.00
—For each additional lot of any of the same product*	$14.00	$45.00
—Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot.		
Dock side inspections of an individual product unloaded directly from the same ship:		
—For each package weighing less than 15 pounds	1.1 cent	N/A
—For each package weighing less than 30 pounds (previously 15–29 pounds)	2.2 cents	2.5 cents
—For each package weighing 30 or more pounds	3.3 cents	3.8 cents
—Minimum charge per individual product	$86.00	$99.00
—Minimum charge for each additional lot of the same product	$14.00	$45.00
Hourly rate for inspections performed for other purposes during the grader's regularly scheduled work week	$43.00	$49.00
—Hourly rate for other work performed during the graders regular scheduled work week will be charged at a reasonable rate.		
Overtime or holiday premium rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week.	$21.50	$25.00
Hourly rate for inspections performed under 40 hour contracts during the grader's regularly scheduled work week*.	$40.00	$49.00
Rate for billable mileage	$1.00	$1.00

A thirty day comment period is provided for interested persons to comment on this proposed action. Thirty days is deemed appropriate because it is preferable to have any fee increase, if adopted, to be in place as close as possible to the beginning of the fiscal year, October, 1, 2003.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) Quality and condition inspections of products in quantities of 51 or more packages and unloaded from the same land or air conveyance:

(i) $99 for over a half carlot equivalent of an individual product;

(ii) $83 for a half carlot equivalent or less of an individual product;

(iii) $45 for each additional lot of the same product.

(2) Condition only inspection of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:

(i) $83 for over a half carlot equivalent of an individual product;

(ii) $76 for a half carlot equivalent or less of an individual product;

(iii) $45 for each additional lot of the same product.

(3) For quality and condition inspection and condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $45 for each individual product;

(ii) $45 for each additional lot of any of the same product. Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) Dock side inspections of an individual product unloaded directly from the same ship:

(i) 2.5 cents per package weighing less than 30 pounds;

(ii) 3.8 cents per package weighing 30 or more pounds;

(iii) Minimum charge of $99 per individual product;

(iv) Minimum charge of $45 for each additional lot of the same product.

(2) [Reserved]

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dock-side, the carlot fees in paragraph (a) of this section shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in paragraphs (a) through (c) of this section, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $49 an hour: *Provided,* That:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections;

(3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee;

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $25.00 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: September 2, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22682 Filed 9–5–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 991

[Docket No. AO–F&V–991–A3; FV03–991–01]

Hops Produced in Washington, Oregon, Idaho and California; Notice of Rescheduling of Hearing on Proposed Marketing Agreement and Order No. 991 and Additional Proposal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of rescheduling of public hearing on proposed marketing agreement and order.

SUMMARY: Notice is hereby given of a rescheduling of a public hearing to consider a proposed marketing agreement and order under the Agricultural Marketing Agreement Act of 1937 to cover hops grown in Washington, Oregon, Idaho and California. The hearing was originally scheduled to begin August 14, 2003, and a notice of hearing was announced in the **Federal Register** on Monday, July 28, 2003, at 68 FR 44244. A notice of postponement of the public hearing was announced in the **Federal Register** on Thursday, August 14, 2003, at 68 FR 48575.

DATES: The hearing will be held on October 15 and 16 in Portland, Oregon, and continue, if necessary, on October 17 in Portland, Oregon. The hearing will resume on October 20 and 21 in Yakima, Washington, and continue, if necessary, on October 22 through 24 in Yakima, Washington. The first day of the hearing will begin at 8:30 a.m. in Portland, Oregon and the first day of the hearing will begin at 8:30 a.m in Yakima, Washington.

ADDRESSES: The hearing locations are: October 15 and 16, 2003 (and October 17, if necessary)—Sheraton Portland Airport Hotel, 8235 NE Airport Way, Portland, Oregon 97220: October 20 and 21 (and October 22, 23, and 24, if necessary)—Doubletree Hotel Yakima Valley, 1507 N. First Street, Yakima, Washington 98901.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204; telephone (503) 326–2724 or Fax (503) 326–7440; or Kathleen M. Finn, 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.

SUPPLEMENTARY INFORMATION: The Notice of Hearing was published in the **Federal Register** on July 28, 2003 (68 FR 44244) and the proposals that will be considered at the hearing can be found there. In addition, the following proposal, which was submitted by John F. Annen prior to the deadline, will also be considered at the hearing:

Proposal submitted by John F. Annen, President, Annen Bros., Inc.

Proposal Number 10

Delete §§ 991.50 through 991.58 from the Hop Marketing Order Proponent Committee's proposal.

Authority: 7 U.S.C. 601–674.

Dated: September 3, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22754 Filed 9–5–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A72, et al.; DA–03–08]

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A72
1005	Appalachian	AO–388–A13
1006	Florida	AO–356–A36
1007	Southeast	AO–366–A42
1030	Upper Midwest	AO–361–A37
1032	Central	AO–313–A46
1033	Mideast	AO–166–A70
1124	Pacific Northwest	AO–368–A33
1126	Southwest	AO–231–A66
1131	Arizona-Las Vegas	AO–271–A38
1135	Western	AO–380–A20

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; notice of public hearing on proposed rulemaking.

SUMMARY: A hearing is being held to consider proposals to amend all 11 Federal milk marketing orders. The proposals would reclassify evaporated milk in consumer-type packages and sweetened condensed milk in consumer-type packages from Class III products to Class IV products. Another proposal would reclassify bulk ending inventory each month to the lower-priced class of Class III or Class IV. Proponents have requested that the proposals be handled on an emergency basis.

DATES: The hearing will convene at 8:30 a.m. on October 21, 2003.

ADDRESSES: The hearing will be held at the Holiday Inn and Suites Alexandria (Historic District), 625 First Street, Alexandria, Virginia 22314. Telephone Number: (703) 548–6300 or 1–877–732–3318.

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Room 2971-Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *Antoinette.Carter@usda.gov.*

Persons requiring a sign language interpreter or other special accommodations should contact Erik F. Rasmussen, Market Administrator, at (617) 737–7199; e-mail *maboston@fedmilk1.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Holiday Inn and Suites, Alexandria Historic District, beginning at 8:30 a.m., on Tuesday, October 21, 2003, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (6) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects

7 CFR Part 1000

Milk marketing orders; Reporting and recordkeeping requirements.

7 CFR Parts 1001 Through 1135

Milk marketing orders.

The authority citation for 7 CFR parts 1001 through 1135 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by O–AT–KA Milk Products Cooperative, Inc.:

Proposal No. 1

In § 1000.40, revise paragraph (c)(1)(iii) and paragraph (d)(1)(i), redesignate paragraph (d)(1)(ii) as paragraph (d)(1)(iii), and add new paragraph (d)(1)(ii) to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Sweetened condensed milk in a consumer-type package; and

* * * * *

(d) * * *

(1) * * *

(i) Butter, plastic cream, anhydrous milkfat, and butteroil;

(ii) Evaporated milk in a consumer-type package; and

(iii) Any milk product in dried form;

* * * * *

Proposed by Diehl, Inc., and Milnot Holding Corporation:

Proposal No. 2

In § 1000.40, remove paragraph (c)(1)(iii), revise paragraph (d)(1)(i), redesignate paragraph (d)(1)(ii) as paragraph (d)(1)(iii), and add new paragraph (d)(1)(ii) to read as follows:

§ 1000.40 Classes of Utilization.

* * * * *

(d) * * *

(1) * * *

(i) Butter, plastic cream, anhydrous milkfat, and butteroil;

(ii) Evaporated or sweetened condensed milk in a consumer-type package; and

(iii) Any milk product in dried form;

* * * * *

Proposed by New York State Dairy Foods, Inc.:

Proposal No. 3

In § 1000.40, paragraph (d)(2) is removed, paragraphs (d)(3) and (d)(4) are redesignated as paragraphs (d)(2) and (d)(3), and paragraph (e) is revised to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(e) Other uses shall include all skim milk and butterfat:

(1) In inventory at the end of the month of fluid milk products and fluid cream products in bulk form. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month.

(2) Used in any product described in this section that is dumped, used for animal feed, destroyed, or lost by a handler in a vehicular accident, flood, fire, or similar occurrence beyond the handler's control. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator.

Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 4

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to puA-90dvrchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;

Office of the Administrator, Agricultural Marketing Service;

Office of the General Counsel;

Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: September 2, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22683 Filed 9–5–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–119–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600 Series Airplanes, Model A300 B4–600R Series Airplanes, Model A300 C4–605R Variant F Airplanes, and Model A300 F4–605R 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 Airbus Model A300 B4–600 Series Airplanes, Model A300 B4–600R Series Airplanes, Model A300 C4–605R Variant F Airplanes, and Model A300 F4–605R Airplanes. This proposal would require modification of certain components of the 115 Volts Alternating Current (VAC) supply wiring and of the fuel gauging system. This action is necessary to prevent short circuits between 115 VAC wiring and certain fuel system electrical wire runs with subsequent overheating of the cadensicon sensor thermistor or fuel level sensor, which could be great enough to ignite fuel vapors in the fuel tank and cause an explosion. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–119–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–119–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 Airbus Industrie, 1 Rond Point Maurice

Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–119–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–119–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4–600 Series Airplanes, Model A300 B4–600R Series Airplanes, Model A300 C4–605R Variant F Airplanes, and Model A300 F4–605R Airplanes. The DGAC advises that review of the 115 Volts Alternating Current (VAC) supply wiring has shown unsatisfactory separation between power supply routes S and M. The DGAC also advises of the possibility of a short circuit between the 115 VAC electrical lines and the cadensicon electrical sensor circuits. If a short circuit occurs in these areas, significant overheating of the cadensicon sensor thermistor or of a fuel level sensor is possible. This condition, if not corrected, could result in ignition of fuel vapors in the fuel tank and an explosion.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–28–6066, dated November 8, 2000, which describes procedures to separate, by installing spacers and supports, electrical cable routes 2S and 2M where these cable are routed together on the leading edge of the right-hand wing at zone 623; and in the areas of track 4 and track 5, screwjack 3, rib 220, and rib 69. Airbus has also issued Airbus Service Bulletin A300–28–6070, Revision 1, dated March 22, 2002, which describes procedures for installing sleeves to separate electrical cable routes 2S and 2M in various places, *i.e.*, in the right-hand electronics rack 90VU, in the forward cargo compartment, between FR38.2 and FR39, under the cabin floor, between FR51 and FR52, in the main landing gear well and hydraulics compartment, and in the shroud box. Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified both service bulletins as mandatory and issued French airworthiness directives 2002–172(B), dated April 3, 2002, and 2002–171(B), dated April 3, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins 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.

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

The FAA estimates that 70 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 29 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $8,938 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $757,610, or $10,823 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.

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:

Airbus: Docket 2002–NM–119–AD.

Applicability: Model A300 B4–600 series airplanes, Model A300 B4–600R series airplanes, Model A300 C4–605R Variant F airplanes, and Model A300 F4–605R airplanes; as listed in Airbus Service Bulletin A300–28–6066, dated November 8, 2000; and Airbus Service Bulletin A300–28–6070, Revision 1, dated March 22, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent short circuits between 115 Volts Alternating Current (VAC) wiring and certain fuel system electrical wire runs with subsequent overheating of the cadensicon sensor thermistor or fuel level sensor, which could be great enough to ignite fuel vapors in the fuel tank and cause an explosion, accomplish the following:

Modification

(a) Within 4,000 flight hours after the effective date of this AD, modify elements of the electrical wiring to separate the cadensicon wiring from the 115 VAC wiring, in accordance with Airbus Service Bulletin A300–28–6066, dated November 8, 2000.

(b) Within 4,000 flight hours after the effective date of this AD, modify elements of the electrical wiring to separate the 115 VAC supply wiring of the fuel gauging system, in accordance with Airbus Service Bulletin A300–28–6070, Revision 1, dated March 22, 2002.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note: The subject of this AD is addressed in French airworthiness directives 2002–172(B) and 2002–171(B), both dated April 3, 2002.

Issued in Renton, Washington, on August 29, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22704 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–192–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes. That action would have required an inspection to detect arcing damage of the electrical cables leading to the terminal strips and surrounding structure in the wing areas inboard of the pylons 1 and 3 and the No. 2 engine; and corrective actions, if necessary. That action also would have required revising the cable connection stackup of the terminal strips on the wings and No. 2 engine. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data indicating that the identified unsafe condition specified in NPRM does not exist on the affected airplanes. Accordingly, the proposed rule is withdrawn.

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on February 20, 2001 (66 FR 10844). The proposed rule would have required an inspection to detect arcing damage of the electrical cables leading to the terminal strips and surrounding structure in the wing areas inboard of the pylons 1 and 3 and the No. 2 engine; and corrective actions, if necessary. The proposed rule also would have required revising the cable connection stackup of the terminal strips on the wings and No. 2 engine. That action was prompted by 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 series airplane. The proposed actions were intended to prevent arcing damage to the terminal strips and damage to the adjacent structure in the wing areas inboard of the pylons 1 and 3 and the No. 2 engine, which could result in a fire inboard of the pylons 1 and 3 or the No. 2 engine.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the results of an FAA analysis have revealed that there is a lack of materials and fuels in the vicinity of the terminal strips and

surrounding structure in the wing areas inboard of the pylons 1 and 3 and the No. 2 engine, and that a fire in that area is highly unlikely. The probable result is that a power feed arc in the pylon area would typically damage and pit the feeder line and, perhaps, damage and pit the terminal bracket at the chafing location. As the arc current level increases, the electrical power system differential fault protection would detect this condition and disconnect electrical loads supplied to that particular feeder. In addition, the flightcrew would be alerted to this condition, allowing the operator/owner to correct the problem at the next maintenance interval. On the basis of this analysis, we have determined that the potential arcing on the terminal strips in the wing areas inboard of the pylons 1 and 3 and the No. 2 engine does not constitute an unsafe condition.

FAA's Conclusions

Upon further consideration, we have determined that the identified unsafe condition does not exists on the affected airplanes. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2000–NM–192–AD, published in the **Federal Register** on February 20, 2001 (66 FR 10844), is withdrawn.

Issued in Renton, Washington, on August 29, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22707 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–336–AD]

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: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, that would have required operators to inspect the pitot-true air temperature (TAT) relays and the full authority digital engine control (FADEC) electronic interface resistor modules to detect contamination; perform corrective action if necessary; clean the relay/connector pins and sockets; modify the seal between the cockpit console panels and the storm window; and/or install a new protective frame (protective sheets) at the cockpit relay supports. This new action revises the applicability of the proposed rule to add airplanes. The actions specified by this new proposed AD are intended to detect and correct oxidation of the pitot-TAT relay, which could result in increased resistance and overheating of the relay and consequent smoke in the cockpit; and to detect and correct oxidation of the FADEC electronic interface resistor modules, which could result in in-flight uncommanded engine power roll back to idle. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–336–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–336–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 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.

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:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to

Docket Number 2002–NM–336–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–336–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 EMBRAER Model EMB–135 and –145 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 28, 2003 (68 FR 9607). That NPRM (the ''original NPRM'') would have required operators to inspect the pitot-true air temperature (TAT) relays and the full authority digital engine control (FADEC) electronic interface resistor modules to detect contamination; perform corrective action if necessary; clean the relay/connector pins and sockets; modify the seal between the cockpit console panels and the storm window; and/or install a new protective frame (protective sheets) at the cockpit relay supports. The original NPRM was prompted by reports of several occurrences of smoke in the cockpit during flight, due to oxidation in the pitot-true air temperature (TAT) #2 relay caused by water leakage from the storm window located above the relay console. That condition, if not corrected, could result in increased resistance and overheating of the relay and consequent smoke in the cockpit.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Support for the Original NPRM

The commenters generally support the intent of the original NPRM.

Request to Cite New Service Information

One commenter, the manufacturer, advises that it has revised one of the service bulletins cited in the original NPRM (EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001). Change 03, dated January 27, 2003, was issued to add airplanes to the effectivity. The commenter requests that the original NPRM be revised to cite Change 03 as the appropriate source of service information for the inspection, modification, and installation of pitot TAT relays.

The FAA agrees with the request. The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, classified Change 03 as mandatory and issued Brazilian airworthiness directive 2001–05–01R2, dated April 22, 2003, to ensure the airworthiness of these airplanes in Brazil. The FAA notes that the only difference between Change 02 and Change 03 is the effectivity; the procedures are the same in both versions of the service bulletin. The applicability and paragraphs (a), (c), and (d) have been revised in this supplemental NPRM to refer to Change 03 of the service bulletin and provide credit for actions done in accordance with Change 02.

Request To Revise Proposed Applicability

As a result of the revised effectivity in Service Bulletin 145–30–0032, Service Bulletins 145–30–0032 and 145–76–0003 have different effectivity listings. This same commenter requests that the applicability of the original NPRM be revised.

The FAA agrees. To adequately address the identified unsafe condition for the affected fleet, the applicability has been revised in this supplemental NPRM to include airplanes identified in EMBRAER Service Bulletin 145–30–0032, Change 03.

Request To Revise Airplanes Affected by Paragraph (b)

This same commenter requests that the airplanes identified in paragraph (b) of the original NPRM be reidentified to cite airplanes listed in EMBRAER Service Bulletin 145–76–0003, dated April 22, 2002.

The FAA agrees. This change will accurately identify the airplanes subject to the proposed module inspection requirement. Paragraph (b) has been revised accordingly in this supplemental NPRM.

Request To Follow Different Service Information

One commenter requests that paragraph (d) of the original NPRM be revised to also consider installation of new protective sheets to the relay supports as acceptable for compliance with that requirement if done in accordance with Part I of EMBRAER Service Bulletin 145–25–0211, Change 06, dated December 26, 2002.

The FAA agrees, finding that the procedures are the same in both references. Paragraph (d) has been revised accordingly in this supplemental NPRM.

Conclusion

Since certain changes described above expand the scope of the original NPRM, the FAA has 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 Supplemental NPRM

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. Because we have now included this material in part 39, we no longer need to include it in each individual AD. In this supplemental NPRM, Note 1 and paragraph (f) of the original NPRM have been removed, and paragraph (e) of the original NPRM has been revised to only identify the office authorized to approve AMOCs.

Revised Labor Rate

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

The FAA estimates that 365 airplanes of U.S. registry would be affected by this supplemental NPRM. The FAA provides the following cost estimates to accomplish the proposed actions:

Action	Work hours per airplane	Average hourly labor rate	Parts cost per airplane	Cost per airplane
Inspect the pitot-TAT relay	1	$65		$65

Action	Work hours per airplane	Average hourly labor rate	Parts cost per airplane	Cost per airplane
Inspect the FADEC resistor modules	2	65	.....	130
Seal the lateral console panels and install protective sheets	3	65	660	855

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 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:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2002–NM–336–AD.

Applicability: Model EMB–135 and EMB–145 series airplanes, certificated in any category; as listed in EMBRAER Service Bulletin 145–30–0032, Change 03, dated January 27, 2003.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct oxidation of the pitot-true air temperature (TAT) relay, which could result in increased resistance and overheating of the relay and consequent smoke in the cockpit; and to detect and correct oxidation of the full authority digital engine control (FADEC) electronic interface resistor modules, which could result in in-flight uncommanded engine power roll back to idle; accomplish the following:

Inspection and Cleaning of Pitot-TAT Relays

(a) For airplanes identified in paragraph 1.A.(1) (''PART I'') of EMBRAER Service Bulletin 145–30–0032, Change 03, dated January 27, 2003: Within 400 flight hours after the effective date of this AD, perform a detailed inspection to detect contamination of the pitot-TAT relays and clean the relay/connector pins and sockets, in accordance with the Accomplishment Instructions (''PART I'') of the service bulletin. If any contamination remains after cleaning: Prior to further flight, replace each contaminated relay, relay socket, and relay socket contact with a new part, in accordance with the service bulletin. Accomplishment of an inspection and applicable corrective actions is acceptable for compliance with the requirements of this paragraph if done before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001.

Note 1: 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.''

Inspection of FADEC Interface Resistor Modules

(b) For airplanes identified in EMBRAER Service Bulletin 145–76–0003, dated April 22, 2002: Within 400 flight hours after the effective date of this AD, perform a detailed inspection to detect contamination (including moisture and corrosion) of the left- and right-hand FADEC electronic interface resistor modules, in accordance with the Accomplishment Instructions of the service bulletin. Then do the applicable corrective actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) If any contamination is found during the inspection: Before further flight, clean the resistor modules and/or their respective electrical connector pins, in accordance with the service bulletin.

(2) If any contamination remains after cleaning the modules and pins as specified in paragraph (b)(1) of this AD: Before further flight, replace the modules and connectors with new parts, as applicable, in accordance with the service bulletin.

(3) Following accomplishment of any corrective action specified in paragraph (b)(1) or (b)(2) of this AD: Before further flight, perform the ohmic resistance test of the left- and right-hand FADEC electronic interface resistor modules, and accomplish applicable troubleshooting procedures, in accordance with the service bulletin.

Console Panel Sealing

(c) For airplanes identified in paragraph 1.A.(2) (''PART II'') of EMBRAER Service Bulletin 145–30–0032, Change 03, dated January 27, 2003: Before further flight following accomplishment of the requirements of paragraph (a) of this AD, modify the seal between the cockpit console panels and the storm window by applying PVC foam adhesive tape and sealant, in accordance with the Accomplishment Instructions (''PART II'') of the service bulletin. Accomplishment of the modification before the effective date of this AD is acceptable for compliance with the requirements of this paragraph if done in accordance with EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001.

Protective Sheet Installation

(d) For airplanes identified in paragraph 1.A.(3) (''PART III'') of EMBRAER Service Bulletin 145–30–0032, Change 03, dated January 27, 2003: Before further flight following accomplishment of the requirements of paragraph (b) of this AD, install new protective sheets at the relay supports in accordance with the Accomplishment Instructions (''PART III'') of the service bulletin. Installation of protective sheets before the effective date of this AD is acceptable for compliance with the requirements of this paragraph if done in

accordance with Part I of EMBRAER Service Bulletin 145–25–0211, Change 06, dated December 26, 2002, or PART III of EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Brazilian airworthiness directives 2001–05–01R2, dated April 22, 2003; and 2002–10–03, dated October 24, 2002.

Issued in Renton, Washington, on August 29, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22706 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–48–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Aircraft Engines CT7 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain General Electric Aircraft Engines (GEAE) CT7 series turboprop engines. That AD currently requires propeller gearbox (PGB) oil filter impending bypass button (IBB) inspections, oil filter inspections, replacement of left-hand and right-hand idler gears at time of PGB overhaul, and replacement of certain SN PGBs before accumulating 2,000 flight hours. This proposed AD would require the same actions, and adds additional SNs of affected PGBs. This proposed AD is prompted by reports of PGBs equipped with certain gears that do not meet design specifications, resulting in the same failure addressed in the existing AD. We are proposing this AD to prevent separation of PGB left-hand and right-hand idler gears, which could result in uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxiliary feathering system from fully feathering the propeller on certain PGBs.

DATES: We must receive any comments on this proposed AD by November 7, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–48–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from General Electric Aircraft Engines, CT7 Series Turboprop Engines, 1000 Western Ave, Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 99–NE–48–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

On March 12, 2003, the FAA issued AD 2003–06–03 (Amendment 39–13090, 68 FR 13618, March 20, 2003). That AD requires initial and repetitive inspections of the PGB oil filter IBB for extension (popping), and follow-on inspections, maintenance, and replacement actions if the PGB oil filter IBB is popped, and if necessary, replacement of the PGB with a serviceable PGB. In addition, that amendment requires replacement of certain left-hand and right-hand idler gears at time of overhaul of PGBs, and the replacement of certain SN PGBs before accumulating 2,000 flight hours. That AD was prompted by an on-going investigation that concluded that low-time PGB removals are due to accelerated wear of the PGB idler gears, rather than improperly hardened PGB input pinions. That condition, if not corrected, could result in uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxiliary feathering system from fully feathering the propeller on certain PGBs.

Actions Since AD 2003–06–03 was Issued

Since that AD was issued, the FAA has learned that a certain population of PGBs have been discovered equipped with certain gears that do no meet design specifications. This can result in the same PGB failure described in AD 2003–06–03.

Relevant Service Information

For AD 2003–06–03, the FAA previously reviewed and approved the technical contents of:

- GEAE CT7 Turboprop Service Bulletin (SB) CT7–TP S/B 72–0453, dated July 27, 2001, that describes procedures for inspections of the PGB oil filter IBB for extension, and if the oil filter IBB is extended, follow-on inspections, maintenance, and replacement actions. This SB also identifies PGBs by SN that require inspection; and
- GEAE CT7 Turboprop SB CT7–TP S/B 72–0452, dated July 27, 2001, that requires replacement of certain SNs of left-hand and right-hand idler gears

with serviceable gears. This SB also identifies affected PGBs by SN.

• For this proposal, the FAA has reviewed and approved the technical contents of GEAE CT7 Turboprop Alert Service Bulletin CT7–TP S/B 72–A0466, dated April 17, 2003, that lists the population of SNs of PGBs susceptible to gears not meeting design specifications.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require:

• Initial and repetitive inspections of the propeller gearbox (PGB) oil filter IBB for extension (popping).

• Follow-on inspections, maintenance, and replacement actions if the PGB oil filter IBB is popped, and if necessary, replacement of the PGB with a serviceable PGB.

• Replacement of certain left-hand and right-hand idler gears at time of overhaul of PGBs, and the replacement of certain SN PGBs before accumulating 2,000 flight hours after April 24, 2003, the effective date of AD 2003–06–03.

The proposed AD would require that you do these actions using the service information described previously.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are about 667 GEAE CT7 series turboprop engines of the affected design in the worldwide fleet. We estimate that 400 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that each IBB inspection would take approximately 0.25 work hours per engine, and the average labor rate is $65 per work hour. Inspection and replacement of idler gears would take approximately four work hours per engine at time of PGB overhaul. Replacement cost for idler gears per PGB is estimated to be $140,670. Therefore, the total cost on U.S. operators would be approximately $56,378,500.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 99–NE–48–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 13090, 68 FR 13618, March 20, 2003, and by adding a new airworthiness directive, Amendment 39–XXXXX, to read as follows:

General Electric Aircraft Engines: Docket No. 99–NE–48–AD. Supersedes AD 2003–06–03, Amendment 39–13090.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by November 7, 2003.

Affected ADs

(b) This AD supersedes AD 2003–06–03, Amendment 39–13090.

Applicability

(c) This AD applies to General Electric Aircraft Engines (GEAE) CT7 series turboprop engines, with propeller gearboxes (PGBs) identified by serial number (SN) in Table 1 of GEAE CT7 Turboprop Service Bulletin (SB) CT7–TP S/B 72–0452, dated July 27, 2001, and Table 1 of GEAE CT7 Turboprop Alert Service Bulletin (ASB) CT7–TP S/B 72–A0466, dated April 17, 2003. These engines are installed on but not limited to SAAB 340 series airplanes.

Unsafe Condition

(d) This AD is prompted by reports of additional PGBs equipped with certain gears that do not meet design specifications, resulting in the same failure addressed in the AD being superseded. We are issuing this AD to prevent separation of PGB left-hand and right-hand idler gears, which could result in uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxiliary feathering system from fully feathering the propeller on certain PGBs.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Inspect the PGB oil filter impending bypass button (IBB) for extension using the following schedule:

(1) Initially inspect within 50 hours time-in-service (TIS) after the effective date of this AD.

(2) Thereafter, inspect each operational day.

(g) If the PGB oil filter IBB is extended, replace the oil filter and perform follow-on inspections, using paragraph 3.A of the Accomplishment Instructions of GEAE CT7 Turboprop SB CT7–TP S/B 72–0453, dated July 27, 2001.

(h) At the next return of the PGB to a CT7 turboprop overhaul facility after the effective date of this AD, replace left-hand and right-hand idler gears. Use the Accomplishment Instructions of GEAE CT7 Turboprop SB CT7–TP S/B 72–0452, dated July 27, 2001 to replace the gears.

(i) If the PGB is mated to a Hamilton Standard propeller and the left-hand and right-hand idler gears have not been replaced in accordance with the Accomplishment Instructions of GEAE CT7 Turboprop SB CT7–TP S/B 72–0452, dated July 27, 2001, replace the PGB before accumulating an additional 2,000 engine flight hours after April 24, 2003, the effective date of AD 2003–06–03.

Terminating Action

(j) Replacement of left-hand and right-hand idler gears in accordance with paragraph (h) of this AD, or replacement of the PGB in accordance with paragraph (i) of this AD constitutes terminating action to the repetitive inspections required by paragraph (f) of this AD.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(l) Special flight permits may be issued only for an airplane that does not have more than one engine with a PGB oil filter IBB extended, to operate the airplane to allocation where the requirements of this AD can be done.

Material Incorporated by Reference

(m) You must use the service information specified in Table 1 to perform the inspections and replacements required by this AD. Approval of incorporation by reference from the Office of the Federal Register is pending for GEAE CT7 Turboprop ASB CT7–TP S/B 72–A0466, dated April 17, 2003. Table 1 follows:

TABLE 1.—INCORPORATION BY REFERENCE

Service bulletin no.	Page	Revision	Date
SB CT7–TP S/B 72–0452 Total Pages: 12	ALL	Original	July 27, 2001.
SB CT7–TP S/B 72–0453 Total Pages: 5	ALL	Original	July 27, 2001.
ASB CT7–TP S/B 72–A0466 Total Pages: 8	ALL	Original	April 17, 2003.

Related Information

(n) None.

Issued in Burlington, Massachusetts, on September 2, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–22713 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–08–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F 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 airplanes listed above. This proposal would require a one-time inspection for damage of the power feeder cables and surrounding structure, and repair if necessary. For certain airplanes, this proposal would require fabricating and installing a power feeder support bracket assembly and clamps at station Y=595.000, left side. For certain other airplanes, this proposal would require installing two power feeder support brackets and clamps at station Y=606.000, left side. This action is necessary to prevent chafing of the external ground power feeder cables against the adjacent structure, which could result in arcing and fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–08–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: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; 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 2002–NM–08–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of arcing and a fire on a McDonnell Douglas Model DC–10 airplane in the area of the external ground power feeder cables and the adjacent structure at station Y=595.000, left side, at longerons 40 and 41. Chafing of the cables against the structure was discovered during maintenance. Investigation has revealed that, lacking any clamping in the area, the power feeder cables had been pulled taut against the adjacent structure, resulting in the chafing. This condition, if not corrected, could result in arcing and fire at this location.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003. The service bulletin describes procedures for a visual inspection of the power feeder cables and surrounding structure for damage, and repair if necessary. In addition, for Group 1 and Group 3 airplanes, which have a floor beam at station Y=595.000, the service bulletin describes procedures for fabricating and installing a power feeder support bracket assembly and clamps at station Y=595.000, left side. For Group 2 airplanes, which have a floor beam at station Y=606.000, the service bulletin describes procedures for installing two power feeder support brackets and clamps at station Y=606.000, left side. 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.

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). This proposed AD identifies the office authorized to approve AMOCs in paragraph (c).

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 59 airplanes of the affected design in the worldwide fleet. The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 to 3 work hours per airplane to accomplish the proposed actions, at an average labor rate of $65 per work hour. Required parts would cost approximately $385 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $22,660 to $25,520, or $515 to $580 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 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:

McDonnell Douglas: Docket 2002–NM–08–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the external ground power feeder cables against the adjacent structure, which could result in arcing and fire, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD: Perform a general visual inspection for damage of the power feeder cables and surrounding structure, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003. If any damage is found, repair it before further flight in accordance with the service bulletin. Inspections and repairs done before

the effective date of this AD in accordance with Revision 01 of the service bulletin, dated November 6, 2002, are also acceptable for compliance with the requirements of this paragraph.

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 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.''

Bracket Installation

(b) Within 6 months after the effective date of this AD: Perform the actions specified in paragraphs (b)(1) and (b)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003. Accomplishment of the actions before the effective date of this AD in accordance with Revision 01 of the service bulletin, dated November 6, 2002 is also acceptable for compliance with the requirements of this paragraph.

(1) For Group 1 and Group 3 airplanes: Fabricate and install a new power feeder support bracket assembly and clamps at station Y=595.000, left side. Bracket fabrication and installation done before the effective date of this AD in accordance with the original issue of the service bulletin, dated October 18, 2001, is also acceptable for compliance with the requirements of paragraph (b)(1) of this AD.

(2) For Group 2 airplanes: Install 2 power feeder support brackets and clamps at station Y=606.000, left side.

Alternative Methods of Compliance

(c) 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 August 29, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22709 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–247P]

Schedules of Controlled Substances: Placement of 2,5-Dimethoxy-4-(n)-propylthiophenethylamine, N-Benzylpiperazine and 1-(3-Trifluoromethylphenyl)piperazine Into Schedule I of the Controlled Substances Act

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of proposed rulemaking to place 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), N-Benzylpiperazine (BZP), and 1-(3-trifluoromethylphenyl)piperazine (TFMPP) into Schedule I of the Controlled Substances Act (CSA). This proposed action is based on data gathered and reviewed by the DEA. If finalized, this proposed action would continue to impose the criminal sanctions and regulatory controls of Schedule I substances under the CSA on the manufacture, distribution, and possession of 2C-T-7, BZP, and TFMPP.

DATES: Comments must be received on or before October 8, 2003.

ADDRESSES: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, Washington DC 20537, Attention: DEA **Federal Register** Representative/CCR.

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

SUPPLEMENTARY INFORMATION: On September 20, 2002, the Deputy Administrator of the DEA published two final rules in the **Federal Register** amending § 1308.11(g) of Title 21 of the Code of Federal Regulations to temporarily place 2C-T-7 (67 FR 59163), and BZP and TFMPP (67 FR 59161) into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). These final rules, which became effective on the date of publication, were based on findings by the Deputy Administrator that the temporary scheduling of 2C-T-7, BZP, and TFMPP was necessary to avoid an imminent hazard to the public safety. The CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expire at the end of one year from the date of issuance of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C. 811(a)(1) have been initiated and are pending, the temporary scheduling of a substance may be extended for up to six months. Under this provision, the temporary scheduling of 2C-T-7, BZP, and TFMPP, which would expire on September 19, 2003, may be extended to March 19, 2004. This extension is being ordered by the DEA Administrator in a separate action.

In accordance with 21 U.S.C. 811(b) of the CSA, DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse of 2C-T-7, BZP, and TFMPP. The Administrator has submitted these data to the Acting Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Administrator also requested a scientific and medical evaluation and a scheduling recommendation for 2C-T-7, BZP, and TFMPP from the Acting Assistant Secretary for Health. The Food and Drug Administration (FDA) has notified the DEA that there are no exemptions or approvals in effect under 21 U.S.C. 355 of the Food, Drug and Cosmetic Act for 2C-T-7, BZP, or TFMPP. A search of the scientific and medical literature revealed no indications of current medical use of 2C-T-7, BZP, or TFMPP in the United States.

2,5-Dimethoxy-4-(n)-propylthiophenethylamine

What is 2,5-dimethoxy-4-(n)-propylthiophenethylamine?

2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), a phenethylamine hallucinogen, is structurally related to the Schedule I phenethylamine 4-bromo-2,5-dimethoxyphenethylamine (2CB), and other hallucinogens (*e.g.*, 2,5-dimethoxy-4-methylamphetamine (DOM), and 1-(4-bromo-2,5-dimethoxyphenyl)-2-aminopropane (DOB)) in Schedule I of the CSA. 2C-T-7 is a sulfur analogue of 2CB. Both substances have the structural features necessary for stimulant and/or hallucinogenic activity. Based on its structural similarity to 2CB, one would expect 2C-T-7's pharmacological profile to be qualitatively similar to 2CB if evaluated in preclinical and clinical studies.

2C-T-7 is being abused for its action on the central nervous system (CNS),

and for its ability to produce euphoria with 2CB-like hallucinations. 2C-T-7 has not been approved for medical use in the United States by the FDA. The safety of this substance for use in humans has never been demonstrated.

Drug discrimination studies in animals have indicated that 2C-T-7 is a psychoactive substance capable of producing hallucinogenic-like discriminative stimulus effects (*i.e.*, subjective effects). 2C-T-7's subjective effects were shown to share some commonality with LSD; it partially substituted for LSD up to doses that severely disrupted performance in rats trained to discriminate LSD (Committee on Problems on Drug Dependence, Drug Evaluation Committee, Personal Communication). Like 2CB, DOM, and DOB, 2C-T-7 displays affinity for central serotonin receptors. Radioligand binding assays showed that 2C-T-7 affinity for the 5-HT receptor system was selective. Self-reports indicate that the hallucinogenic effects of 2C-T-7 are comparable to those of 2CB and mescaline.

Why is 2C-T-7 Being Controlled?

The abuse of stimulant/hallucinogenic substances in popular all night dance parties (raves) and in other venues has been a major problem in Europe since the 1990s. In the past several years, this activity has spread to the United States. The Schedule I controlled substance MDMA and its analogues, collectively known as Ecstasy, are the most popular drugs abused at these raves. Their abuse has been associated with both acute and long-term public health and safety problems. These raves have also become venues for the trafficking and abuse of other controlled substances. 2C-T-7 made its appearance in the ''rave'' scene in Wisconsin, Oakland, California, and the Atlanta, Georgia areas.

The abuse of 2C-T-7 by young adults in the United States began to spread in the year 2000. Since that time, 2C-T-7 has been encountered by law enforcement agencies in Northern Wisconsin, Texas, Tennessee, Washington, Oklahoma, Atlanta, Georgia, and the San Francisco, California areas. DEA information shows that 2C-T-7 has been observed at local ''rave'' parties in California and part of the Southeastern United States.

Information gathered by DEA also indicates that 2C-T-7 has been purchased in powder form over the Internet and distributed as such. In the United States, capsules containing 2C-T-7 powder also have been encountered.

An Internet company was identified as a source of 2C-T-7 being sold in the United States. The business was operated from the owner's residence. Law enforcement authorities in Tennessee made a controlled purchase of 2C-T-7 from this Internet company; 250 mg of 2C-T-7 was purchased for $150.00. The owner has been charged with the distribution of 2C-T-7 and other products. 2C-T-7 has been clandestinely produced in the United States. A clandestine laboratory, identified as the supplier of 2C-T-7 to this Internet company, was seized in 2002 by DEA in Las Vegas, Nevada. 2C-T-7 has been sold as ''Tweety-Bird Mescaline.'' It has also been found in combination with N,N-dipropyltryptamine (DPT).

Sensory distortion and impaired judgment can lead to serious consequences for both the user and the general public. 2C-T-7 can have lethal effects when abused alone or in combination with other illicit drugs. To date, three deaths have been associated with the abuse of 2C-T-7. The first death occurred in Oklahoma during April of 2000; a young healthy male overdosed on 2C-T-7 following intranasal administration. The co-abuse of 2C-T-7 with MDMA will pose a significant health risk if 2C-T-7's popularity increases in the same venues as with MDMA. The co-abuse of 2C-T-7 with MDMA has resulted in lethal effects. The other two 2C-T-7 related deaths occurred in April 2001 and resulted from the co-abuse of 2C-T-7 with MDMA. One young man died in Tennessee while another man died in the state of Washington.

N-Benzylpiperazine and 1-(3-trifluoromethylphenyl)piperazine

What are N-Benzylpiperazine and 1-(3-trifluoromethylphenyl)piperazine?

N-Benzylpiperazine (BZP) and 1-(3-trifluoromethylphenyl)piperazine (TFMPP) are piperazine derivatives. BZP was first synthesized as a potential antiparasitic agent. It was subsequently shown to possess amphetamine-like and some antidepressant activity, but was not developed for marketing. TFMPP is an industrial chemical and shares some pharmacological similarities with 3,4-methylenedioxymethamphetamine (MDMA or Ecstasy). Both BZP and TFMPP are primarily used as chemical intermediates and have no accepted medical use in the United States. The safety of these piperazines for use in humans has never been demonstrated.

The available evidence suggests that the pharmacological effects of BZP and TFMPP are substantially similar to amphetamine and MDMA, respectively. The abuse liability studies conducted by the Drug Evaluation Committee of the College on Problems of Drug Dependence indicate that rhesus monkeys consistently self-administer BZP and exhibit stimulant-like behavioral effects following BZP self-administration sessions. BZP fully generalizes to amphetamine's discriminative stimulus in monkeys. TFMPP generalizes to MDMA's discriminative stimulus effects and serves as discriminative stimulus in rats. Serotonergic mechanisms mainly underlie the discriminative stimulus effects of TFMPP.

Consistent with the above-mentioned animal studies, it has been shown that BZP is about 20 times more potent than amphetamine in producing stimulant-like subjective and cardiovascular effects in humans (Bye C, *et al.*, Eur. J. Clin. Pharmacol. 6: 163–169, 1973). Similarly, Campbell and colleagues (Eur. J. Clin. Pharmacol. 6: 170–176, 1973), using a double-blind clinical study involving 18 subjects with a history of amphetamine dependence, reported that the nature and the time-course of behavioral, autonomic and subjective effects following BZP administration are similar to those of amphetamine. BZP was found to be about 10 times more potent than amphetamine in this study.

Self-reports suggest that the subjective effects of BZP are stimulant-like and TFMPP is an active hallucinogen. These reports collectively suggest that BZP has amphetamine-like subjective and reinforcing effects, while TFMPP might have MDMA-like subjective effects in humans. Similar to other classical hallucinogens, TFMPP also binds to serotonin receptors. TFMPP, similar to MDMA, has been shown to release 5-HT from central serotonergic neurons through uptake carrier-dependent mechanism (Pettibone D and Williams M, Biochem. Pharmacol. 33: 1531–1535, 1984; Auerbach SB, *et al.*, Neuropharmacol. 30: 307–311, 1991).

Why are BZP and TFMPP Being Controlled?

The initial indication of the abuse of BZP and TFMPP appeared in late 1996. An individual in Santa Barbara, California, promoted the use and sale of these and other ring-substituted phenylpiperazines homologs (*i.e.*, 3-chlorophenyl-piperazine and 4-methoxyphenylpiperazine) through the Internet.

The abuse of BZP/TFMPP has been growing as evidenced by the increasing encounters by law enforcement agencies since the late 1990's. BZP powder, or tablets containing BZP alone or in combination with TFMPP, have been

seized by federal and state/local law enforcement agencies in 21 states and Washington DC. Since 2000, there have been 77 cases involving seizures of BZP/TFMPP with total of over 33,000 tablets/capsules and 752,000 grams of powder. Although both BZP and TFMPP have legitimate uses as chemical intermediates, they are being purchased illegally from Internet chemical supply houses. They are sold in powder or liquid form or formulated into tablets and sold on the Internet for human consumption. These substances are being promoted as legal alternatives to MDMA and sold as ''Ecstasy'' or as ''BZP'', ''A2'', ''legal E'', or ''legal X''. Law enforcement data indicate that these piperazines are mainly encountered as tablets, with imprints of logos commonly seen on MDMA tablets.

The available scientific evidence as discussed above suggests that BZP and TFMPP share substantial pharmacological similarities with the Schedule II controlled substance amphetamine and the Schedule I controlled substance MDMA, respectively. The risks to the public health associated with amphetamine and MDMA, both substances with high potential for abuse, are well known and documented. BZP is about 10 to 20 times more potent than amphetamine in producing stimulant-like subjective, euphoric and cardiovascular effects in humans. TFMPP, similar to MDMA, produces hallucinogenic effects. BZP and TFMPP can alter sensory and judgment processes and thus can cause serious adverse health consequences for both the user and the general public. DEA is aware of several instances where BZP and TFMPP have been used in combination and sold as counterfeit MDMA, a Schedule I controlled substance. In 2001, a report from a university in Zurich, Switzerland details the death of a young female which was attributed to the combined use of BZP and MDMA. The above data show that the continued, uncontrolled tablet production, distribution and abuse of BZP and TFMPP pose an imminent hazard to the public safety. There are no recognized therapeutic uses of these substances in the United States.

The Administrator, based on the information gathered and reviewed by her staff and after consideration of the factors in 21 U.S.C. 811(c), believes that sufficient data exist to support the placement of 2C-T-7, BZP, and TFMPP into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U.S.C. 811 and 812 for a substance to be placed into Schedule I are as follows:

(1) The drug or other substance has a high potential for abuse.

(2) The drug or other substance has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Before issuing a final rule in this matter, the DEA Administrator will take into consideration the scientific and medical evaluation and scheduling recommendation of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). The Administrator will also consider relevant comments from other concerned parties.

Interested persons are invited to submit their comments, objections, or requests for a hearing in writing, with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537. In the event that comments, objections or requests for a hearing raise one or more questions that the Administrator finds warrants a hearing, the Administrator shall publish a notice in the **Federal Register** summarizing the issues to be heard and setting the time for the hearing.

What Is the Effect of This Proposed Rule?

This proposed rule, if finalized, would continue to subject those who handle 2C-T-7, BZP, and TFMPP to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule I controlled substance.

Regulatory Certification

Regulatory Flexibility Act

The Administrator hereby certifies that this proposed rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action permanently places 2C-T-7, BZP, and TFMPP into Schedule I of the Controlled Substances Act.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132 Federalism

This proposed rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rulemaking will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This proposed rulemaking will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rulemaking is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.11 is proposed to be amended by:

a. Redesignating existing paragraphs (d)(6) through (d)(27) as paragraphs (d)(7) through (d)(28),

b. Adding a new paragraph (d)(6),

c. Redesignating existing paragraphs (d)(28) through (d)(31) as paragraphs (d)(30) through (d)(33),

d. Adding a new paragraph (d)(29),

e. Redesignating existing paragraphs (f)(2) through (f)(7) as paragraphs (f)(3) through (f)(8),

f. And adding a new paragraph (f)(2) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(6) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7)—7348.

* * *

(29) 1-(3-trifluoromethylphenyl)piperazine (other name: TFMPP)—7494.

* * * * *

(f) * * *

(2) N-Benzylpiperazine (some other names: BZP, 1-benzylpiperazine)—7493.

* * * * *

Dated: September 2, 2003.

Karen P. Tandy,

Administrator.

[FR Doc. 03–22684 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 15]

RIN 1513—AA41

Proposed Eola Hills Viticultural Area (2002R–216P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish Eola Hills as a viticultural area in Oregon. The proposed viticultural area is entirely within the existing Willamette Valley viticultural area and encompasses roughly 37,900 acres within Polk and Yamhill Counties. We designate viticultural areas to allow bottlers to better describe the origin of wines and allow consumers to better identify the wines they may purchase. We invite comments on this proposed addition to our regulations, particularly from bottlers who use brand names similar to that of the proposed area.

DATES: We must receive written comments on or before November 7, 2003.

ADDRESSES: You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 15);
- 202–927–8525 (facsimile);
- *nprm@ttb.gov* (e-mail); or
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.

You may view copies of the petition, this notice, the appropriate maps, and any comments we receive about this notice by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226; phone 202–927–7890. You may also access copies of the notice and comments on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, P.O. Box 18152, Roanoke, Virginia 24014; telephone 540–344–9333.

SUPPLEMENTARY INFORMATION:

TTB Background

Has Passage of the Homeland Security Act Affected Department of Treasury Rulemaking?

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms into two agencies, the Alcohol and Tobacco Tax and Trade Bureau in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. Regulation of wine labeling, including viticultural area designations, is the responsibility of the new TTB. References to ATF in this document relate to events that occurred prior to January 24, 2003, or to functions that the Bureau of Alcohol, Tobacco, Firearms and Explosives continues to perform.

Background on Viticultural Areas

What Is TTB's Authority To Establish a Viticultural Area?

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions, and the Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR part 9, American Viticultural Areas, contains the list of approved viticultural areas.

What Is the Definition of a Viticultural Area?

Title 27 CFR 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9. These designations allow consumers and vintners to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographic origin.

What Is Required To Establish a Viticultural Area?

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence of growing conditions, such as climate, soils, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the specific boundaries of the proposed viticultural area, based on features shown on United States Geological Survey-approved (USGS) maps; and
- Copies of the appropriate USGS-approved map(s) with the boundaries prominently marked.

What Impact May This Notice Have on Current Wine Labels?

As appellations of origin, viticultural area names have geographic significance. Our 27 CFR part 4 label regulations prohibit the use of a brand name with geographic significance on a wine unless the wine meets the appellation of origin requirements for the named area. Our regulations also prohibit any other label references that suggest an origin other than the true place of origin of the wine.

If we establish this proposed viticultural area, bottlers who use brand names, including trademarks, like Eola Hills must ensure that their existing products are eligible to use the viticultural area's name as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area, and the wine must meet the other requirements of 27 CFR 4.25a(e)(3).

If a wine is not eligible for the appellation, the bottler must change the brand name or other label reference and obtain approval of a new label. Different rules apply if a wine in this category has a brand name used on a label approved prior to July 7, 1986. See 27 CFR 4.39(i) for details.

Eola Hills Petition

Mr. Russell Raney of Evesham Wood Vineyard, Salem, Oregon, petitioned ATF for the establishment of a viticultural area to be called ''Eola Hills.'' The proposed viticultural area is within the State of Oregon and entirely within the existing Willamette Valley viticultural area described in 27 CFR 9.90. The petitioner estimates that the proposed area encompasses 37,900 acres, with about 1,244 acres planted to vines. Currently 12 wineries operate within the proposed area.

What Name Evidence Has Been Provided?

As historical evidence of the use of the name ''Eola Hills,'' the petitioner submitted an excerpt from ''Oregon Geographic Names'' (published by the Oregon Historical Society, 5th Edition, 1982, pp. 294–295). This source states that the Eola Hills were named for the village of Eola, which is situated at the southern end of the ridge. On January 17, 1856, the Oregon territorial legislature incorporated the village as ''Eola,'' a name derived from Aeolus, the Greek god of winds. The book further states that the Eola Hills ''constitute one of the important groups of isolated hills in the Willamette Valley.'' It goes on to explain that the hills have been known by other names, but the name ''Eola Hills seems firmly established.''

For additional name evidence, the petitioner also submitted several maps that identify the proposed area as ''Eola Hills.'' Four of the United States Geological Survey maps used to show the proposed boundaries (Rickreall, Salem West, Mission Bottom, and Amity) identify the area as Eola Hills. The petitioner also submitted two geologic maps of the area that are issued by the State of Oregon's Department of Geology and Mineral Industries. Both prominently label the area ''Eola Hills.''

According to the petitioner, Eola Hills has name recognition and a reputation for quality among wine consumers both in and out of Oregon. For this reason, vineyards and wineries within the proposed area utilize the name frequently in their promotional literature. The petitioner submitted two promotional maps demonstrating this. One map, entitled ''The Wine Appellations of Oregon,'' issued by the Oregon Wine Marketing Coalition, portrays the Eola Hills area as a subregion within the Willamette Valley. The other map, entitled ''Eola Hills Winegrowing Region, Willamette Valley Oregon,'' shows the location of all vineyards and wineries in the proposed area.

The petitioner notes that a small portion of the proposed area is sometimes referred to as ''Amity Hills.'' ''Oregon Geographic Names'' describes Amity Hills as a northern extension of the Eola Hills that is separated from the main ridge by a pass east of the town of Amity. USGS maps for McMinnville and Amity, Oregon, identify this area as Amity Hills. However, the geologic maps issued by Oregon's Department of Geology and Mineral Industries identify it as part of the Eola Hills. The petitioner argues that, for the purpose of wine designation, consumers in Oregon have come to recognize the entire area as a single unit known as ''Eola Hills.'' He also states that vintners in the Amity Hills portion of the proposed area support the designation of Eola Hills for the entire area.

What Boundary Evidence Has Been Provided?

As evidence of the boundaries, the petitioner submitted with the petition six USGS topographic maps on which the Eola Hills are dominant features. The main ridge of the Eola Hills runs north to south, starting approximately 5¾ miles northeast of the town of Amity and extending south for 16 miles to Oregon highway 22, just north of the Willamette River at West Salem. At their widest point, toward the southern end, the Eola Hills are about 6½ miles across, from Wallace Road in the east to U.S. highway 99 in the west.

The petitioner uses the 200-foot contour line as the predominant boundary marker. He notes that he occasionally diverges to use roads or highways where they form a more convenient boundary and to exclude land not deemed suitable for grape cultivation due to soil type, elevation, or urban development.

What Evidence of Distinctive Growing Conditions Has Been Provided?

Soil and Geology

The petitioner states that the soils and geology of the Eola Hills are distinctive from those of the surrounding areas in two regards:

- The prevailing basalt-derived soils are clearly shallower than the soils of other hills of the North Willamette Valley, and
- The well-drained basalt soils are very different from the alluvial soils of the surrounding valley floor.

As evidence of this, Mr. Raney submitted two geologic maps issued by the State of Oregon's Department of Geology and Mineral Industries. One is entitled ''Geologic Map of the Rickreall and Salem Quadrangles, Oregon''; the other is entitled ''Preliminary Geologic Map of the Amity and Mission Bottom Quadrangles, Oregon.'' According to these documents, volcanic basalt rock from the lava flows of the Miocene era underlies the Eola Hills, with areas of marine sedimentary rock from the Oligocene era at the lower elevations of the ridge. The soils in the middle and higher elevations of the Eola Hills are largely well-drained, silty-clay loams weathered from basalt, while on the lower slopes, silt loams weathered from sedimentary rock predominate, particularly on the west-facing slopes.

According to soil survey maps published by the Soil Conservation Service of the U.S. Department of Agriculture, the dominant basalt-derived soils in the Eola Hills are Nekia (recently reclassified as ''Gelderman'' series), Ritner, and Jory series soils. The preponderance of the shallower Nekia-Gelderman soils in the Eola Hills differentiates them from the Red Hills farther north, where the Jory soil series predominates. The Nekia-Gelderman soils have a much lower water capacity than the Jory soil series. The most frequently occurring sedimentary soils in the Eola Hills are the Steiwer, Chehulpum, and Helmick series, especially on the west side of the ridge. The third major soil group in the Eola Hills is comprised of those soils formed from alluvial deposits, the most common of which is the Woodburn silt loam series. Such alluvial soils generally occur only on the lowest elevations of the proposed viticultural area (below 300 feet). Like the above-mentioned soils, this third group, too, can provide suitable conditions for wine grapes if sufficient slope exists for good water drainage.

Finally, the Eola Hills are surrounded on almost all sides by, and are easily distinguished from, Willamette Valley

terrace land. With few exceptions, this terrace land lies below the 200-foot elevation line and is characterized by less well-drained alluvial soils. According to the petitioner, this type of soil is generally not suitable for the cultivation of premium wine grapes. Therefore, land below 200 feet is not included in the proposed Eola Hills boundaries.

Topography

The main ridge of the Eola Hills runs north-south and has numerous lateral ridges that run east-west on both sides. Slopes on the west side of the ridge tend to be somewhat steeper and pocketed, and they fall away below 200 feet more abruptly than those slopes on the east side, which tend to be gentler and more extensive. Both sides, however, provide vineyards sites with very similar soils and growing conditions. The highest point in the south end of the hills is 1,093 feet. In the central area, near the Polk-Yamhill County line, the ridge peaks at around 1,160 feet; in the north, it peaks at 863 feet. The majority of Eola Hills vineyard sites are found in the elevation range of 250–700 feet, although suitable sites exist above this elevation, given proper sun exposure and microclimate. The most common orientation of vineyards here is south, southwestern, and southeastern. However, in gently sloping terrain, due east- and due west-facing sites are also capable of producing high quality wine grapes.

Climate

According to the petitioner, the Eola Hills are blessed with a temperate climate. Summers are warm, but seldom excessively hot, while winters are mild, with temperatures usually above freezing. Annual rainfall ranges from under 40 inches on the southeastern edge of the Eola Hills to more than 45 inches in the higher elevations. More important, only about 15 percent of the total annual rainfall in the mid-Willamette Valley occurs from April through September. Thus, rainfall averages during the growing season are uniform throughout the Eola Hills.

The petitioner states that the Eola Hills are influenced more by their position due east of the Van Duzer Corridor than by their location in the rain-shadow of the Coast Range. Ocean winds vented through this Corridor often cause late-afternoon, summer temperatures to drop dramatically, which further distinguishes the area from the hills further north. During the growing season, average maximum temperatures at the middle elevations range from 62° F in April to 83° F in July. This contributes to the ideal conditions for the ''cool-climate'' grape varieties which dominate in Eola Hills vineyards, such as Pinot Noir, Pinot Gris, and Chardonnay.

The petitioner notes that Eola Hills slopes experience greater heat accumulation during the growing season than does the surrounding Willamette Valley floor, due to the effects of thermal inversion. Cool air drains toward the valley floor during the night, which layers warmer air on the lower slopes. To demonstrate the differences between sites in the Eola Hills and the valley floor, the petitioner submitted monthly heat accumulation data that compares a valley floor site, the site of the Salem, Oregon, airport, and an Eola Hills vineyard site, Seven Springs Vineyard, for the years 1992–95. This data showed that the Seven Springs Vineyard site had consistently higher seasonal heat accumulation for the years in question. According to data gathered from the Salem WSO Airport, a typical vineyard site in the Eola Hills has a growing season (April 1 to October 31) heat accumulation range of 2,300–2,500 degree-days, with a base of 60° F. Based on standards for determining climatic regions using temperature summation, this places it high in the Region 1 category (2,500 degree-days or less).

What Boundary Descriptions Have Been Provided?

The proposed Eola Hills viticultural area is located in the northern half of the existing Willamette Valley viticultural area in Oregon. Two-thirds of the area lies within Polk County, while the northern one-third extends into Yamhill County. A detailed description of the proposed boundaries can be found in the proposed regulations below in this notice.

What Maps Were Provided?

The petitioner provided the required maps, and we list them in the proposed regulation.

Public Participation

We request comments from anyone interested. Please support your comments with specific information about the proposed area's name, growing conditions, or boundaries.

Because of the potential impact of an Eola Hills viticultural area on current brand names that include ''Eola,'' we are particularly interested in comments regarding the proposed area's name. Are there other names for this area that would not conflict with current brand names? We are also interested in suggestions for preventing conflicts between viticultural area names and brand names of geographic significance, as discussed above under ''What impact may this notice have on current wine labels?''

All comments must include your name and mailing address, reference this notice number, and be legible and written in language acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

Will TTB Keep My Comments Confidential?

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

How May I Submit Comments?

You may submit comments in any of four ways.

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—
  (1) Be on 8.5- by 11-inch paper;
  (2) Contain a legible, written signature; and
  (3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *By e-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—
  (1) Contain your e-mail address;
  (2) Reference this notice number on the subject line; and
  (3) Be legible when printed on 8.5- by 11-inch paper
- *By online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via email'' link under this notice number.

You may also write to the Administrator to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

What Information Will TTB Disclose?

You may view copies of this notice, the petition, the appropriate maps, and any comments received by appointment at the ATF Reference Library in room

6480 at 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies at 20 cents per 8.5-x 11-inch page. Contact the ATF Librarian at the above address or telephone 202–927–7890 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. All posted comments will show the names of commenters, but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reference Library. To access the online copy of this notice, visit at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Does The Regulatory Flexibility Act Apply to This Proposed Rule?

We certify that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses. The proposal imposes no new reporting, recordkeeping, or other administrative requirements.

The establishment of viticultural areas represents neither our endorsement nor approval of the quality of wine made from grapes grown in the designated areas. Rather, the system allows us to identify areas distinct from one another. In turn, identifying viticultural areas lets wineries describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from using a viticultural area name results from a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Does Executive Order 12866 Define This NPRM as a Significant Regulatory Action?

This proposed rule is not a ''significant regulatory action'' as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

Drafting Information

Jennifer Berry of the Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

For the reasons discussed in the preamble, we propose to amend Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding § 9.____ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.____ Eola Hills.

(a) *Name.* The name of the viticultural area described in this section is ''Eola Hills''.

(b) *Approved Maps.* The six USGS, 1:24,000 scale, topographic maps used to determine the boundaries of the Eola Hills viticultural area are titled—

(1) Rickreall, Oregon, 1969, photorevised 1976;

(2) Salem West, Oregon, 1969, photorevised 1986;

(3) Mission Bottom, Oregon, 1957, revised 1993;

(4) Dayton, Oregon, 1957, revised 1992;

(5) McMinnville, Oregon, 1957, revised 1992; and

(6) Amity, Oregon, 1957, revised 1993.

(c) *Boundary.* The Eola Hills viticultural area is located in the State of Oregon, within Polk and Yamhill Counties, and entirely within the Willamette Valley viticultural area. The area's boundary is defined as follows—

(1) Begin on the Rickreall, Oregon, map, at the intersection of State Highways 22 and 223; then

(2) Proceed east on highway 22 to its intersection with Doaks Ferry Road on the Salem West, Oregon, map; then

(3) Proceed northeast on Doaks Ferry Road to its intersection with the 200-foot contour line southeast of Gibson Gulch, in section 65; then

(4) Follow the 200-foot contour line in a westerly loop until it rejoins Doaks Ferry Road; then

(5) Continue north on Doaks Ferry Road to its intersection with highway 221; then

(6) Continue north on State Highway 221 to its intersection with the 200-foot contour line at the point where the contour line departs from highway 221 and runs southwest along the southern edge of Spring Valley (section 53 on the Mission Bottom, Oregon, map); then

(7) Follow the 200-foot contour line first south onto the Salem West, Oregon, map, then northwest around the southern and western edge of Spring Valley and back on to the Mission Bottom, Oregon, map; then

(8) Continue to follow the 200-foot contour line generally north on the Mission Bottom, Oregon, map, crossing onto and back from the Amity, Oregon, map and continue past the Yamhill County line and onto the Dayton, Oregon, map; then

(9) Follow the 200-foot contour line from the Dayton, Oregon, map onto the McMinnville, Oregon, map and back to the Dayton, Oregon, map and continue around the northeast edge of the Amity Hills spur of the Eola Hills; then

(10) Follow the 200-foot contour line onto the McMinnville, Oregon, map as it continues around the northern and western periphery of the Amity Hills spur; then

(11) Follow the 200-foot contour line onto the Amity, Oregon, map as it heads first south, then generally southeast, then generally south, along the western edge of the Eola Hills until it intersects Old Bethel Road at a point just north of the Polk County line; then

(12) Follow Old Bethel Road, which becomes Oak Grove Road, south until it intersects with the 200-foot contour line just northwest of the township of Bethel; then

(13) Follow the 200-foot contour line around in a southeasterly loop until it again intersects Oak Grove Road where Oak Grove and Zena Roads intersect; then

(14) Follow Oak Grove Road south until it intersects with Frizzell Road; then

(15) Follow Frizzell Road west for three-tenths mile until it intersects with the 200-foot contour line; then

(16) Follow the 200-foot contour line generally south until it intersects with the starting point on the Rickreall, Oregon, map.

Signed: August 6, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–22762 Filed 9–5–03; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV 045–0070b; FRL–7548–1]

Revisions to the Nevada State Implementation Plan, Clark County Air Quality Management Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Clark County Air Quality Management Board (CCAQMB) portion of the Nevada State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM–10) from residential wood combustion. We are proposing to approve the local rules (building code provisions) that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 8, 2003.

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

You can inspect a copy of the submitted rule (building code provisions) revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted provisions and TSD at the following locations:

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

Nevada Division of Environmental Protection, 333 West Nye Lane, Room 138, Carson City, NV 89706.

Clark County Air Quality Management Board, 500 South Grand Central Parkway, Las Vegas, NV 89155.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local Clark County Building Code, section 3708; City of Las Vegas Building Code, section 3708; City of North Las Vegas Building Code, section 13.16.150; City of Henderson Building Code section 15.40.010. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 29, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–22646 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2 and 95

[ET Docket No. 03–137; FCC 03–132]

Exposure to Radiofrequency Electromagnetic Fields

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: This document seeks comment on proposed amendments to the FCC's rules and regulations relating to compliance of transmitters and facilities with guidelines for human exposure to radiofrequency (RF) energy. These proposals are intended to ensure protection of the public from potentially adverse health effects from RF exposure, while avoiding any unnecessary burden in evaluating compliance with FCC requirements. Several proposals are made regarding the Commission's rules and regulations including proposals related to categorical exclusion from routine evaluation for RF exposure, requirements for evaluation of Specific Absorption Rate (SAR) for certain RF devices, RF evaluation requirements for modular transmitters, labeling requirements for consumer devices, clarifications of responsibilities for evaluating compliance, special considerations regarding occupational exposure to RF fields, procedures for measuring RF fields for evaluating compliance, and other miscellaneous items related to clarification of the FCC's rules for RF exposure.

DATES: Written comments are due December 8, 2003, and reply comments are due January 6, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland, Office of Engineering and Technology, (202) 418–2422, email: *robert.cleveland@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)*, ET Docket No. 03–137, FCC 03–132, adopted June 12, 2003, and released June 26, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 8, 2003, and reply comments on or before January 6, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the

Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of the Notice of Proposed Rule Making

Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields

1. The National Environmental Policy Act of 1969 (NEPA) requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet its responsibilities under NEPA, the Commission has adopted requirements for evaluating the potential environmental impact of its actions. One of several environmental factors that must be considered is human exposure to radiofrequency (RF) energy emitted by FCC-regulated transmitters and facilities.

2. In 1996 and 1997, the Commission established its most recent comprehensive guidelines for evaluating the environmental impact of RF energy. These guidelines include limits for Maximum Permissible Exposure (MPE), including limits for both whole-body and partial-body exposures. The Commission's guidelines were based on recommendations from expert scientific bodies as well as on guidance received from Federal agencies with responsibility for protecting the public health and for worker safety.

3. Since adoption and implementation of its guidelines, the Commission has determined that certain revisions and changes may be needed in the procedures and regulations used in ensuring compliance with the RF exposure guidelines. For example, additional transmitters and devices under FCC jurisdiction may be eligible for categorical exclusion from routine evaluation while others may have been inappropriately excluded. Also, certain criteria used for categorical exclusion should be harmonized to govern similar facilities in different services. In addition, it appears that certain aspects of the Commission's RF exposure rules may require revision to clarify the responsibilities of licensees and grantees and to ensure compliance in a more practical, consistent and efficient manner.

4. This *NPRM* makes several proposals to accomplish these goals, and Commission is requesting comment on all of the proposals. These proposals are related only to the Commission's implementation of procedures for compliance with the adopted limits for human exposure from fixed, mobile and portable transmitters regulated by the FCC. This *NPRM* does not invite comment regarding the exposure limits themselves, which have been developed in conjunction with other organizations and agencies that have primary expertise in health and safety.

Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (NPRM).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in this *NPRM.* The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2]

A. Need for, and Objectives of, the Proposed Rules

6. The National Environmental Policy Act of 1969 (NEPA) requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment.[3] To meet its responsibilities under NEPA, the Commission has adopted requirements for evaluating the environmental impact of its actions. One of several environmental factors addressed by these requirements is human exposure to radiofrequency (RF) energy emitted by FCC-regulated transmitters, facilities and devices.[4]

7. The *NPRM* proposes to amend parts 1 and 2 of our rules relating to the compliance of FCC regulated transmitters, facilities, and devices with the guidelines for human exposure to radiofrequency (RF) energy adopted by the Commission in 1996 and 1997. Specifically we are proposing to make certain revisions in our rules that we believe will result in more efficient, practical and consistent application of compliance procedures.

B. Legal Basis

8. The proposed action is authorized under sections 4(i), 301, 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(f) and 303(r).

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

9. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[5] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[6] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[7] A ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (''SBA'').[8]

Experimental Radio Service (Other Than Broadcast)

10. The Commission has not developed a definition of small entities

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 603(a).

[3] National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4335.

[4] *See* 47 CFR 1.1307(b).

[5] 5 U.S.C. 603(b)(3).

[6] 5 U.S.C. 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[8] 15 U.S.C. 632.

applicable to experimental licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The Commission is unable at this time to make a precise estimate of the number of Experimental Radio Services which are small businesses.

11. The majority of experimental licenses are issued to companies such as Motorola and Department of Defense contractors such as Northrop, Lockheed and Martin Marietta. Businesses such as these may have as many as 200 licenses at one time. The majority of these applications are from entities such as these. Given this fact, the remaining 30 percent of applications, we assume, for purposes of our evaluations and conclusions in this FRFA, will be awarded to small entities, as that term is defined by the SBA.

12. The Commission processes approximately 1,000 applications a year for experimental radio operations. About half or 500 of these are renewals and the other half are for new licenses. We do not have adequate information to predict precisely how many of these applications will be impacted by our proposed rule revisions. However, based on the above figures we estimate that as many as 300 of these applications could be from small entities and potentially could be impacted.

Mass Media Services

13. Experimental Broadcast Stations; Low Power TV, TV Translator and TV Booster Stations; Instructional Television Fixed Service; FM Broadcast Translator Stations and FM Booster Stations. These services involve a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (*e.g.*, from a remote news gathering unit back to the station), although the latter service is not affected by this proceeding. The applicable definitions of small entities are those, noted previously, under the SBA rules and are applicable to radio broadcasting stations and television broadcasting stations.[9]

14. The Commission estimates that there are approximately 2,700 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these broadcast facilities. We recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[10]

15. There are presently 2032 ITFS licensees. All but 100 of these licensees are held by educational institutions. Educational institutions are included in the definition of a small business. We do not, however, collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Therefore, we conclude that at least 1932 ITFS licensees are small businesses. All of these licensees could be impacted by the rule revisions proposed with respect to categorical exclusion and labeling requirements for subscriber transceivers.

16. Multipoint Distribution Service (MDS). This service has historically provided primarily point-to-multipoint, one-way video services to subscribers.[11] The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.[12] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[13] The Commission established this small business definition in the context of this particular service and with the approval of the SBA.[14] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[15] Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.[16] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. These small business licensees may be affected by the proposals in this NPRM pertaining to categorical exclusion and labeling.

Maritime Services

17. The proposed rules would not change the current rules that affect licensees using ship earth stations in the Maritime Services. The Commission has not developed a definition of small entities applicable to licensees of ship earth stations. Therefore, the Commission is unable at this time to make a precise estimate of the number of licensees of ship earth stations which are small businesses.

International Services

18. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[17] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[18] According to the Census Bureau, there were a total of 848 communications services providers,

[9] 13 CFR 121.201, NAICS codes 513111 and 513112.

[10] 15 U.S.C. 632.

[11] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) includes Local Multipoint Distribution Service (LMDS), and the Multichannel Multipoint Distribution Service (MMDS).

[12] *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions,* 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

[13] 47 CFR 21.961 and 1.2110.

[14] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

[15] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See id.* At 9608.

[16] 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $11 million or less). *See* 13 CFR 121.201.

[17] An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

[18] 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

NEC, in operation in 1992, and a total of 775 had annual receipts of less than $10.0 million.[19] The Census report does not provide more precise data.

International Broadcast Stations. Commission records show that there are 17 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. Since all international broadcast stations operate using relatively high power levels, it is likely that they could all be impacted by our rule revisions.

Fixed Satellite Transmit/Receive Earth Stations. There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition. However, the majority of these stations could be impacted by our revised rules.

Fixed Satellite Small Transmit/Receive Earth Stations. There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition. However, the majority of these stations could be impacted by our revised rules.

Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. There are 492 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition. However, it is expected that many of these stations could be impacted by our revised rules.

Mobile Satellite Earth Stations. There are 15 licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition. However, it is expected that many of these stations could be impacted by our revised rules.

Wireless and Commercial Mobile Services

19. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[20] According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[21] Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Telecommunications Reporting Worksheets* data, 806 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and SMR telephony carriers, which are placed together in the data.[22] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 806 small wireless service providers that may be affected by these revised rules. All may be impacted by these proposed rule revisions.

Private and Common Carrier Paging. In the Paging *Third Report and Order,* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[23] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[24] The SBA has approved these definitions.[25] An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[26] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data.[27] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by these revised rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition. All may be impacted by these proposed rule revisions.

Specialized Mobile Radio (SMR). Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of $15 million or less in the

[19] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[20] 13 CFR 121.201, NAICS code 513322.

[21] *1992 Census, Series UC92-S–1,* at Table 5, NAICS code 513322.

[22] *Trends in Telephone Service,* Table 16.3 (December 2000).

[23] *220 MHz Third Report and Order,* 62 FR 16004 (April 3, 1997), at paragraphs 291–295.

[24] 700 MHz Guard Band Auction Closes,'' Public Notice, 15 FCC Rcd 18026 (2000).

[25] ''Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,'' Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98–107 (1999).

[26] ''Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,'' Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98 (1999).

[27] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

three preceding calendar years.[28] The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.[29] Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997.[30] Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[31] An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small businesses. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band. All may be impacted by these proposed rule revisions.

Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. Therefore, the Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules.

Fixed Microwave Services. Microwave services include common carrier,[32] private-operational fixed,[33] and broadcast auxiliary radio services.[34] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—*i.e,* an entity with no more than 1,500 persons.[35] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies. Some of these services could be impacted by the proposed revisions of our rules, particularly those which utilize consumer subscriber transceivers that may be subject to labeling requirements.

Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[36] Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition. However, in general, there should be little impact of these proposed rule revisions on these services.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.[37] The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees which could be impacted includes these eight entities.

Local Multipoint Distribution Service. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[38] An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[39] These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA.[40] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules. The LMDS service could be impacted by the proposed revisions of our rules, particularly with respect to consumer subscriber transceivers that may be subject to labeling requirements.

[28] 47 CFR 90.814(b)(1).

[29] *See* Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (August 10, 1999).

[30] *See* Letter to Daniel B. Phython, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (October 27, 1997).

[31] *Id.*

[32] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's rules).

[33] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[34] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR 74 *et seq.* As discussed earlier, there should be no impact on this class of transmitters.

[35] 13 CFR 121.201, NAICS codes 513321, 513322, 51333.

[36] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by subpart D, subpart A, subpart C, and subpart B, respectively, of part 95 of the Commission's rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

[37] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[38] *See* Local Multipoint Distribution Service, *Second Report and Order,* 12 FCC Rcd 12545 (1997).

[39] *Id.*

[40] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The proposals being made in this item may require additional reporting regarding compliance with our RF exposure limits for certain facilities, operations and transmitters, such as some wireless base stations and some antennas at multiple transmitter sites. In other cases, current reporting requirements are being relaxed. Also, we are proposing to require that in order for the occupational/controlled SAR or MPE limits to be used in evaluating compliance for a portable or mobile device, certain conditions must be met, that may include placing a label on a device that provides a user with specific information on RF exposure. We are also proposing that a sample of the label and instructional material be filed with the Commission along with the application for equipment authorization.

21. We are also proposing to adopt a general labeling requirement for certain high-gain subscriber across all services that will be consistent and ensure compliance of consumer products with our RF safety guidelines. When equipment authorization is required, we are proposing that a sample of the label and illustrations showing its location should be filed with the Commission along with the application for a grant of equipment authorization.

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

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[41] In this proceeding, our proposals are consistent with (2), in that our goal is making our RF rules more consistent and clarifying certain areas that have created confusion in the past. In addition, due to our revisions in our policy on categorical exclusions, we are providing exemptions from routine RF evaluation for many small entities that should reduce the overall impact on small entities (see number 4 of this paragraph).

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

23. None.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Environmental impact statements.

47 CFR Parts 2 and 95

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 2 and 95 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1307 is amended by revising paragraph (b)(1) and the table that immediately follows it, and by revising paragraph (b)(2) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) The appropriate exposure limits in §§ 1.1310 and 2.1093 of this chapter are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in § 1.1310 or § 2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for the facilities, operations and transmitters indicated in table l, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (b)(1)(ii), (c) and (d) of this section. The term *power* in column 2 of table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), effective isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in § 2.1 of this chapter.

The phrase *total transmit power of all channels* when used in column 2 of table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying criteria of table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, the criteria are to be applied to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions. See § 1.1310 for general information on compliance with the FCC's limits for RF exposure.

(i) Table 1 applies to ''fixed'' transmitters. For purposes of applying these rules, a fixed transmitter is defined as one that is physically secured at one location and is not able to be easily moved to another location. This definition includes transmitters that are physically secured at one location on a temporary basis. An example of this latter case would be a wireless base station installed temporarily to accommodate increased call volume at a special event.

(ii) Fixed transmitters in any service are not required to undergo routine environmental evaluation for RF exposure, and the provisions of table 1 do not apply, if the transmitter is mounted such that persons cannot be closer than 20 cm from any part of the radiating structure and if the operating power of the transmitter is less than 1.5 W effective radiated power (ERP), for transmitters operating at frequencies at or below 1.5 GHz, or less than 3 W ERP for operating frequencies above 1.5 GHz. Compliance with exposure guidelines for fixed transmitters can be accomplished by the use of labels specifying minimum separation distance and/or proper antenna installation.

(iii) *Labeling requirements*: With the exception of paragraph (b)(1)(iv) of this section, licensees in service categories with labeling requirements are required to attach a label to a fixed subscriber transceiver antenna if:

(A) The transceiver is mounted such that persons cannot be closer than 20 cm from any part of the radiating structure and the operating power of the transmitter is greater than 1.5 W ERP, for transmitters operating at frequencies at or below 1.5 GHz, or greater than 3

[41] 5 U.S.C. 603(c).

W ERP for operating frequencies above 1.5 GHz; or,

(B) The transceiver is designed with the potential to be mounted closer than 20 cm from the body or from nearby persons and the operating power is greater than 100 mW conducted or radiated peak power. The label must provide adequate notice regarding potential radiofrequency safety hazards, *e.g.*, information regarding the safe minimum distance required between users and antennas; and reference the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310. Such labels must be clearly visible and legible to nearby persons.

(iv) Labels are not required on any fixed subscriber transceiver antennas if it can be demonstrated that the appropriate partial body SAR limits specified in § 2.1093 of this chapter cannot be exceeded by persons immediately adjacent to the antenna. Also, labels are not required on any fixed subscriber transceiver antenna if the transmitter is mounted such that persons can never be closer than 20 cm from any part of the radiating structure and the device can be shown to comply with the MPE limits for field strength and/or power density at a distance of 20 cm or more.

TABLE 1.—FIXED TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
Experimental Radio Services (part 5)	(1) Transmit power is 100 W ERP (164 W EIRP) or more or (2) Separation distance is less than 3 m.
Multipoint Distribution Service (subpart K of part 21).	(1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m. *Labeling:* In addition, MDS licensees are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv).
Paging and Radiotelephone Service (subpart E of part 22).	(1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) for VHF, UHF, and 900 MHz channels, or greater than 200 W ERP (328 W EIRP) for 2.1 GHz channels or (2) Separation distance is less than 3 m.
Cellular Radiotelephone Service (subpart H of part 22).	(1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m.
Personal Communications Services (part 24)	*Narrowband PCS (subpart D):* (1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m. *Broadband PCS (subpart E):* (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP). (2) Separation distance is less than 3 m.
Satellite Communications (part 25)	All Included. *For DARS terrestrial repeater stations only:* (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m. *Labeling:* In addition, for NGSO subscriber equipment, licensees are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv).
Wireless Communications Service (part 27)	*700 MHz service:* (1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m. *2.3 GHz service:* (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m.
Radio Broadcast Services (part 73)	All included, except subpart G. *For subpart G only:* Separation distance less than 3 m (assuming ERP 100 W or less).
Experimental, auxiliary, and Broadcast and other program Distributional services (part 74).	*Subparts A, G, L:* (1) Transmit power is greater than 100 W ERP (164 W special EIRP) or (2) Separation distance is less than 3 m. *Subpart I:* (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m.

TABLE 1.—FIXED TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION—Continued

Service (title 47 CFR rule part)	Evaluation required if:
	Labeling: In addition, ITFS licensees are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv).
Stations in the Maritime Services (part 80)	Ship earth stations only.
Private Land Mobile Radio Services Paging Operations & Specialized Mobile Radio (part 90).	(1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m.
Amateur Radio Service (part 97)	Transmitter output power levels specified in § 97.13(c)(1) of this chapter.
Fixed Microwave Service (part 101)	*For frequencies at or below 1500 MHz:* (1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m. *For frequencies above1500 MHz:* (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m. *Labeling:* In addition, licensees in the LMDS, 24 GHz and DEMS, and 39 GHz Service are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv).

Note to Table 1: The term ''separation distance'' in Table 1 is defined to mean the minimum distance from any part of the radiating structure of a transmitting antenna in any direction to any area that may be entered by a member of the general public. Workers meeting the criteria for occupational/controlled exposures may access such areas consistent with appropriate engineering and/or administrative controls that result in compliance with FCC occupational/controlled limits without triggering the need for routine evaluation.

(2) Except as provided under §§ 2.1091 and 2.1093, mobile and portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services (ship earth stations only), and the Specialized Mobile Radio Service authorized under subpart H of parts 22, 24, 25, 27, 80, and 90, respectively, of this chapter, are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. Cordless telephones and portable transmitters, millimeter devices, unlicensed PCS and unlicensed NII devices authorized under §§ 15.247, 15.253, 15.255, 15.319 and 15.407 of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. However, routine evaluation for portable devices authorized under § 15.247 of this chapter is required only if the maximum peak output power of the device exceeds 100 milliwatts (100 mW). Portable transmitting equipment for use in the Wireless Medical Telemetry Service (WMTS) authorized under part 95 of this chapter is subject to routine environmental evaluation as specified in §§ 2.1093 and 95.1125 of this chapter. Equipment authorized for use in the Medical Implant Communications Service (MICS) as a medical implant transmitter (as defined in Appendix 1 to subpart E of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in § 2.1093 of this chapter. All other mobile, portable and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091 and 2.1093 of this chapter prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d).

* * * * *

3. Section 1.1310 is amended by revising the introductory text, by removing notes 1 and 2 to table 1, and by adding paragraphs (a), (b), (c), and (d) to read as follows:

§ 1.1310 Radiofrequency radiation exposure limits.

The limits for Maximum Permissible Exposure (MPE) specified below and in table 1 shall be used to evaluate the environmental impact of human exposure to radiofrequency (RF) radiation as specified in § 1.1307(b). In the case of portable devices, as defined in § 2.1093 of this chapter, and fixed transmitters that are mounted so that persons may normally be within 20 cm of any part of the radiating structure, the MPE values listed in table 1 are not appropriate for evaluation of exposure and such evaluations must be performed according to the provisions of § 2.1093 of this chapter. The MPE values in table 1 are derived from a Specific Absorption Rate (SAR) limit for occupational/controlled exposure of 0.4 W/kg, as averaged over the whole body, and an SAR limit for general population/uncontrolled exposure of 0.08 W/kg, as averaged over the whole body. In addition, the Commission has adopted exposure limits for spatial peak SAR. In general, and in lieu of compliance with the MPE values in table 1, compliance can also generally be demonstrated with respect to the allowed limits for SAR. The SAR limits for occupational/controlled exposure are 0.4 W/kg, as averaged over the whole body, and a spatial peak SAR of 8 W/kg, averaged over any 1 gram of tissue (defined as a tissue volume in the shape of a cube); exceptions are the hands, wrists, feet and ankles where the spatial peak SAR limit is 20 W/kg, as averaged over any 10 grams of tissue (defined as a tissue volume in the shape of a cube). The SAR limits for general population/uncontrolled exposure are 0.08 W/kg, as averaged over the whole body, and a spatial peak SAR of 1.6 W/kg, averaged over any 1 gram of tissue (defined as a tissue volume in the shape of a cube); exceptions are the hands, wrists, feet and ankles where the spatial peak SAR limit is 4 W/kg, as averaged over any 10 grams of tissue (defined as a tissue volume in the shape of a cube). Detailed information on evaluating compliance with these exposure limits can be found in the FCC's OET Bulletin Number 65, ''Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields,'' and in the

supplements to Bulletin 65, all available at the FCC's Internet Web site: *www.fcc.gov/oet/rfsafety.*

Note to Introductory Paragraph: These limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (NCRP) in ''Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,'' NCRP Report No. 86, Sections 17.4.1, 17.4.1.1, 17.4.2 and 17.4.3. Copyright NCRP, 1986, Bethesda, Maryland 20814. In the frequency range from 100 MHz to 1500 MHz, exposure limits for field strength and power density are also generally based on guidelines recommended by the American National Standards Institute (ANSI) in Section 4.1 of ''IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,'' ANSI/IEEE C95.1–1992. Copyright 1992 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York 10017. Limits for whole body SAR and spatial peak SAR are based on recommendations made in both of these documents.

* * * * *

(a) Occupational/controlled exposure limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure. Limits for occupational/controlled exposure also apply in situations when an individual is transient through a location where occupational/controlled limits apply provided he or she is made aware of the potential for exposure. The phrase *fully aware* in the context of applying these exposure limits means that an exposed individual has received written and verbal information fully explaining the potential for RF exposure resulting from his or her employment. With the exception of *transient* individuals, this phrase also means that an exposed individual has received comprehensive training regarding appropriate work practices relating to controlling or mitigating his or her exposure. Such training is not required for *transient* individuals, but they must receive written or verbal information and notification (for example, warning signs) concerning their exposure potential and appropriate means available to mitigate their exposure. The phrase *exercise control* means that an exposed individual is allowed to reduce or avoid exposure by administrative or engineering work practices, such as use of personal protective equipment or time-averaging of exposure.

(b) General population/uncontrolled exposure limits apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure.

(c) Licensees and applicants are generally responsible for compliance with both the occupational/controlled exposure limits and the general population/uncontrolled exposure limits as they apply to transmitters under their jurisdiction. Licensees and applicants should be aware that the occupational/controlled exposure limits apply especially in situations where workers may have access to areas in very close proximity to antennas where access to the general public may be restricted.

(d) Amateur radio station licensees must also take steps to ensure that their stations comply with the exposure limits, as noted in § 1.1307(b), table 1, of this section and in § 97.13(c) of that chapter. For example, for a typical amateur station located at a residence the station licensee and members of his or her immediate household may be evaluated with respect to the occupational/controlled exposure limits, provided the appropriate conditions specified in paragraph (a) of this section. Other nearby persons, such as neighbors, who are not members of the amateur licensee's household must be evaluated with respect to the general population/uncontrolled exposure limits. Similar considerations apply to amateur stations located at places other than a residence.

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

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

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

5. Section 2.1091 is amended by revising paragraphs (c), (d) introductory text and (d)(3) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

* * * * *

(c) Mobile devices that operate in the Cellular Radiotelephone Service, the Personal Communications Service (PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services, the Specialized Mobile Radio Service, authorized under subpart H of part 22, parts 24, 25, 27, 80 (ship earth station devices only), and 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if they operate at frequencies of 1.5 GHz or below and their effective radiated power (ERP) is 1.5 watts or more, or if they operate at frequencies above 1.5 GHz and their ERP is 3 watts or more. Unlicensed personal communications service devices, unlicensed millimeter wave devices and unlicensed NII devices authorized under § 15.253, § 15.255, and subparts D and E of part 15 of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their ERP is 3 watts or more or if they meet the definition of a portable device as specified in § 2.1093(b) requiring evaluation under the provisions of that section. All other mobile and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(1) When antennas for part 15 modular transmitters (''transmitter modules'') that operate at power levels of 200 mW or less (peak EIRP or peak conducted output power) are designed to be incorporated into a laptop (''notebook'') computer such that they will be located at a distance of at least 20 cm from the body of a user (the configuration necessary to be classified as a mobile device) evaluation of the modular transmitter for compliance with the Commission's RF exposure limits is not required. Evaluation for compliance with the Commission's RF exposure limits is required for modular transmitters operating in excess of 200 mW (peak EIRP or peak conducted output power).

(2) In general, the maximum RF exposure of a combination device (host device plus modules) can be determined by adding the frequency-dependent RF exposure levels of all antennas incorporated within a single combination device that could functionally transmit at the same time. Such antennas can be considered to be

''mobile'' transmitting devices for purposes of evaluating compliance as long as the 20 cm separation criterion defined in paragraph (b) of this section is met.

(d) The limits to be used for evaluation of mobile devices are the limits for Maximum Permissible Exposure (MPE) specified in § 1.1310 of this chapter. Appropriate methodologies for evaluating exposure from mobile devices are described in the most current edition of *OET Bulletin 65.* All unlicensed personal communications service (PCS) devices and unlicensed NII devices shall be subject to the limits for general population/uncontrolled exposure.

* * * * *

(3) If appropriate, compliance with exposure guidelines for devices in this section can be accomplished by the use of labels and by providing users with information concerning minimum separation distances from transmitting structures and proper installation of antennas. Labels should be legible and clearly visible to the user of the device. Labels used on devices that are subject to occupational/controlled exposure limits must indicate that the device is for occupational use only, must refer the user to specific information on RF exposure, such as that provided in a user manual, and must note that the label and its information is required for FCC RF exposure compliance. Such instructional material must provide the user with information on how to use the device in order to ensure compliance with the occupational/controlled exposure limits. A sample of the label, illustrating its location on the device, and any instructional material intended to accompany the device when marketed, shall be filed with the Commission along with the application for equipment authorization. For occupational devices, details of any special training requirements pertinent to limiting RF exposure should also be submitted. Holders of grants for mobile devices to be used in occupational settings are encouraged, but not required, to coordinate with end-user organizations to ensure appropriate RF safety training.

* * * * *

6. Section 2.1093 is amended by revising paragraphs (c) and (d)(3) and by adding paragraph (d)(6) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Service (PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services, the Specialized Mobile Radio Service, the Wireless Medical Telemetry Service (WMTS) and the Medical Implant Communications Service (MICS), authorized under subpart H of part 22, parts 24, 25, 27, 80 (ship earth station devices only), and 90, subparts H and I of part 95, and unlicensed personal communication service devices, unlicensed NII devices and millimeter wave devices authorized under subparts D and E, §§ 15.253 and 15.255 of part 15 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. Portable devices authorized under § 15.247 of part 15 of this chapter are subject to routine evaluation for RF exposure prior to equipment authorization or use if the maximum peak output power of the device exceeds 100 milliwatts (100 mW). Evaluation of MICS transmitters may be demonstrated by use of computational modeling or laboratory measurement techniques. Unless otherwise specified in this chapter, other portable transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307 (c) and (d) of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(1) Unlicensed transmitters authorized under § 15.247 may be authorized as ''transmitter modules'' for use in various host devices provided that the configurations and exposure conditions of host products are identified and provided the maximum peak conducted output power is 100 milliwatts (100 mW) or less. Such transmitters may be authorized as modules when they have been shown to comply with our RF exposure guidelines and when it can be demonstrated that the use of the module in additional host devices would not result in non-compliance.

(2) When a modular transmitter (''transmitter module'') is designed to be used in a hand-held wireless portable telephone or in a portable digital assistant (''PDA'') that can be used in contact with the head or body, and the operating power level of the module is 2 mW or less (peak EIRP or peak conducted output power), if the phone or PDA (''host'' device) has been previously shown to be compliant with the Commission's limits for SAR, no additional SAR evaluation of the combined device (host plus module) is required. When a modular transmitter is designed to be used in a hand-held wireless portable telephone or in a PDA that can be used in contact with the head or body, and the operating power level of the module is greater than 2 mW (peak EIRP or peak conducted output power), the combined device (host plus module) must be evaluated for SAR in the normal operating configuration. If the combined device is demonstrated to be in compliance with the Commission's SAR limits, this demonstration of compliance can be applied to such modules designed to be used in similar host devices that have been tested and certified for similar configurations.

(3) When modular transmitters (''transmitter modules'') operating at power levels of 10 mW or less (peak EIRP or peak conducted output power) are designed to be used in the keyboard portion of a laptop (''notebook'') computer evaluation for compliance with the Commission's limits for SAR is not required.

(4) When modular transmitters (''transmitter modules'') operating at power levels of 25 mW or less (peak EIRP or peak conducted output power) are designed to be used in a PDA, designed only to be held in the hand, evaluation for compliance with the Commission's limits for SAR is not required.

(5) When a modular transmitter is designed to be used in a PDA (the ''host device'') that is only used when held in the hand, and the operating power level of the module is greater than 25 mW (peak EIRP or peak conducted output power), the combined device (host plus module) must be evaluated for SAR in the normal operating configuration. If the combined device is demonstrated to be in compliance with the Commission's SAR limits, this demonstration of compliance can be applied to such modules designed to be used in similar host devices that have been tested and certified for similar configurations.

(6) For a combination device that incorporates at least one modular transmitter in addition to the host transmitter, when the relevant exclusion thresholds described in this section are not applicable, evaluation of SAR of the combination device can be determined by adding the maximum RF exposure

levels of all antennas incorporated within a single combination device that could functionally transmit at the same time.

(d) * * *

(3) Compliance with SAR limits can be demonstrated by either laboratory measurement techniques or by computational modeling. The latter must be supported by adequate documentation. The methodologies that shall be used for evaluating SAR for wireless handsets and similar devices are described in the most current edition of *Supplement C to OET Bulletin 65,* issued by the Commission's Office of Engineering and Technology.

* * * * *

(6) Labels placed directly on portable devices designed only for occupational use can be used as part of an applicant's evidence of compliance with occupational/controlled exposure limits. Such labels should be legible and clearly visible to the user of the device. They must indicate that the device is for occupational use only, refer the user to specific information on RF exposure, such as that provided in a user manual and note that the label and its information is required for FCC RF exposure compliance. Such instructional material must provide the user with information on how to use the device in order to ensure compliance with the occupational/controlled exposure limits. A sample of the label, illustrating its location on the device, and any instructional material intended to accompany the device when marketed, shall be filed with the Commission along with the application for equipment authorization. Details of any special training requirements pertinent to limiting RF exposure should also be submitted. Holders of grants for portable devices to be used in occupational settings are encouraged, but not required, to coordinate with end-user organizations to ensure appropriate RF safety training.

7. Section 95.603 is amended by revising paragraph (f) to read as follows:

§ 95.603 Certification required.

* * * * *

(f) Each Medical Implant Communications Service transmitter (a transmitter that operates or is intended to operate in the MICS) must be certificated except for medical implant transmitters that are not marketed for use in the United States, but which otherwise comply with the MICS technical requirements and are operated in the United States by individuals who have traveled to the United States from abroad. Medical implant transmitters (as defined in appendix 1 to subpart E of part 95 of this chapter) are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307 and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of devices operating under this section must demonstrate compliance with these requirements using either finite difference time domain computational modeling or by laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that specific absorption rate (SAR) data also be submitted.

* * * * *

[FR Doc. 03–22624 Filed 9–5–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 68, No. 173

Monday, September 8, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Frank Church—River Of No Return Wilderness Noxious Weed Treatments Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare a Supplemental Environmental Impact Statement to the Frank Church—River Of No Return Wilderness (FC–RONR) Wilderness Noxious Weed Treatments Environmental Impact Statement (EIS).

SUMMARY: The Salmon-Challis national Forest, will prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate changed conditions since issuing the August 1999 FC–RONR Wilderness Noxious Weed Treatments EIS and Record of Decision (ROD). The inventoried number of sites and acreages to be treated within the FC–RONR Wilderness will be updated and analyzed. The EIS will also address a long-term integrated weed prevention strategy and use of an additional herbicide (Plateau).

DATES: The Forest Service expects to submit a draft Supplemental EIS by October 2003. The comment period on the Draft SEIS will be 45 days from the date the Notice of Availability is published in the **Federal Register**.

ADDRESSES: Submit written comments concerning this notice to Ken Wotring, Project Coordinator, Salmon-Challis National Forest, 50 Hwy 93 South, Salmon, Idaho, 83467.

FOR FURTHER INFORMATION CONTACT: Ken Wotring at (208) 756–5131 or Howard Lyman at (208) 839–2211.

SUPPLEMENTARY INFORMATION:

Background

The Bitterroot, Nez Perce, Payette and Salmon Challis National Forests administer the Frank Church—River of No Return Wilderness. These National Forests chose to address several issues relative to consistent management of the FC–RONR Wilderness. Most of the issues addressed were recreational in nature. The need for consistent management of noxious weeds within the Wilderness was also addressed. A Draft EIS was released in January 1998. Public comment was extremely polarized regarding the recreational issues. Many individuals and interests were concerned that the Alternatives displayed in the DEIS would institute excessively harsh measures to address management of recreational use. On the other hand, public support for an aggressive noxious weeds program was evident in the comments received on this issue.

The Forest Supervisors decided upon a two-prong approach in response to those public comments. (1) They would issue a Supplemental Draft to evaluate additional management actions to respond to public concerns prior to development of a FEIS for revision of the FC-RONRW Management Plan. (2) They would issue a Final Weeds EIS and ROD responsive to public support for a consistent noxious weeds program.

August 1999 FC–RONR Wilderness Noxious Weed Treatment Final Environmental Impact Statement (Weeds FEIS) and Record of Decision

The Weeds FEIS proposed action was to treat 300 sites encompassing 1,775 acres beginning in 1999 and up until the FEIS for revising the FC–RONRW Management Plan was completed. The Record of Decision (ROD) for the Weeds FEIS deferred addressing non-treatment practices, including coordination, education, prevention and inventory in the Management Plan Revision FEIS.

The Weeds ROD selected Alternative 2, which consisted of an Aggressive Integrated Weed Treatment Wilderness-wide. Specific actions included:

- Controlling weed populations through a combination of manual, chemical and biological methods;
- Implementing restoration following control methods; and
- Monitoring.

This decision was appealed, and while the Regional Forester upheld the Forests, direction to the Forests reaffirmed the earlier commitment to complete a Noxious Weeds Prevention Strategy as part of the non-treatment practices to be addressed in the revision of the Management Plan FEIS.

The Forests implemented an integrated weed management strategy and committed to readdress non-treatment practices, specifically the Prevention Strategy in the Management Plan FEIS.

Changed Conditions and a New Approach

The 1999 Weed FEIS analysis was based on nearly 300 inventoried sites encompassing 1,775 acres. The Weed FEIS evaluated, and the ROD adopted, an Adaptive Strategy for future treatment of new weed invasions and expansion of existing infestations. Extensive wildfires burned over ½ million acres in and adjacent to the FC–RONR Wilderness during the summer of 2000 and accelerated expansion of noxious weeds into those fire distrubed areas. Recent inventories document sites encompassing 5,204 acres. Therefore, a Supplemental analysis to the Noxious Weeds EIS will be prepared to address the changed conditions. The SEIS will also address an additional herbicide for use in Noxious Weed control (Plateau). Finally, the SEIS will address a Noxious Weed Prevention Strategy for the FC–RONR Wilderness.

Timelines

The Draft SEIS is expected to be available for public review in October 2003. The comment period on the Draft SEIS will be 45 days from the Notice of Availability in the **Federal Register**. It is very important that those interested in this analysis participate at that time. To be most helpful, comments on the DSEIS should be as specific as possible. The Final SEIS is scheduled for completion in January 2004. At that time, we will release the Final SEIS along with the Record of Decision (ROD). A 45-day appeal period will follow as required pursuant to 36 CFR 215. Implementation of the decision can occur 5 days following release of the ROD if not appealed or after a favorable appeal decision.

Submitting Comments

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. 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.

Authority

The Salmon-Challis National Forest Supervisor has determined that preparation of a Supplemental EIS (Draft and Final) is required in order to address changed conditions and prior agency commitments, under CEQ regulations implementing the National Environmental Policy Act (40 CFR 1501–1508). The Supplemental EIS will address a proposal by the Salmon-Challis, Bitterroot, Payette and Nez Perce National Forests to address weeds management as described above. That portion of the Boise National Forest that falls within the FC–RONRW is proposed and will be administered by the Salmon-Challis National Forest.

Responsible Official

I am the responsible official for release of the Notice of Intent to prepare this Draft Supplemental Environmental Impact Statement. My address is Salmon-Challis National Forest, 50 Hwy 93 South, Salmon, Idaho 83467. In addition to myself, Deciding Officials will include: Mark Madrid, Forest Supervisor Payette National Forest; Bruce Bernhardt, Forest Supervisor Nez Perce National Forest and Dave Bull, Forest Supervisor Bitterroot National Forest.

Dated: August 29, 2003.

Lesley W. Thompson,

Acting Forest Supervisor, Salmon-Challis National Forest.

[FR Doc. 03–22677 Filed 9–5–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by November 7, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Annan, Acting Director, Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 5168 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0737. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: *Title:* Seismic Safety of New Building Construction.

OMB Control Number: 0572–0099.

Type of Request: Extension of a currently approved information collection.

Abstract: The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*) was enacted to reduce risks to life and property through the National Earthquake Hazards Reduction Program (NEHRP). The Federal Emergency Management Agency (FEMA) is designated as the agency with the primary responsibility to plan and coordinate the NEHRP. This program includes the development and implementation of feasible design and construction methods to make structures earthquake resistant. Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, requires that measures to assure seismic safety be imposed on federally assisted new building construction.

Title 7 Part 1792, Subpart C, Seismic Safety of Federally assisted New Building Construction, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by RUS or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB. This subpart implements and explains the provisions of the loan contract utilized by the RUS for both electric and telecommunications borrowers and by the RTB for its telecommunications borrowers requiring construction certifications affirming compliance with the standards.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.2.

Estimated Total Annual Burden on Respondents: 800.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 5168 South Building, Washington, DC 20250–1522.

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.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–22753 Filed 9–5–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Business Development Mission to Brazil

AGENCY: Department of Commerce.

ACTION: Notice to Announce Business Development Mission to Brazil, November 9–13, 2003.

SUMMARY: Deputy Secretary of Commerce Samuel W. Bodman, and Assistant Secretary of Commerce for Market Access and Compliance William Lash, will lead a senior-level business development mission to Sao Paulo, Brasilia and Recife, Brazil from November 9–13, 2003. The focus of the mission will be to help U.S. companies explore trade and investment opportunities in Brazil. The delegation will include approximately 10–15 U.S.-based senior executives of small, medium and large U.S. firms representing, but not limited to, technology, equipment, and services in the following key growth sectors: infrastructure (port, rail, construction), information technology, security, agribusiness and biotechnology.

DATES: Applications should be submitted to the Office of Business Liaison by October 3, 2003. Applications received after that date

will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Office of Business Liaison; Room 5062; Department of Commerce; Washington, DC 20230; Tel: (202) 482–1360; Fax: (202) 482–4054.

SUPPLEMENTARY INFORMATION:

Business Development Mission to Brazil

November 9–13, 2003

I. Description of the Mission

Deputy Secretary of Commerce Samuel W. Bodman, and Assistant Secretary of Commerce for Market Access and Compliance William Lash, will lead a senior-level business development mission to Sao Paulo, Brasilia and Recife, Brazil from November 9–13, 2003. The focus of the mission will be to help U.S. companies explore trade and investment opportunities in Brazil. The delegation will include approximately 10–15 U.S.-based senior executives of small, medium and large U.S. firms representing, but not limited to, technology, equipment, and services in the following key growth sectors: infrastructure (port, rail, construction), information technology, security, agribusiness and biotechnology.

II. Commercial Setting for the Mission

Brazil is the largest market in the Western Hemisphere after the United States, with 180 million people and a GDP of over $450 billion. Total trade between the United States and Brazil has held steady at about $30 billion per year. In 2002, Brazil had a $13 billion surplus with the world ($3.4 billion with the U.S.) as a result of an aggressive export strategy, relatively favorable exchange rate regime, and strong agricultural exports.

Brazil offers substantial opportunities for U.S. firms due to the sheer size and sophistication of its internal market. Developing Brazil's infrastructure is a priority for the Lula Administration, and is key to modernizing the underdeveloped Northeast region of the country, as well as furthering efficiency in the Brazil's industrial zones. The Brazilian federal government and many individual states are moving forward on a variety of infrastructure development projects backed by multilateral lending institutions, focusing on transportation and construction. Development of Brazil's technology sector—both information technology and biotechnology—is another priority for the Lula government. Strong links between the research and industry communities offer a wealth of business opportunities across the country. Brazil also has advanced genetic and biotechnology research sectors with a focus on agriculture and agribusiness.

The financial situation in Brazil has greatly improved since last year's Presidential elections. The new administration immediately set out to calm the markets by vowing to maintain strict fiscal policies, fulfill Brazil's debt obligations, promote economic growth, and install pro-business officials in his cabinet. Although high interest rates have dampened internal investment, the Lula Administration has created a solid economic climate by holding inflation in check, reforming part of the tax code, and working to reduce bureaucracy in international trade.

III. Goals for the Mission

The mission will further U.S. commercial policy objectives, and advance specific U.S. business interests. It is intended to:

- Assist individual U.S. companies to pursue export and other new business opportunities in Brazil by introducing them to key government decision-making officials and potential business partners;
- Evaluate the market potential for the company's products and assist firms in gaining an understanding of how to operate successfully in Brazil's commercial environment;
- Enhance the dialogue between government and industry on issues affecting U.S.-Brazil commercial relations, and build upon the pro-growth agenda launched during the Summit between President Bush and Brazilian President Lula; and
- Promote the benefits of economic growth through liberalized trade and investment policies, especially in the underdeveloped Northeast region of Brazil.

IV. Scenario for the Mission

The Business Development Mission will provide participants with exposure to high-level business and government contacts and an understanding of market trends and the commercial environment. American Embassy officials will provide a detailed briefing on the economic, commercial and political climate, and participants will receive individual counseling on their specific interests from the in-country U.S. Commercial Service industry specialists. Meetings will be arranged as appropriate with senior government officials and potential business partners. Representational events also will be organized to provide mission participants with opportunities to meet Brazil's business and government representatives, as well as U.S. business people living and working in Brazil.

The tentative trip itinerary will be as follows:

November 9—Arrive Brasilia; Mission Begins
November 10—Meetings with the Brazilian Government
November 11—Travel to Recife for Business Meetings
November 12—Travel to Sao Paulo for Business Meetings
November 13—Business Meetings in Sao Paulo; Mission Concludes

V. Criteria for Participation of Companies

The recruitment and selection of private sector participants for this mission will be conducted according to the ''Statement of Policy Governing Department of Commerce-Overseas Trade Missions'' established in March 1997. Approximately 10–15 companies will be selected for the mission. Companies will be selected according to the criteria set out below.

Eligibility

Applicants must be: (1) incorporated in the United States; and (2) the products and/or services that it will promote (a) must be manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, must be marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service.

Selection Criteria

Companies will be selected for participation in the mission on the basis of:

- Consistency of company's goals with the scope and desired outcome of the mission as described herein;
- Relevance of a company's business and product line to market opportunities in Brazil;
- Rank of the designated company representative;
- Past, present, or prospective international business activity;
- Diversity of company size, type, location, demographics, and traditional under-representation in business;
- Degree of company's commitment to good corporate citizenship; and
- Timely receipt of signed mission application, participation agreement, and participation fee.

Recruitment will begin immediately and will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade missions

calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet websites, press releases to the general and trade media. Promotion of the mission will also take place through the involvement of U.S. Export Assistance Centers and relevant trade associations.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process.

VI. Time Frame for Applications

Applications for the trade mission to Brazil will be made available on or about September 4, 2003. The fee to participate in the mission has not yet been determined, but will be approximately $5,000 to $8,000. The participation fee will not cover travel to and from Brazil or lodging expenses; these will be the responsibility of each mission participant. For additional information on the trade mission or to obtain an application, contact the Office of Business Liaison at (202) 482–1360. Applications should be submitted by October 3, 2003, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit. A mission website will be posted at *http://www.commerce.gov/brazilmission2003* to share information as it becomes available. Contact: Office of Business Liaison, Room 5062, Department of Commerce, Washington, DC 20230, Tel: (202) 482–1360 Fax: (202) 482–4054, e-mail: obl@doc.gov, *http://www.commerce.gov/brazilmission2003.*

Dated: September 2, 2003.

Dan McCardell,

Director, Office of Business Liaison, Room 5062, Department of Commerce.

[FR Doc. 03–22716 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–D–R–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–867]

Certain Automotive Replacement Glass Windshields From The People's Republic of China: Notice of Partial Rescission of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission of administrative review.

SUMMARY: On May 21, 2003, in response to timely requests from respondents subject to the order on certain automotive replacement glass (''ARG'') windshields from the People's Republic of China (''PRC''), in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by respondents, including Changchun Pilkington Safety Glass Company, Ltd., Dongguan Kongwan Automobile Glass, Ltd., Fuyao Glass Industry Group Company, Ltd., Guilin Pilkington Safety Glass Company, Ltd., Peaceful City, Ltd., Shanghai Yaohua Pilkington Autoglass Company, Ltd., Shenzen CSG Automotive Glass Co., Ltd., (formerly Shenzhen Benxum Auto Glass Co., Ltd.) (''Benxum''), TCG International, Inc.(''TCGI''), Wuhan Yaohua Pilkington Safety Glass Company, Ltd., and Xinyi Automotive Glass (Shenzhen) Co., Ltd. (''Xinyi'') of ARG from China for the period September 19, 2001 through March 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 27781 (May 21, 2003) (''Initiation Notice''). The petitioners in the original investigation did not request an administrative review. Because Benxum, TCGI, and Xinyi have withdrawn their requests for administrative review and the petitioners did not request an administrative review, the Department is rescinding this review of sales by Benxum, TCGI, and Xinyi, in accordance with 19 C.F.R. 351.213(d)(1). The Department is now publishing its determination to rescind the review of sales of subject merchandise by Benxum, TCGI, and Xinyi for the periods referenced below.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Jon Freed, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230; telephone: (202) 482–1102, (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2002, the Department published in the **Federal Register** the antidumping duty order on ARG Windshields from the People's Republic of China (''PRC''). *See Antidumping Duty Order: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 16087 (April 4, 2002). On April 7, 2003, the Department of Commerce (''Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on ARG windshields from the PRC for the period September 19, 2001, through March 31, 2003. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 16761 (April 7, 2003). On May 21, 2003, in response to timely requests from respondents subject to the order on ARG windshields from the PRC, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by respondents, including Changchun Pilkington Safety Glass Company, Ltd., Dongguan Kongwan Automobile Glass, Ltd., Fuyao Glass Industry Group Company, Ltd., Guilin Pilkington Safety Glass Company, Ltd., Peaceful City, Ltd., Shanghai Yaohua Pilkington Autoglass Company, Ltd., Benxum, TCGI, Wuhan Yaohua Pilkington Safety Glass Company, Ltd., and Xinyi of ARG windshields from the PRC for the period September 19, 2001 through March 31, 2003. *See Initiation Notice*, 68 FR 27781 (May 21, 2003).

On June 3, 2003, the Department issued antidumping duty questionnaires to the respondents, including Benxum, TCGI, and Xinyi. On July 8, 2003, Benxum submitted a letter to the Department withdrawing its request for an administrative review of sales and entries of subject merchandise exported by Benxum and covered by the antidumping duty order on ARG windshields from the PRC. On July 31, 2003, TCGI submitted a letter to the Department withdrawing its request for an administrative review of sales and entries of subject merchandise exported by TCGI and covered by the antidumping duty order on ARG windshields from the PRC. On July 31, 2003, Xinyi submitted a letter to the Department withdrawing its request for an administrative review of sales and entries of subject merchandise exported by Xinyi and covered by the antidumping duty order on ARG windshields from the PRC.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of requested review. Benxum, TCGI, and Xinyi withdrew their respective requests for review within the 90 day time limit; accordingly, we are rescinding this administrative

review as to those companies and will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection. For Benxum and TCGI, the period of the administrative review that is hereby rescinded is September 19, 2001 through March 31, 2003. For Xinxi, the period of the administrative review that is hereby rescinded is February 12, 2002 through March 31, 2003.[1]

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of APO is a sanctionable violation.

This determination is issued in accordance with 19 C.F.R. 351.213(d)(4) and section 777(i)(1) of the Act.

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22785 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] The liquidation of entries of subject merchandise exported by Xinyi was not suspended until the final determination in the original investigation. *See Notice of Preliminary Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 66 FR 48233, 48242 (September 19, 2001) compare with *Notice of Final Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482, 6484 (February 12, 2002).

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–817]

Oil Country Tubular Goods From Mexico: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On September 25, 2002, the Department of Commerce (the Department) published in the Federal Register a notice announcing the initiation of an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Mexico. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 60210 (September 25, 2002) (Initiation). The period of review (POR) is August 1, 2001 to July 31, 2002. This review has now been rescinded because there were no entries for consumption of subject merchandise that are subject to review in the United States during the POR.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Abdelali Elouaradia, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–1398 or (202) 482–1374 respectively.

Scope of Review

Imports covered by this review are oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The Department has determined that couplings, coupling stock and drill pipe are not within the scope of the antidumping order on OCTG from Mexico. *See* Letter to Interested Parties; Final Affirmative Scope Decision, August 27, 1998. *See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods From Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders From Argentina and Mexico With Respect to Drill Pipe*, 66 FR 38630, July 25, 2001.

Background

On August 30, 2002, United States Steel Corporation (petitioner), requested an administrative review of Tubos de Acero de Mexico S.A. (TAMSA), a Mexican producer and exporter of OCTG, with respect to the antidumping order published in the **Federal Register**. *See Antidumping Duty Order: Oil Country Tubular Goods From Mexico*, 60 FR 41055 (August 11, 1995). Additionally, respondent Hylsa, S.A. de C.V. (Hylsa) requested that the Department conduct an administrative review of Hylsa. On September 11, 2002, Hylsa withdrew its request and requested that the Department terminate the review. Therefore, the Department did not initiate with respect to Hylsa. We initiated the review for TAMSA. *See Initiation*.

SUPPLEMENTARY INFORMATION: On October 11, 2002, the Department issued an antidumping duty questionnaire to TAMSA. On November 1, 2002, TAMSA and Siderca Corporation (TAMSA's U.S. affiliate) claimed that they ''did not directly or indirectly, enter for consumption, or sell, export or ship for entry for consumption in the United States subject merchandise during the period of review.'' Petitioner subsequently claimed on November 12, 2002, that publicly available import data from the Department's IM-145 database showed that 2,187 metric tons of seamless OCTG from Mexico entered the United States during the POR. Petitioner asserted that TAMSA was the only producer of seamless OCTG in Mexico. Petitioner requested that the Department investigate these transactions to determine whether this merchandise is subject to review. On December 10, 2002, the Department forwarded a no-shipment inquiry to Customs for circulation to all Customs ports. Customs did not indicate to the Department that there was any record of

consumption entries during the POR of OCTG from Mexico exported by TAMSA. As part of this investigation, the Department issued supplemental questionnaires on March 28, 2003, and April 14, 2003. On April 4, 2003 and April 23, 2003, TAMSA submitted its responses to the supplemental questionnaires.

The Department has thoroughly investigated proprietary information from U.S. Customs Service (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) (Customs) for all HTSUS numbers covered by the scope of this review. After reviewing the Customs information and the public data submitted by petitioner, the Department determined that the merchandise entered during the POR was exported from a third country or was exported to a foreign trade zone by TAMSA. The Department notes that the merchandise was entered under the proper country of export (the third country or Mexico) and the merchandise was declared as being of Mexican origin and was entered subject to duty.

Finally, the Department requested additional information from Customs and the respondent regarding certain entries. Both Customs and TAMSA submitted information pertaining to these entries (*see* August 6, 2003 TAMSA submission). The documentation clearly indicates the merchandise was first admitted into a foreign trade zone. After further analysis we found that these entries were subsequently entered for consumption in the U.S. and were subject to antidumping duties. After reviewing the information, the Department determines that TAMSA had no knowledge that these sales were destined for consumption in the United States. Under these circumstances, Petitioners did not object to rescinding this review involving these entries of subject merchandise produced by TAMSA. *See Memorandum to the File From Richard O. Weible dated August 21, 2003.*

Accordingly, we are rescinding this review. The cash deposit rate will continue to be the rate established in the most recently completed segment of this proceeding.

This notice is issued and published in accordance with sections 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22784 Filed 9–05–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–824]

Silicomanganese From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on silicomanganese from Brazil. The preliminary results of this review are now due on October 17, 2003.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Ellman, (202) 482–4852, or Katja Kravetsky, (202) 482–0108, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

Extension of Time Limit for Preliminary Results of Review

On January 22, 2003, in response to a request to conduct an administrative review of the antidumping duty order on silicomanganese from Brazil, the Department of Commerce (''the Department'') published a notice of initiation of administrative review covering the period December 1, 2001, through November 30, 2002. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009.

Currently, the preliminary results of this administrative review are due no later than September 2, 2003. Due to the complexity of certain cost issues, including the cost investigation and high inflation during the period of review, that have arisen in the course of the review, it is not practicable to complete the preliminary results within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended. Therefore, in accordance with that section, the Department is extending the time limit for completion of the preliminary results until no later than October 17, 2003. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: August 29, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 03–22786 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate (CTL Plate) from Mexico for the period January 1, 2001, through December 31, 2001, the period of review (POR). For information on the net subsidy for the reviewed company as well as for non-reviewed companies, please see the ''Preliminary Results of Review'' section of this notice. If the final results remain the same as these preliminary results of the administrative review, we will instruct the Bureau of Customs and Border Protection (BCBP) to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results. (See the ''Public Comment'' section of this notice).

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** (58 FR 43755) the countervailing duty order on certain cut-to-length carbon steel plate from Mexico. On August 6, 2002, the Department published a notice of ''Opportunity to Request an Administrative Review'' (67 FR 50856) of this countervailing duty order. On

August 30, 2002, we received a timely request for review from Altos Hornos de Mexico, S.A. (AHMSA), the respondent company in this proceeding. On September 25, 2002, we initiated the review covering the period January 1, 2001, through December 31, 2001 (67 FR 60210). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 60210 (September 25, 2002).

On September 27, 2002, we issued initial questionnaires to AHMSA and the Government of Mexico (GOM) covering the programs reviewed in the previous segment of the proceeding. On October 22, 2002, petitioners argued that two GOM programs, asset tax relief provided under the Immediate Deduction Program and the Program for Sectoral Promotion (PROSEC), were either subsumed by or successors to programs previously found to be countervailable in this proceeding and, thus, should be included in any questionnaires issued to AHMSA and the GOM.[1] On December 16, 2002, petitioners submitted new subsidy allegations. These allegations included the Immediate Deduction Program and PROSEC as well as the following programs: Provision of Debt Relief from AHMSA's Creditors by Nacional Financiera (NAFIN) and the Coahuila State Government (CGS), Petroleos Mexicanos (Pemex) Guaranteed Provision of Natural Gas for less than Adequate Remuneration, and Debt Relief on Banco Nacional de Comercio Exterior S.N.C. (Bancomext) Loans. Petitioners also alleged that AHMSA was uncreditworthy during calendar year 2000. On January 21, 2003, petitioners submitted additional factual information regarding their new subsidy allegations.

On March 26, 2003, we extended the period for completion of the preliminary results of review pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended, (the Act). *See Certain Cut-to-Length Carbon Steel Plate From Mexico: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review* (68 FR 14580). On April 29, 2003, we issued our first supplemental questionnaires to AHMSA and the GOM.

On June 3, 2003, we issued a memorandum concerning petitioners' new subsidy allegations. In the memorandum, we agreed with petitioners that asset tax relief provided under the Immediate Deduction Program was related to a program previously found countervailable by the Department and that the program merited an examination in the instant proceeding. Furthermore, we initiated investigations of the following programs: Provision of Debt Relief from AHMSA's Creditors by Nacional Financiera (NAFIN) and the Coahuila State Government (CGS), Petroleos Mexicanos (Pemex) Guaranteed Provision of Natural Gas for less than Adequate Remuneration, and Banco Nacional de Comercio Exterior S.N.C. (Bancomext) Debt Relief. In addition, we initiated an investigation of AHMSA's creditworthiness covering calendar year 2000. We declined to initiate an investigation of PROSEC because we found no record evidence to support petitioners allegation that the PROSEC program was countervailable. For more information, see the June 3, 2003, memorandum from the Team to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, the public version of which is on file in Room B–099 of the Central Records Unit (CRU) in the Main Commerce Building (*New Subsidies Memorandum*). The programs for which we initiated investigations are discussed in further detail in the ''Creditworthiness and Calculation of Discount Rate'' and ''Analysis of Programs'' sections of this preliminary results notice.

On June 3, 2003, we issued second supplemental questionnaires to AHMSA and the GOM. On June 30, 2003, we issued a third supplemental questionnaire to AHMSA.

From July 16 through July 24, 2003, we conducted a verification of the questionnaire responses submitted by AHMSA and the GOM. The results of our verification are contained in the September 2, 2003, memoranda from Lyman Armstrong to Eric Greynolds, Program Manager, Office of AD/CVD Enforcement VI (AHMSA Verification Report and GOM Verification Report, respectively), the public versions of which are on file in the CRU.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested, *i.e.*, AHMSA, and 17 programs.

Scope of Review

The products covered by this administrative review are certain cut-to-length carbon steel plates. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this administrative review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from this administrative review is grade X–70 plate. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Allocation Period

Pursuant to 19 CFR 351.524(d)(2), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation or review, and that the difference between the company-specific AUL and the AUL for the industry under investigation is significant.

In this administrative review, the Department is considering both non-recurring subsidies previously allocated in the initial investigation and non-recurring subsidies received since the period of investigation (POI). For non-recurring subsidies previously allocated in the initial investigation, the

[1] Petitioners are Bethlehem Steel Corporation and United States Steel Corporation.

Department is using the original allocation period of 15 years. For non-recurring subsidies received since the original investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables did not reasonably reflect the AUL of the renewable physical assets for the firm or industry under review. Therefore, in accordance with 19 CFR 351.524(d)(2), we have allocated all of AHMSA's non-recurring subsidies received since the original investigation over 15 years, the AUL listed in the IRS tables for the steel industry.

Facts Available

In the course of this proceeding, we have repeatedly sought information from AHMSA concerning its creditworthiness status during calendar year 2000, in connection with the renegotiation of a loan. See questions C.1 through C.7 of the Department's June 3, 2003, supplemental questionnaire. See also question B.1 of the Department's June 30, 2003, supplemental questionnaire. In both instances, AHMSA responded that it was ''unable to respond to the Department's questions on creditworthiness at this time.'' [2]

Section 776(a) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described above, AHMSA has failed to provide information regarding its creditworthiness during calendar year 2000 in the manner explicitly and repeatedly requested by the Department; therefore, we must resort to the facts otherwise available. Lacking a questionnaire response from AHMSA on the issue of its creditworthiness in 2000, we have relied on primary source information from AHMSA that was submitted onto the record of this proceeding prior to the initiation of our creditworthiness investigation. Namely, we have used, as facts available, AHMSA's financial statements for the years 1997 through 2000, as well as information obtained during verification concerning AHMSA's financial standing in 2000. Using this primary source information, we have determined that, for purposes of these preliminary results, AHMSA was uncreditworthy during 2000. For a discussion of our creditworthiness analysis, see the September 2, 2003 memorandum from the team to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, a public document which is on file in the CRU (*Creditworthiness Memorandum*) as well as the ''Creditworthiness and Calculation of Discount Rate'' section of this preliminary results notice.

Change in Ownership

In November 1991, the GOM sold all of its ownership interest in AHMSA. Prior to privatization, AHMSA was almost entirely owned by the GOM. Since November 1991, the GOM has held no stock in AHMSA.

In accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Delverde Srl* v. *United States*, 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g en banc denied* (June 20, 2000) (*Delverde III*), the Department addresses this fact pattern by first determining whether the person who received the subsidies is, in fact, distinct from the person that produced the subject merchandise exported to the United States during the POR. If the two are distinct, the original subsidies may not be attributed to the new producer/exporter. On the other hand, if the original subsidy recipient and the current producer/exporter are considered to be the same person, that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, in the latter case, we will determine that a ''financial contribution'' has been made by a government and a ''benefit'' has been conferred upon the ''person'' that is the firm under investigation. Assuming that the original subsidy had not been fully amortized under the Department's normal allocation methodology as of the POR, the Department would continue to countervail the remaining benefits of that subsidy. See *e.g.*, the ''Change in Ownership'' section of the Decision Memorandum that accompanied the *Final Results of the Administrative Review of the Countervailing Duty Order (CVD) on Certain Cut-to-Length Carbon Steel Plate from Mexico—Calendar Year 1998*, 66 FR 14549 (March 12, 2001) (*1998 Review of CTL Plate*).

In making the ''same person'' determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale entity to be the same person as the pre-sale entity if, based on the totality of the factors considered, we determine that the entity sold in the change-in-ownership transaction can be considered a continuous business entity because it was operated in substantially the same manner before and after the change-in-ownership. *Id.*

In the previous segment of the proceeding, we found that the privatized AHMSA was essentially the same person as that which existed prior to the privatization as a separately-incorporated, GOM-owned steel producer of the same name. As a result of our analysis, we found the subsidies received by the pre-privatized AHMSA to be countervailable. *See* the ''Application of Methodology'' section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate.* No new information or evidence of changed circumstances has been submitted requiring us to reconsider our finding in this segment of the proceeding (*i.e.*, calendar year 2001). Therefore, for purposes of these preliminary results, we continue to find that the privatized AHMSA is essentially the same person as that which existed prior to the privatization. We further preliminarily determine that allocable subsidies bestowed prior to AHMSA's privatization continue to benefit AHMSA, to the extent that the benefit stream extends into the POR of this segment of the proceeding.[3]

Inflation Methodology

In the underlying investigation, we determined, based on information from the GOM, that Mexico experienced significant inflation from 1983 through 1988. *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico,* 58 FR 37352 at 37355 (July 9, 1993) (*CTL Plate Investigation*). In accordance with past practice, because we found significant inflation in Mexico and because AHMSA adjusted for inflation in its financial statements, we made adjustments, where necessary, to

[2] We note that, at AHMSA's request, we extended the due date of the June 3, 2003, questionnaire by 10 days. *See* the Department's June 10, 2003, letter to AHMSA on, ''Extension Request on Behalf of Altos Hornos de Mexico, S.A. de C.V.''

[3] On June 23, 2003, the Department published a notice that our practice regarding the ''same person test'' would be modified. *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125. In that notice, we announced the prospective application of a new privatization methodology that would supercede the ''same person test.'' We further stated that the new methodology would only apply to segments of proceedings initiated on or after June 30, 2003.

account for inflation in the benefit calculations.

Because Mexico experienced significant inflation during only a portion of the 15-year allocation period, indexing for the entire period or converting the non-recurring benefits into U.S. dollars at the time of receipt (*i.e.*, dollarization) for use in our calculations would have inflated certain allocable benefits by adjusting for inflationary as well as non-inflationary periods. Thus, in the underlying investigation, we used a loan-based methodology to reflect the effects of intermittent high inflation. *See CTL Plate Investigation*, 58 FR at 37355. The methodology we used in the underlying investigation assumed that, in the absence of a government equity infusion/grant, a company would have needed a 15-year loan that would be rolled over each year at the prevailing nominal interest rates, which for purposes of our calculations are the interest rates based on Costo Porcentual Promedio (CPP) discussed in the ''Calculation of Discount Rate and Creditworthiness'' section of this notice. The benefit in each year of the 15-year period would be equal to the principal plus the interest payments associated with the loan at the nominal interest rate prevailing in that year.

Because we assumed that an infusion/grant given was equivalent to a 15-year loan at the current rate in the first year, a 14-year loan at current rates in the second year and so on, the benefit after the 15-year period would be zero, as it would be under the Department's grant amortization methodology. Because nominal interest rates were used, the effects of inflation were already incorporated into the benefit. This methodology was upheld in *British Steel plc* v. *United States*, 127 F.3d 1471 (Fed. Cir. 1997) (*British Steel III*).

In *Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review*, 65 FR 13368 (March 13, 2000) (*1997 Review of CTL Plate*), we analyzed information provided by the GOM and found that Mexico, again, experienced significant, intermittent inflation during the period 1991 through 1997. *See* the ''Inflation Methodology'' section of the Decision Memorandum for the *1997 Review of CTL Plate*. In addition, during the 1997 review of CTL Plate, we learned at verification that AHMSA had continued its practice of accounting for inflation in its financial statements. *Id.* Thus, in the *1997 Review of CTL Plate*, we used the benefit calculation methodology from the *CTL Plate Investigation*, described above, for all non-recurring, peso-denominated grants received since the POI. *Id.*

No new information or evidence of changed circumstances has been presented thus far in this review to warrant reconsideration of these findings. Thus, for the purposes of these preliminary results, we have continued to use the benefit calculation methodology from the *CTL Plate Investigation* for all non-recurring, peso-denominated grants received through 1997.[4]

Calculation of Discount Rate and Creditworthiness

In these preliminary results, for those years in which AHMSA received non-recurring grants and equity infusions, we used as our long-term benchmark discount rate the CPP, which is the average cost of funds for banks in Mexico.[5] We note that we converted the CPP rate into a discount rate using the formula that has been used in past Mexican cases.[6] We further note that, for those years in which there were grants and equity infusions and for which the Department had calculated a benchmark interest rate in a prior case, we used the rates calculated in those cases.

As discussed in the ''Background'' section of this preliminary results notice, we initiated an investigation to determine whether AHMSA was creditworthy during calendar year 2000. As discussed in the ''Facts Available'' section of this notice, we have made our determination of AHMSA's uncreditworthiness using primary source information from AHMSA that was submitted onto the record of this review prior to our initiation of this inquiry. Upon review of the financial information for AHMSA that is available on the record of this review, we preliminarily find that AHMSA was uncreditworthy during calendar year 2000. For further discussion, see the *Creditworthiness Memorandum*. Thus, for year 2000, we constructed a discount rate for uncreditworthy companies using the methodology described in 19 CFR 351.505(a)(3)(iii).

Analysis of Programs

I. Programs Preliminarily Determined To Confer Subsidies

A. GOM Equity Infusions

In the underlying investigation, we determined that the GOM made equity infusions into AHMSA during the years 1987, 1990 and 1991.[7] See *CTL Plate Investigation*, 58 FR at 37356. Shares of common stock were issued for all of these infusions. The GOM made these equity infusions annually as part of its budgetary process, in accordance with the Federal Law on State Companies. At the time of these infusions, AHMSA was almost entirely a government-owned company.

In the underlying investigation, we found AHMSA to be unequityworthy during the years 1987, and in 1990 and 1991. *See CTL Plate Investigation* 58 FR at 37356. Accordingly, we determined that the equity infusions by the GOM into AHMSA in these years were countervailable. In the 1998 review of CTL Plate, we continued to find this program countervailable. *See* the ''Programs Conferring Subsidies'' section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate.* No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of these findings. As a result, for purposes of these preliminary results, we continue to find that these equity infusions conferred a benefit and constituted a government financial contribution under sections 771(5)(E)(i) and 771(5)(D)(i) of the Act, respectively. In addition, we continue to find that the equity infusions were specific to a single enterprise within the meaning of section 771(5A)(D)(iii)(I) of the Act.

To calculate the countervailable benefit in the POR, we used the grant allocation methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR by the total consolidated sales of AHMSA during the POR. On this basis, we preliminarily determine the net subsidy for this program to be 0.96 percent *ad valorem* for AHMSA.

B. IMIS Research and Development Grants

The Instituto Mexicano de Investigaciones Siderurgicas (IMIS), or the Mexican Institute of Steel Research, was a government-owned research and development organization that performed independent and joint

[4] We note that AHMSA has received no non-recurring, peso-denominated grants since 1997.

[5] This is the same discount rate that was used in the previous segment of this proceeding. *See, e.g.,* the Calculation Memorandum for the *Final Results of Administrative Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Steel Plate from Mexico,* which was included as Exhibit 11 of AHMSA's November 25, 2002, questionnaire response.

[6] *Id.*

[7] AHMSA received counteravailable equity infusions in previous years. However, these equity infusions were fully allocated prior to the 2001 POR.

venture research with the iron and steel industry.

In the underlying investigation, the Department found that IMIS's activities with AHMSA fell into two categories: joint venture activities and non-joint venture activities. *See CTL Plate Investigation*, 58 FR at 37359. We determined that IMIS's non-joint venture activities with AHMSA were not countervailable. However, the Department determined that joint venture activities were countervailable, and we treated IMIS's contributions to joint venture activities as non-recurring grants. *Id.* We used the same approach in the 1998 review of CTL Plate. AHMSA received grants under this program during the years 1987 through 1991.[8] No new information or evidence of changed circumstances has been presented thus far in this review to warrant reconsideration of these findings. As a result, for purposes of these preliminary results, we continue to find that the IMIS grants conferred a benefit and constituted a government financial contribution under sections 771(5)(E) and 771(5)(D)(i) of the Act, respectively. In addition, we continue to find that the IMIS grants were specific to the steel industry under section 771(5A)(D)(i) of the Act.

To calculate the countervailable benefit in the POR, we used the grant allocation methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR by the total consolidated sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.04 percent *ad valorem* for AHMSA.

C. Lay-Off Financing From the GOM

During the verification of the underlying investigation, the Department discovered that the GOM had loaned AHMSA money to cover the cost of personnel lay-offs which the GOM felt were necessary to make AHMSA more attractive to potential purchasers. This loan was made prior to AHMSA's privatization in 1991. The Department also learned that this loan did not accrue interest after September 30, 1991. Further, the Department learned that the GOM was allowing the privatized AHMSA to repay this loan with the transfer of AHMSA assets back to the GOM. The assets AHMSA was using to repay the loan were assets which the Grupo Acero del Norte (GAN), the purchaser of AHMSA, had not wished to purchase but which the GOM included in the sale package. *See CTL Plate Investigation*, 58 FR at 37360. These assets were characterized as ''unnecessary assets'' or assets not necessary to the production of steel.

Because the information about this financing and its repayment came to light only at verification of the questionnaire responses submitted during the investigation, we were unable to determine whether this loan relieved AHMSA of an obligation it would otherwise have borne with respect to the laid-off workers. Thus, in the underlying investigation, we calculated the benefit by treating the financing as an interest-free loan. *See CTL Plate Investigation*, 58 FR at 37361.

In the review covering calendar year 1997, AHMSA claimed that it had extinguished its lay-off financing debt with the transfer of the ''unnecessary assets.'' *See 1997 Review of CTL Plate. See also, Certain Cut-to-Length Carbon Steel Plate from Mexico: Preliminary Results of Countervailing Duty Administrative Review*, 64 FR 48796, 48801 (September 8, 1999) (*Preliminary Results of 1997 Review of CTL Plate*). In that review, we noted that the record of the investigation indicated that these assets were included by the GOM in the sale of AHMSA despite the fact that GAN, the purchaser of AHMSA, indicated that it did not wish to purchase those assets, and GAN's bid for AHMSA did not include any funds for those assets. *See Preliminary Results of 1997 Review of CTL Plate*, 64 FR at 48799. In the 1997 review of CTL Plate, we further noted that the record from the investigation indicated that the value of those assets was frozen in November 1991, and that, as of that date, the assets were neither depreciated nor revalued for inflation, both of which are standard accounting practices in Mexico. *See id.* 64 FR at 48801.

Although, in the 1997 review of CTL Plate, we noted that a loan that provides countervailable benefits normally ceases to do so once it has been fully repaid, we determined that the benefit to AHMSA with respect to the lay-off financing was essentially in the form of a grant. Specifically, in that review, we determined that AHMSA had repaid the loan with the transfer of assets which AHMSA's purchasers did not wish to purchase and for which they did not pay. *See Preliminary Results of 1997 Review of CTL Plate*, 64 FR 48801. Thus, in the review covering calendar year 1997, we determined that the GOM's acceptance of these ''unnecessary assets'' to repay this loan, assets which were effectively given to AHMSA free of charge, constituted debt forgiveness of this loan. Accordingly, we determined that the entire amount of the pre-privatization lay-off financing was a non-recurring grant within the meaning of section 771(5)(E) of the Act that was received in 1994, the time at which the pre-privatization loan was forgiven. We further found that this program constituted a government financial contribution and was specific to a single enterprise within the meaning of sections 771(5)(D)(ii) and 771(5A)((D)(iii)(I) of the Act, respectively. We continued to apply this approach in the 1998 review of CTL Plate. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings. Thus, for the purposes of these preliminary results, we continue to find that the entire amount of the pre-privatization lay-off financing constituted a non-recurring grant received in 1994, the point at which the loan was forgiven.

To calculate the countervailable benefit in this review, we used the grant allocation methodology for intermittent, significant inflation described above. We then divided the benefit from the pre-privatization lay-off financing attributable to the POR by the total consolidated sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.52 percent *ad valorem* for AHMSA.

D. GAN's Committed Investment Into AHMSA

As noted above in the ''Change-in-Ownership'' section, the GOM sold AHMSA to GAN in 1991. To sell the company, the GOM established a bid structure in which bids could be divided into two parts: A cash component and a committed investment component. Under these bidding rules, a potential purchaser of AHMSA could, in lieu of a cash payment to the GOM, agree to make future investments into AHMSA. GAN, the eventual purchaser of AHMSA, made a bid for the company which consisted of a cash payment to the GOM as well as a promise to invest a certain amount into AHMSA in the future. Another bid by a third party, which had a higher cash component, was rejected by the GOM in favor of GAN's bid.

In the 1998 review of CTL Plate, we found that, because the transaction in question involved only the sale of AHMSA, the actions of the GOM were specific to a single enterprise within the meaning of section 771(5A)(D)(iii)(I) of the Act. *See* the ''Committed Investment'' section of the Decision Memorandum that accompanied the

[8] AHMSA also received a grant under this program 1986. However, this grant was fully expensed prior to the 2001 POR.

1998 Review of CTL Plate. We further found that the record reflected that the GOM, in accepting GAN's bid, considered one-half of GAN's committed investment to be equivalent to the payment of cash. Therefore, we used this amount as a proxy for the amount of revenue foregone by the GOM in its sale of AHMSA, within the meaning of section 771(5)(D)(ii) of the Act. *Id.* No new information or evidence of changed circumstances has been presented thus far in this review to warrant any reconsideration of these findings. Therefore, for purposes of these preliminary results, we continue to find that GAN's committed investment into AHMSA was specific and constituted a government financial contribution within the meaning of the Act. Furthermore, we continue to find that this program conferred a benefit under section 771(5)(E) of the Act.

Accordingly, we have treated this benefit as a non-recurring grant in the amount of the revenue foregone and allocated it over time using our standard grant formula.[9] We then converted the benefit attributable to the POR into pesos using the average annual peso/U.S. dollar exchange rate for the POR. Finally, we divided the resulting peso-denominated benefit amount by AHMSA's total consolidated sales during the POR. On this basis, we determine the net countervailable subsidy to be 2.21 percent *ad valorem.*

E. 1988 and 1990 Debt Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructured Debt Owed to the GOM

In 1987, the GOM negotiated agreements with foreign creditors to restructure the debt of AHMSA. The GOM again negotiated on behalf of AHMSA debt restructuring agreements in 1988 and 1990. Under these agreements, the GOM purchased AHMSA's debts, which were denominated in several foreign currencies, from AHMSA's foreign creditors in exchange for GOM debt. The GOM thereby became the creditor for loans included in these agreements.

In the underlying investigation, the GOM claimed that AHMSA's principal repayment obligations remained the same after the debt restructuring. However, in that investigation, we could not confirm during verification that AHMSA's principal obligations on its debt had not been forgiven in the 1988 and 1990 debt restructuring agreements. Thus, based upon the facts available to the Department at the time of the investigation, we assumed that the principal had been forgiven and that this had been reflected in the amount of the discount the GOM had received when purchasing the debt from AHMSA's foreign creditors. Accordingly, we treated the forgiven principal as a non-recurring grant.

In the 1997 review of CTL Plate, AHMSA claimed that, in June 1996, it had repaid its restructured debt in the form of a discounted prepayment to the GOM, thereby extinguishing its financial obligations to the GOM. During verification of the questionnaire response submitted during that administrative review, we learned that, in order to determine the amount of the discounted prepayment that AHMSA was to make in June of 1996, the company and the GOM had created amortization tables for each of the foreign currency loans. Next, they had converted these payment streams into U.S. dollars and calculated the net present value for each payment stream. They had then summed the U.S. dollar denominated net present values to derive the amount of the discounted prepayment to be made in U.S. dollars.

In the 1997 review of CTL Plate, we determined that AHMSA's discounted prepayment of its 1988 and 1990 restructured debts constituted a countervailable benefit, in the form of debt forgiveness, because AHMSA's discounted prepayment had resulted in a reduction of the amount of principal owed by AHMSA on this debt. *See Preliminary Results of 1997 Review of CTL Plate*, 64 FR at 48799. On this basis, we determined in the 1997 review of CTL Plate that the difference between the principal outstanding on AHMSA's restructured debt and the amount of its discounted prepayment constituted debt forgiveness on the part of the GOM and, therefore, conferred a benefit and constituted a government financial contribution within the meaning of sections 771(5)(E) and 771(5)(D)(ii) of the Act, respectively. In addition, we determined that the benefit was conferred in 1996, the year in which the debt forgiveness took place. *See id.* Because the debt forgiveness was made to a single enterprise, we determined in the 1997 review of CTL Plate that it was specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. We continued this approach in the 1998 review of CTL Plate. No new information or evidence of changed circumstances has been presented thus far in this review to warrant any reconsideration of these findings. Thus, for purposes of these preliminary results, we continue to find that the debt forgiveness under this program is a countervailable, non-recurring grant.

Because the principal forgiven was denominated in U.S. dollars and, thus, was unaffected by Mexico's intermittent significant inflation, we used the Department's standard non-recurring grant methodology to allocate the benefit to the POR. See 19 CFR 351.509. We used as our discount rate the weighted-average of AHMSA's fixed-rate, U.S. dollar loans that were received during the year of receipt when the debt forgiveness took place. We then converted the U.S. dollar denominated benefit into pesos using the average annual peso/U.S. dollar exchange rate for the POR. Finally, we divided the benefit attributable to the POR by AHMSA's total consolidated sales during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.52 percent *ad valorem* for AHMSA.

F. Immediate Deduction Program

Under Article 51 of Mexico's tax law, companies may opt to take an immediate deduction on fixed assets purchased during the tax year, as opposed to taking regular straight line depreciation. The rates of depreciation under the immediate deduction vary according to industry. The Immediate Deduction program was established in 1987 and was subject to ongoing reforms until it was repealed in 1998. The program was subsequently reinstated in 2002. *See* the ''Immediate Deduction'' section of the GOM Verification Report. Tax credits earned under the Immediate Deduction program can be carried-forward for a period of 10 years. *Id.* Pursuant to this carry forward provision, AHMSA was able to apply tax credits, earned prior to and during 1998, to tax year 2000 even though the program was not active during the POR.

The immediate deduction mechanism was available only for certain fixed assets that had not been previously used in Mexico. The immediate deduction was not available for pre-operation expenses or for deferred expenses and costs. The GOM's stated purpose for the immediate deduction program was to promote investment by allowing companies to take an accelerated or immediate deduction set to an industry-specific rate, rather than using the standard straight-line depreciation method. GOM officials confirmed during verification that the immediate deduction option only applied to property used permanently within Mexico but outside the metropolitan areas of Mexico City, Guadalajara, and

[9] The benefit amount under this program was denominated in U.S. dollars. Therefore, it was not necessary to use the intermittent inflation methodology discussed above.

Monterrey. *See* the ''Immediate Deduction'' section of the GOM Verification Report. With respect to small firms (*i.e.*, firms with a gross income of 7 million pesos or less), the location restriction did not apply.[10] An immediate deduction could be taken, at the election of the taxpayer, in the tax year in which the investments in qualifying fixed assets were made, in the year in which these assets were first used, or in the following year. No prior approval by the GOM was required to use the immediate deduction option.

In past reviews, our examination of this program was limited to whether AHMSA used tax credits earned under the Immediate Deduction program to reduce its income tax liability. *See, e.g.*, the ''Immediate Deduction'' section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate.* However, based on record evidence collected during this segment of the proceeding, we are preliminary revising this approach. Under Article 23 of the Mexican tax law, the GOM imposes an alternative minimum tax. Pursuant to this provision, companies are required to pay the lesser of either the income tax or the asset tax. The asset tax is equal to 1.8 percent of the value of a company's assets. During the POR, AHMSA was in a tax loss position. Therefore, it did not have any taxable income. However, pursuant to Article 23 of the Mexican tax law, it was liable for an asset tax equal to 1.8 percent of the value of its assets. Therefore, we are investigating the extent to which AHMSA may have used this program to reduce its asset tax burden.

In previous segments of this proceeding, we have found the Immediate Deduction program specific to a region, pursuant to section 771(5A)(D)(iv) of the Act. We have further found that the program constituted a financial contribution, to the extent that the GOM is not collecting tax revenue that is otherwise due, and that it conferred a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. *See, e.g.*, the ''Immediate Deduction'' section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate.* No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of these findings. Thus, for purposes of these preliminary results, we continue to find this program countervailable.

In accordance with 19 CFR 351.509, we have calculated the benefit under this program by determining the amount of asset tax that AHMSA would have paid, absent the program, in the tax return it filed during the POR. We note that the amount of asset tax that AHMSA would have paid absent the program was clearly indicated on the tax return that AHMSA filed during the POR. *See* Exhibit 1 of AHMSA's July 8, 2003, supplemental questionnaire response. We then divided the benefit by AHMSA's total consolidated sales. On this basis, we preliminarily determine the net subsidy to be 2.57 percent *ad valorem* for AHMSA.

G. Bancomext Export Loans

The Banco Nacional de Comercio Exterior, S.N.C. (Bancomext), also known as the National Bank of Foreign Trade, is a state-owned lending institution that offers financing to producers or trading companies engaged in export activities. Specifically, these U.S. dollar-denominated loans provide financing for working capital (pre-export loans), and export sales (export loans).

During the POR, AHMSA made interest payments on a Bancomext loan that it originally received from the Government bank in 1995. However, the terms of the loan were renegotiated in May of 2000 following AHMSA's entrance into an interest payment suspension. AHMSA had no other loans outstanding with Bancomext as of the end of 2001, the POR. As discussed in further detail below, this Bancomext loan was the only loan that was not covered by the interest payment suspension and, thus, was the only loan on which AHMSA paid interest during the POR.

In the underlying investigation, we determined that, because the loans issued by Bancomext are available only to exporters, this program is specific within the meaning of section 771(5A)(B) of the Act. We further found that loans under this program conferred a benefit and constituted a government financial contribution under sections 771(5)(E)(ii) and 771(5)(D)(i) of the Act, respectively, to the extent that they are provided at rates below those prevailing on comparable commercial loans. *See CTL Plate Investigation,* 58 FR at 37357. We used the same approach in the previous segment of this proceeding. *See* the ''Bancomext Export Loans'' section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate.* No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of these findings. Therefore, for purposes of these preliminary results, we continue to find that lending under this program constitutes a countervailable export subsidy.

As explained in the *Creditworthiness Memorandum,* on May 25, 1999, AHMSA entered into a court-sanctioned suspension of payments program. Under the suspension of payments program, all payments on AHMSA's commercial debt (*i.e.*, non-government debt) were suspended from May 1999 through 2001, a period which includes the POR. However, during the POR, AHMSA made payments on its outstanding Bancomext loan, pursuant to a May 2, 2000 agreement established between Bancomext and AHMSA. Under this agreement, the terms of AHMSA's Bancomext loan were renegotiated. In particular, the two parties changed the repayment schedule, interest rates, and penalty payment terms. See, *e.g.*, Exhibit 13 of AHMSA's November 25, 2002 questionnaire response.[11]

As stated above, while the Bancomext loan was originally issued in 1995, the terms of the loan were renegotiated in 2000. Thus, in keeping with the Department's practice, we find that, for purposes of these preliminary results, May 2000 was the effective issuance date of the Bancomext loan. *See e.g., Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy,* 63 FR 40474, 40477 (July 29, 1998). As explained in the *Creditworthiness Memorandum,* we have preliminarily determined that AHMSA could not have obtained long-term loans from conventional commercial sources in 2000. Accordingly, in deriving the benchmark interest rate (*e.g.*, a rate that would have been established in 2000 and remained applicable during the POR) we have used the benchmark methodology for uncreditworthy companies outlined in 19 CFR 351.505(a)(3)(iii).

To determine the benefit conferred under the Bancomext export loan program, we compared the interest rate charged on these loans during the POR to the uncreditworthy benchmark interest rate discussed above. As the interest amounts AHMSA paid in the 2001 POR were less than what AHMSA would have paid on a comparable commercial loan, as indicated by our benchmark interest rate, we preliminarily determine that this program conferred a countervailable benefit upon AHMSA in accordance with section 771(5)(E)(ii) of the Act.

[10] We note that the small firm classification does not apply to AHMSA.

[11] Bankcomext officials were able to secure payment from AHMSA, pursuant to the terms of the amended loan agreement. We note that the details of the amended loan agreement are business propertary, see the ''Bancomet'' section of the GOM Verification Report.

We note that AHMSA was unable to make timely interest payments on several occasions during the 2001 POR, and, pursuant to the terms of its loan agreement, was forced to make penalty interest payments. During verification, we confirmed that the penalty interest rate established under the terms of the renegotiation was 25 percent lower than that established under the original terms of the Bancomext loans. During verification, we asked Bancomext officials why, in the midst of AHMSA's financial difficulties, they decided to lower the penalty interest rate that they charged AHMSA for late interest payments. Bancomext officials explained that the revised moratorium interest rate was the rate that was agreed to between the two parties during the renegotiation process.

For purposes of these preliminary results, we find that, given that AHMSA defaulted on its commercial debt in 1999, its uncreditworthy status at the time of the 2000 renegotiation process, and its history of failing to adhere to its contractual obligations with Bancomext, the terms of the renegotiated Bancomext loans did not reflect the amount of penalty interest that AHMSA would have paid on a comparable commercial loan.[12]

We attempted to obtain information from AHMSA and the GOM regarding penalty interest rates charged in Mexico during 2000. AHMSA explained that, while it was late on several loans prior to 2000, it did not make any penalty interest payments to commercial institutions immediately prior to or during the 2001 POR. *See* page 11 of AHMSA's May 22, 2003, supplemental questionnaire response. In its supplemental questionnaire response, the GOM stated that it was, ''* * * unable to provide such information * * *'' on the grounds that, ''* * * Mexican bank secrecy laws prohibit the disclosure of company-specific repayment information.'' *See* page 1 of the GOM's May 21, 2003, questionnaire response. During verification, we attempted to meet with a commercial lending institution in Mexico to discuss, among other things, the typical practices of Mexican banks, as they apply to the establishment of penalty interest payments. However, the officials at the commercial lending institution refused to answer our questions. *See* the September 2, 2003, report entitled, ''Meeting with Banking Officials from Banamex,'' a public document on file in room B–099 of the CRU. Thus, in accordance with section 776(a) of the Act, we are using as facts available the penalty interest rate that was established between Bancomext and AHMSA pursuant to the original terms of the 1995 Bancomext loan agreement. *See* Exhibit 4 of AHMSA's July 8, 2003, supplemental questionnaire response.

To determine the benefit attributable to AHMSA's reduced penalty interest payments, we subtracted the amount of penalty interest AHMSA actually paid during the 2001 POR from the amount of penalty interest the company would have paid during the POR pursuant to its initial 1995 loan agreement with Bancomext.

In their December 16, 2003, submission, petitioners alleged that the GOM forgave principal due on the Bancomext loans when AHMSA and Bancomext renegotiated the terms of the Bancomext loans in 2000. In our *New Subsidy Memorandum,* we determined that an examination of petitioners' allegations was warranted. *See* page 8 of the *New Subsidy Memorandum.* During this review, we have issued multiple supplemental questionnaires to AHMSA and the GOM concerning petitioners' allegation that the government forgave a portion of AHMSA's Bancomext debt. In addition, we thoroughly examined this issue during verification. For example, we reviewed source documents that indicated the balance of principal that AHMSA owed on the Bancomext loans before and after the 2000 loan renegotiation. *See* the ''Bancomext Loans'' section of the AHMSA Verification Report. Based on the questionnaire responses submitted by the GOM and AHMSA and on the source documents reviewed during verification, we preliminarily find that no debt was forgiven on AHMSA's Bancomext loans.

Because eligibility under this program is contingent upon exports, we divided the benefit (*i.e.*, the difference between the benchmark interest/penalty payments and AHMSA's actual interest/penalty payments) by AHMSA's total export sales. We note that we have used an unconsolidated export sales figure because the program was contingent on AHMSA's export sale. Because AHMSA's total export sales were denominated in pesos, we converted the benefit AHMSA received under this program to pesos using the peso/U.S. dollar exchange rate that was outstanding on the date of the interest payments. On this basis, we preliminarily determine the net subsidy for this program to be 6.55 percent *ad valorem* for AHMSA.

II. Programs Preliminarily Determined Not to Confer Subsidies

A. Petroleos Mexicanos (PEMEX) Guaranteed Provision of Natural Gas for Less Than Adequate Remuneration

Based on our *New Subsidies Memorandum,* we initiated an investigation into whether PEMEX sold natural gas to AHMSA for less than adequate remuneration during the POR. In particular, we examined a program under which the state-owned PEMEX agreed to provide a certain fixed quantity of natural gas for the price of US$4 per million British Thermal Units (MMBTU) to AHMSA for a period of three years beginning on February 8, 2001. This contract was applicable from January 1, 2001, to December 31, 2003.

During verification, we met with officials from PEMEX and discussed the manner in which the program operated during the POR. In addition, we identified and examined the distribution of companies and industries that used the program during the POR. *See* the ''PEMEX'' section of the GOM Verification Report. During verification, we confirmed that, as the GOM had stated in its questionnaire responses, the program was provided to wide variety of industries and that neither AHMSA nor the Mexican steel industry was singled out or disproportionally represented in terms of usage. Thus, based on the questionnaire responses submitted by the GOM and on information collected during verification, we preliminarily determine that this program is not specific within the meaning of section 771(5A) of the Act and, therefore, is not countervailable.

B. PITEX Duty-Free Imports for Companies That Export

In prior segments of this proceeding, we found that the Programa de Importacion Temporal Para Producir Productos Para Exportar (PITEX), also know as the Program for Temporary Importation to Produce Products for Export, provides countervailable export subsidies to the extent that the program offers duty exemptions on products not consumed in the production of the exported product. In its questionnaire responses, the GOM claimed that this aspect of the program was terminated pursuant to Article 303 of the North American Free Trade Agreement (NAFTA). In particular, the GOM asserted that, after 2001, PITEX no longer offered duty-free exemptions on capital goods and machinery. *See, e.g.*, page II–44 of the GOM's November 25, 2002. During verification, we investigated the GOM's claims regarding

[12] Regarding AHMSA's history of failing to adhere to its contractual obligations with bancomext, see the ''Bancomext Loan'' section of the AHMSA Verification Report.

PITEX. We found no information that contradicted the GOM's claims. *See* the ''PITEX'' section of the GOM Verification Report.

Because this change was implemented after the POR of this review, we reviewed the relevant source documentation of AHMSA and its affiliate Nacional de Acero, S.A (NASA) to confirm that these companies did not use PITEX during the 2001 POR. *See* the ''PITEX (Temporary Import Items)'' section of the AHMSA Verification Report. In particular, we reviewed annual reports that both companies submitted to the Ministry of Economy, the authority that administers PITEX. *Id.* These reports listed all temporary imports made by the AHMSA and NASA during the POR.[13] We noted that AHMSA reported no temporary imports during the POR. *Id.* NASA reported temporary imports; however, a review of its source documents indicated that it did not receive any duty exemptions on items that were not consumed in the production of exported products. *Id.*

Based on the questionnaire responses submitted by the GOM and AHMSA, as well as on information examined during verification, we find that PITEX did not confer a benefit on AHMSA or its affiliate, NASA, during the POR. Furthermore, we preliminarily determine that PITEX, as of 2002, is no longer countervailable because it no longer offers duty exemptions on products not consumed in the production of the exported product.

C. GOM Assumption of AHMSA Debt in 1986

In the previous segment of this proceeding we found this program conferred countervailable subsidies. *See* the ''1986 Assumption of AHMSA's Debt'' section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate* in which we treated the debt forgiveness provided under this program as a non-recurring, allocable grant received in 1986. However, because we have allocated the debt forgiveness under this program using a 15-year AUL, the benefit stream was fully extinguished prior to the POR and, thus, no longer confers countervailable subsidies. Therefore, we preliminarily determine that this program is no longer countervailable.

[13] We note that, in prior segments of this review, usage of PITEX has corresponded to those items that fall under the temporary imports category.

III. Program Preliminarily Determined Not To Exist

A. NAFIN/Coahuila State Government Supplier Relief

In our *New Subsidies Memorandum*, we initiated an investigation into whether the state-run Nacional Financiera (NAFIN) and the Coahuila State Government (CGS) developed a rescue scheme in 1999 to address the lack of payment of AHMSA's debts to local suppliers. During verification, we thoroughly examined AHMSA's accounts payable, as well as other accounting documents related to its suppliers. During our review of these document, we found no evidence that AHMSA received any of the alleged benefits or that this alleged program exists. See the ''NAFIN/Coahuila State Government Supplier Relief'' section of the AHMSA Verification Report. Further, the GOM claimed that this program does not exist. Therefore, for purposes of these preliminary results, we find that this program does not exist.

IV. Programs Preliminarily Determined To Be Not Used

Based on information reviewed during verification, we preliminarily determine that the following programs were not used during the POR:

1. FONEI Long-Term Financing.
2. Export Financing Restructuring.
3. Bancomext Trade Promotion Services and Technical Support.
4. Empresas de Comercio Exterior or Foreign Trade Companies Program.
5. Article 15 & 94 Loans.
6. NAFIN Long-Term Loans.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(I), we calculated an individual subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 2001, through December 31, 2001, we preliminarily determine the net subsidy for AHMSA to be 13.37 percent ad valorem. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the BCBP to assess countervailing duties for AHMSA at 13.37 percent ad valorem of the f.o.b. invoice price on all shipments of the subject merchandise from AHMSA, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the Uruguay Round Agreements Act (URAA) replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. A requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the pre-URAA antidumping regulation on automatic assessment, which was identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct the BCBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See* CTL Plate Investigation, 58 FR 37352. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 2001, through December 31, 2001, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties

may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22787 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Gray's Reef National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Gray's Reef National Marine Sanctuary (GRNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Local Conservation, University Education, and Living Resources Research.

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's Charter.

DATES: Applications are due by September 30, 2003.

ADDRESSES: Application information may be obtained from Becky Shortland, Council Coordinator, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411; telephone 912/598–2345; *becky.shortland@noaa.gov.* Applications should be sent to Reed Bohne, Manager, Gray's Reef National Marine Sanctuary (same address).

FOR FURTHER INFORMATION CONTACT: Contact Becky Shortland, Council Coordinator, 10 Ocean Science Circle, Savannah, GA 31410; telephone 912/598–2345; *becky.shortland@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Sanctuary Advisory Council was established in August 1999 to provide advice and recommendations on management and protection of the Sanctuary. The Council, through its members, also serves as liaison to the community regarding Sanctuary issues and represents community interests, concerns, and management needs to the Sanctuary and NOAA (National Oceanic and Atmospheric Administration, U.S. Department of Commerce). Gray's Reef NMS is one of the largest near shore live-bottom reefs off the Southeastern United States, encompassing approximately 17 square nautical miles. The area earned sanctuary designation in 1981.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 29, 2003.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–22697 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Call for Applications for a Representative to the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve is seeking applicants for the following vacant primary seat on its Reserve Advisory Council (Council): (1) Native Hawaiian. Council Representatives are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the State of Hawaii. The applicant who is chosen as the Representative should expect to serve the remainder of this seat's term which is due to expire in February 2004. Existing members may re-apply for future vacancies.

DATES: Completed applications must be received no later than September 19, 2003.

ADDRESSES: Applications may be obtained from Moani Pai, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2661 or online at *http://hawaiireef.noaa.gov.* Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Aulani Wilhelm, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii

96825, (808) 397–2657, *Aulani.Wilhelm@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NWHI Coral Reef Ecosystem Reserve is a new marine protected area designed to conserve and protect the coral reef ecosystem and related natural and cultural resources of the area. The Reserve was established by Executive Order pursuant to the National Marine Sanctuaries Amendments Act of 2000 (Pub. L. 106–513). The NWHI Reserve was established by Executive Order 13178 (12/00), as finalized by Executive Order 13196 (1/01).

The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent that any such refuge waters extends beyond Hawaii State waters and submerged lands. The Reserve is managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Orders. The Secretary has also initiated the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the enabling Executive Orders, which are part of the application kit and can be found on the Web site listed above.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Advisory Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the proposal to designate and manage a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary.

The National Marine Sanctuary Program (NMSP) has established the Reserve Advisory Council and is now accepting applications from interested individuals for a Council Representative for the following citizen/constituent position on the Council:

1. One (1) representative from the Native Hawaiian community with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

Current Reserve Council Representatives and Alternates may apply for this vacant seat.

The Council consists of 25 members, 14 of which are non-government voting members (the State of Hawaii representative is a voting member) and 10 of which are government non-voting members. The voting members are representatives of the following constituencies: Conservation, Citizen-At-Large, Ocean-Related Tourism, Recreational Fishing, Research, Commercial Fishing, Education, State of Hawaii and Native Hawaiian. The government non-voting seats are represented by the following agencies: Department of Defense, Department of the Interior, Department of State, Marine Mammal Commission, NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA's National Marine Fisheries Service, National Science Foundation, U.S. Coast Guard, Western Pacific Regional Fishery Management Council, and NOAA's National Ocean Service.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 29, 2003.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–22698 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081303B]

Marine Mammals; File Nos. 704–1698 and 1044–1706

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for permits.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit to take marine mammals parts from species of marine mammals under NMFS jurisdiction for purposes of scientific research: The University of Alaska Museum, 907 Yukon Drive, P.O. Box 756960, Fairbanks, AK 99775 (Dr. Gordon Jarrell, Principal Investigator (PI)); and The Alaska Sea Otter and Steller Sea Lion Commission (TASSC), 6239 B Street, Suite 204, Anchorage, AK 99518 (Dr. Dolly Garza, PI).

DATES: Written or telefaxed comments on the new applications must be received on or before October 8, 2003.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Applications for permits:

File No. 704–1698: The University of Alaska Museum proposes to acquire, import and export specimen samples (whole carcasses; hard and soft parts) from all marine mammal species (pinnipeds and cetaceans) under NMFS jurisdiction. An unlimited number of samples would be taken from the following: 1) stranded marine mammal carcasses; 2) marine mammals taken by Alaskan Native subsistence hunters; and 3) specimens from permitted scientists in academic, federal, and state institutions involved in marine mammal research. Importation and exportation are requested in order to provide specimens to the international scientific community and bring legally acquired specimens from other museums and scientific donations. The objective of this application is to obtain authorization to archive specimens for future bona fide research at the University of Alaska and other institutions in the U.S. and world-wide. The applicant has requested a five-year permit.

File No. 1044–1706: TASSC proposes to receive parts and tissues from stranded marine mammals collected by coastal Alaska Native subsistence users and those from legally subsistence hunted Steller sea lions and other

species. Authority to import and export samples is requested. Further, TASSC proposes to standardize Steller sea lion biological sampling techniques among Alaska Native subsistence users through a series of workshops with harvest communities. The objectives of this research are to promote Alaska Native participation in Steller sea lion conservation and management; assess the health and condition of Steller sea lions through biological data and tissue collection; educate and inform the public on the traditional and contemporary relationship between the Steller sea lion and Alaska Natives; and work with regulatory agencies toward the common goal of enhancing and protecting healthy Steller sea lion populations. The applicant has requested a five-year permit.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 29, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–22782 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061903B]

Marine Mammals; File No. 1045–1713

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Stephen J. Insley, Hubbs-Sea World Research Institute, 2595 Ingraham St., San Diego, California 92109 has been issued a permit to take northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION:

On May 12, 2003, notice was published in the **Federal Register** (68 FR 25349) that a request for a scientific research permit to take the species identified above had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

This research project is designed to remotely investigate at-sea interactions between northern fur seals and ships, particularly the impact of commercial fishing vessels on the northern fur seals. Annually, ten lactating female northern fur seals from the Pribilof Islands in Alaska will be captured, measured, outfitted with datalogging instrumentation, and released. The individuals will be tracked and recaptured, the datalogger removed and the animals subsequently released. Additionally, Level B Harrassment of northern fur seals is authorized for 50 pups, 50 breeding females, 25 mature males, and 50 immature males, annually. These activities will be authorized over five years. The results of this research will provide important information for management decisions regarding northern fur seals.

Dated: July 30, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–22783 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by October 8, 2003. The Office of Management and Budget has approved this information collection requirement through September 30, 2003.

Title; Form; and OMB Number: Record of Military Processing, Armed Forces of the United States; DD Form 1966; OMB Number 0704–0173.

Type of Request: Extension.

Number of Respondents: 510,000.

Responses Per Respondent: 1.

Annual Responses: 510,000.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 170,000.

Needs and Uses: Title 10 U.S.C., sections 504, 505, 506, 12102, and 520a, Title 14 U.S.C., sections 351 and 632, and Title 50 U.S.C., section 451, require applicants to meet standards for enlistment into the Armed Forces. This information collection is the basis for determining eligibility of applicants for enlistment in the Armed Forces and is needed to verify data given by the applicant and to determine his/her qualification of enlistment. The information collected aids in the determination of qualifications, term of service, and grade in which a person, if eligible, will enter active duty or reserve status.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required To Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis.

Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 29, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22685 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 7, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Department of Defense Education Activity 4040 North Fairfax Drive, Arlington, VA 22203, ATTN: Ms. Judith L. Williams.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposal information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 696–4471 ext. 1968.

Title and OMB Control Number: ''Department of Defense Education Activity (DoDEA) High School Program Objective Memorandum (POM) Longitudinal Study'' and OMB Control Number [to be determined].

Needs and Uses: The Department of Defense Education Activity (DoDEA) operates 224 schools, including 56 high schools, in 21 districts located in 14 foreign countries, seven states, Guam, and Puerto Rico. To evaluate the Quality High School Initiative developed at the DoDEA High School Symposium in October 2001, contact with all DoDEA high school students and their sponsors who have left DoDEA high schools is necessary. All students in grades 9–12 who leave DoDEA high schools for any reason (*i.e.,* Permanent Change of Station (PCS), graduation, *etc.*) and their sponsors will be contacted 3–5 months after their departure by a telephone survey. Four telephone surveys will be used; one for students who leave DoDEA high schools for any reason other than graduation and one for their sponsors; one for DoDEA high school graduates and one for their sponsors. The collected data will be used to determine if quality educational programs are provided to all DoDEA high school students regardless of where the DoDEA high school is located. There is no existing data that is sufficiently comprehensive in terms of meeting the need for this information requirement.

Affected Public: Individuals or households.

Annual Burden Hours: 3,250 hours.

Number of Respondents: 13,000.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Beginning in fiscal year 2003, funds from a $114.5 million High School Program Objective Memorandum (POM) are available to support the Quality High School Initiative developed at the Department of Defense Education Activity (DoDEA) High School Symposium held in October 2001. This money is made available through the Office of the Secretary of Defense. The High School POM runs from FY 2003–2008. The Quality High School Initiative will be evaluated to determine if quality educational programs are provided to all DoDEA high school students regardless of where the high school is located. The study entails the development of data collection methods and procedures, as well as the analysis of data, to document the use of resources and the impact on student achievement in grades 9–12. The study will use a telephonic interview technique to determine the success of the initiative in helping students prepare for educational experiences after leaving Department of Defense (DoD) schools either through graduation, permanent change of station of the sponsor, or for any other reason. Four surveys have been developed: One for all DoDEA sponsors and one for students who leave DoDEA for any reason other than graduation; one for DoDEA sponsors of graduates and one for students who graduate. These four telephone surveys include questions on transition, curriculum, courses, activities, counselors, teachers, administrators, and summary issues.

Dated: August 29, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22686 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0132]

Federal Acquisition Regulation; Submission for OMB Review; Contractors' Purchasing Systems Reviews

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0132).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractors' purchasing systems reviews. A request for public comments was published in the **Federal Register** at 68 FR 37467 on June 24, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 8, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Acquisition Policy Division, GSA, (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of a contractor purchasing system review (CPSR), as discussed in part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

B. Annual Reporting Burden

Number of Respondents: 1,580.

Responses Per Respondent: 1.

Total Responses: 1,580.

Average Burden Hours Per Response: 17.

Total Burden Hours: 26,860.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: September 3, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–22747 Filed 9–5–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

DATES: October 1, 2003, from 1230 to 1630; October 2, 2003, from 0800 to 1515 and October 3, 2003, from 0800 to 1245.

ADDRESSES: SERDP Program Office, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

SUPPLEMENTARY INFORMATION:

Matters to be Considered

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: August 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22687 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending one system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

In addition, the Preamble to the Army's Compilation of Privacy Act systems of records notices is being updated to revise two entries, *i.e.*, *For Further Assistance* and *Points of Contact.*

DATES: This proposed action will be effective without further notice on October 8, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137 / DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 29, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

* * * * *

For Further Assistance

Any questions should be addressed to the Department of the Army, Freedom of Information/Privacy Act Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

Points of Contact

Mr. Bruno C. Leuyer at (703) 806–5698/DSN 656–5698 or Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

* * * * *

A0601–222 USMEPCOM

SYSTEM NAME:

Armed Services Military Accession Testing (November 20, 2001, 66 FR 58129).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals who have been administered a version of the Armed Services Vocational Aptitude Battery (ASVAB), to include those who subsequently enlisted and those who did not. This applies to high school, college, National Civilian Community Corps, and vocational students who have participated in the DoD Student Testing Program (STIP), as well as civilian applicants to the military services and active duty Service members.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''To establish eligibility for enlistment; verify enlistment and placement scores; verify retest eligibility; and provide aptitude test scores as an element of career guidance to participants in the DoD Student Testing Program. The data is also used for research, marketing evaluation, assessment of manpower trends and characteristics; and related statistical studies and reports.''

* * * * *

STORAGE:

Delete entry and replace with ''Computer magnetic tapes and electronic storage media''.

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Access to records is restricted to authorized personnel having an official need-to-know. Automated data systems are protected by user identification and manual controls.''

* * * * *

A0601–222 USMEPCOM

SYSTEM NAME:

Armed Services Military Accession Testing.

SYSTEM LOCATION:

U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been administered a version of the Armed Services Vocational Aptitude Battery (ASVAB), to include those who subsequently enlisted and those who did not. This applies to high school, college, National Civilian Community Corps, and vocational students who have participated in the DoD Student Testing Program (STIP), as well as civilian applicants to the military services and active duty Service members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, address, telephone number, date of birth, sex, ethnic group identification, educational grade, rank, booklet number of ASVAB test, individual's plans after graduation, and individual item responses to ASVAB subtests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 601–222, Armed Services Military Personnel Accession Testing Programs; and E.O. 9397 (SSN).

PURPOSE(S):

To establish eligibility for enlistment; verify enlistment and placement scores; verify retest eligibility; and provide aptitude test scores as an element of career guidance to participants in the DoD Student Testing Program. The data is also used for research, marketing evaluation, assessment of manpower trends and characteristics; and related statistical studies and reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Access to records is restricted to authorized personnel having an official need-to-know. Automated data systems are protected by user identification and manual controls.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved the disposition, treat records as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

Individual should provide his/her full name, Social Security Number, date tested, address at the time of testing, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system should address written inquiries to the Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

Individual should provide his/her full name, Social Security Number, date tested, address at the time of testing, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and ASVAB tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 03–22690 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 8, 2003, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal**

Register and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 27, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 29, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S900.40

SYSTEM NAME:

Government Telephone Use Records.

SYSTEM LOCATION:

Records are located at Defense Logistics Agency Support Services, Corporate Installations, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and at the telephone control offices of DLA field units. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA employees, military members, contractors, and individuals authorized to use government telephone systems, including cellular telephones, pagers, and telecommunications devices for the deaf or speech impaired. The records also cover individuals who have been issued telephone calling cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include individual's name and physical location; duty telephone, cell, and pager numbers; billing account codes; government issued telephone calling card account number; equipment and calling card receipts and turn-in documents; and details of telephone use to include dates and times of telephone calls made or received, numbers called or called from, city and state, duration of calls, and assessed costs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 40 U.S.C. 762a, Federal Telecommunications System Requirements; 44 U.S.C. 3501 *et seq.*, Federal Information Policy; National Telecommunications and Information Systems Security Directive 900, National Security Telecommunications, April 2000, promulgated pursuant to 47 U.S.C. 901 *et seq.*, National Telecommunications; E.O. 12731, Ethical Conduct; 5 CFR part 2635, Use of Government Property; and DoD Instruction 5335.1, Telecommunications Services.

PURPOSE(S):

Records are maintained to verify that telephones are used for official business or authorized purposes; to identify inappropriate calls and the persons responsible, and to collect the costs of those calls from those responsible. These records may be used as a basis for disciplinary action against offenders.

Records are also maintained to ensure proper certification and payment of bills; to safeguard telecommunications assets; for internal management control; for reporting purposes; and to forecast future telecommunications requirements and costs.

Statistical data, with all personal identifiers removed, may be used by management officials for purposes of conducting studies, evaluations, and assessments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To telecommunications service providers to permit servicing the account.

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic formats.

RETRIEVABILITY:

Records are retrieved by individual's name, billing account code, or telephone number.

SAFEGUARDS:

Access to the data is limited to those who require the records in the performance of their official duties. The electronic records employ user identification and password protocols. Physical entry is restricted by the use of locks, guards, and administrative procedures. Employees are periodically briefed on the consequences of improperly accessing restricted databases or records.

RETENTION AND DISPOSAL:

Records are destroyed when 3 years old. Initial telephone use reports may be destroyed earlier if the information needed to identify abuse has been captured in other records.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Defense Logistics Agency Support Services Corporate Installations, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the Heads of DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or to the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals must supply their full name and the DLA facility or activity where employed at the time the records were created or processed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or to the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals must supply their full name and the DLA facility or activity where employed at the time the records were created or processed.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer,

Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Data is supplied by the telephone user, telecommunications service providers, and DLA management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–22689 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 5,978,141 entitled ''Optical Mirror Particularly Suited for a Quantum Well Mirror'', Navy Case No. 78155, Inventor Karwacki, Issue Date November 2, 1999.//U.S. Patent No. 5,822,047 entitled ''Modulator LIDAR system'', Navy Case No. 77098, Inventors Contarino, *et al.*, Issue Date October 8, 1998.//U.S. Patent Number 6,486,799 entitled ''Computer-based human-centered display system'', Inventors Still, *et al.*, Issue Date November 26, 2002.//Navy Case Number 84053 entitled ''Deployable Tandem/Multiple Leading Edge Flap'', Inventors Ghee, *et al.*//Navy Case Number 85054 entitled ''Deployable Serrated Flap—Single Flap, Tandem and Multiple Flap, and Tandem Flap In-Opposition'', Inventor Ghee, *et al.*

ADDRESSES: Request for data and inventor interviews should be directed to Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Bldg. 304; Rm. 107, 22541 Millstone Rd., Patuxent River, MD 20670, (301) 342–5586 or E-mail *Fritzpm@navair.navy.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Bldg. 304; Rm. 107, 22541 Millstone Rd., Patuxent River, MD 20670, (301) 342–5586 or E-mail *Fritzpm@navair.navy.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these patents. All licensing application packages and commercialization plans must be returned to Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Bldg. 304; Rm. 107, 22541 Millstone Rd., Patuxent River, MD 20670.

The Navy, in its decision concerning the granting of licenses, will give special consideration to small business firms, and consortia involving small business firms.The Navy intends to insure that its licensed inventions are broadly commercialized throughout the United States.

Any license of Navy technology will require that material which embody the inventions licensed that are to be sold in the United States of America, will be manufactured substantially in the United States.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: August 27, 2003.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 03–22693 Filed 9–5–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice to add two systems of records.

SUMMARY: The Department of the Navy proposes to add two systems of records notices to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on October 8, 2003, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B10), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on August 27, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: August 29, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N06110–1

SYSTEM NAME:

Physical Readiness Information Management System (PRIMS).

SYSTEM LOCATION:

Records are located at the Navy Personnel Command (Pers–6), 5720 Integrity Drive, Millington, TN 38055–6000. Local command fitness leaders and assistant command fitness leaders at Navy installations/bases have access to the information about command personnel assigned to their Unit Identification Code (UIC).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy active duty and reserve personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical Readiness Information Management System (PRIMS) consists of command information, authorization information, member personnel data (such as name, Social Security Number, Unit Identification Code, Department, Division, gender, service, rank, date of birth, Navy Enlisted Code/Designator, physical date, date reported to command, medical waivers, body composition assessment (such as weight, height, neck, abdomen, waist, hips, body fat)) and Physical Readiness Test data, Fitness Enhancement Program data, and Ship Shape data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; OPNAVINST 6110.1G, Physical Readiness Program; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a standardized Navy database to monitor and track the

progress of members' Physical Fitness Assessment (PFA) data and to identify, screen, train, educate, counsel, monitor and rehabilitate members who do not meet the Physical Fitness Assessment standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USERS:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To qualified personnel for the purpose of conducting scientific research, management audits or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation or otherwise disclose member identities in any manner.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Records are maintained on electronic storage media. Paper records may be printed from the database.

RETRIEVABILITY:

Name of member and Social Security Number.

SAFEGUARDS:

Computer facilities are located in restricted areas accessible only to authorized persons who are properly screened, cleared and trained. Access to records is controlled by the use of need-to-know ''roles'' in the application. Paper records downloaded from the database are marked ''For Official Use Only.''

RETENTION AND DISPOSAL:

Records are maintained for a period of five years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command (Pers-657), 5720 Integrity Drive, Millington, TN 38055–6000 and/or the local command fitness leader/assistant command fitness leader.

NOTIFICATION PROCEDURE:

All active duty and active Reserve Navy members with internet capabilities who are seeking to determine whether this system of records contains information about themselves can access this record system online at *https://prims.bol.navy.mil* by using their Social Security Number and the BUPERS ONLINE (BOL) password.

Former service members who are seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Personnel Command (Pers-657), 5720 Integrity Drive, Millington, TN 38055–6000 or to the command where they were last assigned.

Requests must be signed and individuals should include their full name, Social Security Number, name or unit identification code of last command assigned, and dates of last assignment.

RECORD ACCESS PROCEDURES:

All active duty and active Reserve Navy members with Internet capabilities seeking access to records about themselves in this system of records may do so at *https://prims.bol.navy.mil* by using their Social Security Number and the BUPERS ONLINE (BOL) password.

Former service members seeking access to records about themselves in this system of records may receive a copy of the records by making written inquiries to the Commander, Navy Personnel Command (Pers-657), 5720 Integrity Drive, Millington, TN 38055–6000 or to the command where they were last assigned.

Requests must be signed and individuals should include their full name, Social Security Number, name or unit identification code of last command assigned and dates of last assignment.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and for contesting contents and appealing initial agency determinations are published in the Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, command personnel, and/or medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N07200–1

SYSTEM NAME:

Navy Morale, Welfare, and Recreation Debtors List.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe money to Navy Morale, Welfare and Recreation (MWR) facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copy of application, dunning notices, DD Form 139s, correspondence from responsible MWR Business Office, Bad Check System (including: Returned Check Ledger; Returned Check Report; copies of returned checks; bank advice relative to the returned check(s); correspondence relative to attempt by Navy MWR to locate the patron and/or obtain payment; a printed report of names of those persons who have not made full restitution promptly, or who have had one or more checks returned through their own fault or negligence); Accounts Receivable Ledger, detailed by patron; and Treasury Offset Program (TOP) accounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 31 FR 285.11, Administrative Wage Garnishment; Federal Claims Collection Act of 1966 (Pub. L. 89–508) and Debt Collection Act of 1982 (Pub. L. 97–365); and E.O. 9397 (SSN).

PURPOSE(S):

To maintain an automated tracking and accounting system for individuals indebted to the Department of the Navy's Morale, Welfare and Recreation (MWR) facilities for the purpose of collecting debts.

Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department of the Navy.

To the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by Navy

against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217, and 3718.

To any State and local governmental agency that employs the services of others and that pays their wages or salaries, where the employee owes a delinquent non-tax debt to the United States for the purpose of garnishment.

To the Department of the Treasury, Financial Management Service, for the purpose of collecting delinquent debts owed to the U.S. Government via administrative offset.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other Navy purpose or disclosed to another Federal, State or local agency which seeks to locate the same individual for its own debt collection purpose.

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Mainframe magnetic tapes, disk drives, printed reports, file folders, and PC hard and floppy disks.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Information is stored in locked file cabinets, supervised office space, supervised computer tape library that is accessible only through the data center, entry to which is controlled by a ''cardpad'' security system, for which only authorized personnel are given the access code. PC entry into the system may only be made through individual passwords.

SYSTEM MANAGER(S) AND ADDRESS:

Policy official: Head, Financial Management Branch, Department of the Navy, Navy Personnel Command (Pers-652), 5720 Integrity Drive, Millington, TN 38055–6520.

Record holder: Local Morale, Welfare, and Recreation Offices/Visitors Quarters/Civilian Fund Business Offices that fall under the Commanding Officer of an installation. Addresses for Commanding Officers appear in the Directory of Department of the Navy Mailing Addresses.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the local Morale, Welfare, and Recreation Office/Visitors Quarters/Civilian Fund Business Office at the installation where they obtained services or to the System Manager. Addresses for commanding officers appears in the Directory of Department of the Navy Mailing Addresses.

In the initial inquiry, the requester must provide full name, Social Security Number, date of transaction, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the local Morale, Welfare, and Recreation Office/Visitors Quarters/Civilian Fund Business Office at the installation where they obtained services or to the System Manager. Addresses for commanding officers appears in the Directory of Department of the Navy Mailing Addresses.

In the initial inquiry, the requester must provide full name, Social Security Number, date of transaction, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual; the bank involved; activity records; Internal Revenue Service; credit bureaus; the Defense Manpower Data Center; and the Department of the Treasury.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–22688 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

[Solicitation Number DE–PS36–03GO93015]

Chemicals and Forest Products Industries of the Future

AGENCY: Golden Field Office, U.S. Department of Energy (DOE).

ACTION: Notice of issuance of solicitation for financial assistance applications.

SUMMARY: DOE is announcing its intention to seek Financial Assistance Applications for research and development (R&D) projects that will reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts of the domestic chemical and forest products industries. DOE intends to provide financial support to assist in the development of such technologies under provisions of the Energy Policy Act of 1992 (EPAct).

DATES: Issuance of the Solicitation is planned for no later than August 21, 2003.

ADDRESSES: To obtain a copy of the Solicitation once it is issued, interested parties should access the DOE Golden Field Office Home Page at *http://www.golden.doe.gov/businessopportunities.html,* click on ''Solicitations'', and then access the solicitation link. The Golden Home Page will provide direct access to the Solicitation and provide instructions on using the DOE Industry Interactive Procurement System (IIPS) Web site. The Solicitation can also be obtained directly through IIPS at *http://e-*

center.doe.gov by browsing opportunities by Program Office for those solicitations issued by the Golden Field Office. DOE will not issue paper copies of the Solicitation.

FOR FURTHER INFORMATION CONTACT: Beth H. Dwyer, Contracting Officer, at *beth.dwyer@go.doe.gov.* Note, however, that responses to questions concerning the solicitation will ONLY be answered through the Q&A process in the IIPS system, and any Amendments to the Solicitation will be posted on the IIPS Web site ONLY.

SUPPLEMENTARY INFORMATION: The DOE Office of Infrastructure Technologies is soliciting Applications for R&D projects that will focus primarily on technology development in the areas of Catalytic Oxidation, Distillation, Wood/Composites, Fiber Recycling, and New Forest-Based Materials. Other promising technology areas demonstrating energy efficiency in the chemical and forest products industries may be considered in addition to the areas identified above.

Organizations applying under this solicitation are required to develop collaborative project teams involving industry, university and/or national laboratory participants. A minimum of two chemical or forest products organizations must be involved in each application. Awards under this Solicitation will be either Grants or Cooperative Agreements, with a Project Period of three to five years beginning in CY2004. A minimum Cost Share of 30% of Total Project Costs from non-federal sources for applied research projects, and 50% of Total Project Costs from non-federal sources for projects involving commercial demonstration technologies, for each year of the projects, is required in order to be considered for an award.

The possible number of initial awards to be made will depend on the availability of funds in the Fiscal Year 2004 congressional appropriations. Continuation of funding for the full project period will be contingent upon the availability of funds beyond FY 2004. The anticipated level of available DOE funding is specified in the Introduction to and Appendix B of the Solicitation. DOE reserves the right to make no awards under this Solicitation or to reduce the requested DOE funding commitment on any potential award through negotiated reductions in work scope.

Issued in Golden, Colorado, on August 21, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–22749 Filed 9–5–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–70–002]

Algonquin Gas Transmission Company; Notice of Compliance Filing

August 29, 2003.

Take notice that on August 21, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets proposed to be effective October 1, 2003:

Sub Original Sheet No. 50
Sub Original Sheet No. 51
Sub Original Sheet No. 52
Sub Original Sheet No. 53

Algonquin states that it is making this filing pursuant to an order issued by the Commission in the captioned docket on August 6, 2003. The August 6 Order accepted the tariff sheets listed in the appendix of the order, subject to Algonquin's submission within 15 days, of revised tariff sheets reflecting the length of the negotiated rate agreements detailed in the tariff sheets.

Algonquin states that copies of its filing have been mailed to all affected customers of Algonquin and interested state commissions, and to all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: September 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22724 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–082]

ANR Pipeline Company; Notice of Negotiated Rate Filing

August 29, 2003.

Take notice that on August 27, 2003, ANR Pipeline Company (ANR), tendered for filing and approval one (1) new negotiated rate service agreement between ANR and CoEnergy Trading Company. ANR requests that the Commission accept and approve the new agreement to be effective June 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eLibrary'' link.

Comment Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22735 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–579–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2003.

Take notice that on August 26, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, following tariff sheets, bearing a proposed effective date of September 25, 2003:

Second Revised Sheet No. 100
Second Revised Sheet No. 105
Fourth Revised Sheet No. 116
Second Revised Sheet No. 130
Third Revised Sheet No. 166
Sixth Revised Sheet No. 501
First Revised Sheet No. 501A
Third Revised Sheet No. 502A
Sixth Revised Sheet No. 503
First Revised Sheet No. 503.01
Fifth Revised Sheet No. 511

Columbia states it is making the filing to allow it to mutually agree with shippers, on a not unduly discriminatory basis, to combine multiple service agreements under the same rate schedule with varying terms of service for different contract demand quantities into a single service agreement for purposes of increased administrative ease in nominating daily service requirements on the pipeline. Columbia states its proposed revisions are entirely voluntary on the shipper's part and will not expand or restrict any other shipper's existing firm service rights or obligations under any other provisions of Columbia's Tariff.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eLibrary'' link.

Comment Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22732 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–564–001]

Dominion Cove Point LNG, LP; Notice of Tariff Filing

August 29, 2003.

Take notice that on August 27, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of September 10, 2003:

First Revised Sheet No. 213
Substitute First Revised Sheet No. 283

Cove Point states that the purpose of this filing is to supplement its August 11, 2003 filing, which would allow Cove Point the opportunity to charge Negotiated Rates for its transportation, peaking and LNG tanker discharging services. In this supplemental filing, Cove Point has clarified that for purposes of bidding for available firm service and capacity allocation it will treat customers paying for service at a negotiated rate higher than the maximum rate as if they have paid the maximum rate. Also, Cove Point clarified that its NPV calculation will only include revenues generated by the reservation charge or other form of revenue guarantee.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22727 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–433–002]

Energy West Development, Inc.; Notice of Compliance Filing

August 29, 2003.

Take notice that on August 25, 2003, Energy West Development, Inc. (Energy West), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to correct the page numbering for the tariff sheets filed on July 22, 2003, in this proceeding:

First Revised Sheet No. 23
First Revised Sheet No. 24
First Revised Sheet No. 29
First Revised Sheet No. 33
First Revised Sheet No. 42
First Revised Sheet No. 60

Energy West states that copies of the filing have been mailed to each of its customers and interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22726 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–575–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2003.

Take notice that on August 22, 2003, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of September 1, 2003:

Sixtieth Revised Sheet No. 8A
Fifty-Second Revised Sheet No. 8A.01
Fifty-Second Revised Sheet No. 8A.02
Tenth Revised Sheet No. 8A.04
Fifty-Fifth Revised Sheet No. 8B
Forty-Eighth Revised Sheet No. 8B.01
Fifth Revised Sheet No. 8B.02

FGT states that in Docket No. RP03–268–000 filed on February 28, 2003, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 3.49% to become effective for the six-month Summer Period beginning April 1, 2003.

FGT states that in Docket No. RP03–310–000 filed on March 21, 2003, FGT filed a flex adjustment of (0.24%) resulting in an Effective Fuel Reimbursement Charge Percentage (Effective FRCP) of 3.25% to become effective April 1, 2003.

FGT further states that the filing is necessary because it is currently experiencing lower fuel usage than it is being recovered by the current Effective FRCP of 3.25%. Decreasing the FRCP will reduce FGT's over recovery of fuel and reduce the Unit Fuel Surcharge in the next Summer Period.

FGT states that copies of the filing are being mailed to all customers served under the rate schedules affected by the filing and the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eLibrary'' link.

Comment Date: September 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22728 Filed 9–4–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–340–010]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

August 29, 2003.

Take notice that on August 25, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sec. Sub. First Revised Sheet No. 1416, to become effective December 1, 2003.

Gulf South states that it the filing was directed by the Commission in its July 29, 2003 Order regarding Gulf South's compliance with segmentation and Order No. 637.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22725 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–061]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

August 29, 2003.

Take notice that on August 27, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective September 29, 2003.

Fifth Revised Sheet No. 604
Third Revised Sheet No. 605
First Revised Sheet No. 606
Second Revised Sheet No. 607

On July 28, 2003 the Commission issued an Order addressing Gulf South's March 29, 2001 compliance filing in this docket. Gulf South states that this filing

brings Gulf South's PAL service into compliance with the Order, and provides additional flexibility for Gulf South's PAL Customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22734 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–578–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2003.

Take notice that on August 26, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of Midwestern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective October 1, 2003:

Third Revised Sheet No. 200
Fourth Revised Sheet No. 264
Fifth Revised Sheet No. 201
Fourth Revised Sheet No. 203
First Revised Sheet No. 264A
Sixth Revised Sheet No. 204
Sixth Revised Sheet No. 206
Third Revised Sheet No. 266
Third Revised Sheet No. 230B
Fourth Revised Sheet No. 246
Original Sheet No. 266.01
Original Sheet No. 246.01
Fifth Revised Sheet No. 262
Second Revised Sheet No. 266A
Third Revised Sheet No. 262.01
Second Revised Sheet No. 266B
Third Revised Sheet No. 263
Original Sheet No. 266C
Original Sheet No. 270A
Eighth Revised Sheet No. 273
Original Sheet No. 274
Sheet Nos. 275–399

Midwestern states that the purpose of this filing is to update Midwestern's currently effective tariff sheets to reflect the changes that have been accepted by the Commission in Midwestern's Order No. 637 compliance proceeding in Docket Nos. RP00–467–002 and 003 in an Order dated June 5, 2003 (103 FERC ¶ 61,294). Midwestern states that this instant filing is a housekeeping tariff filing prompted by the fact that Midwestern explains that, during the interval of time between Midwestern's compliance filing and the Commission's Order in Midwestern's Order No. 637 compliance proceeding, Midwestern filed and the Commission accepted other Midwestern tariff filings that did not contain Midwestern's Order No. 637 compliance proceeding tariff changes because they had not been accepted at the time the other proceedings were filed.

Midwestern states that copies of this filing have been sent to all of Midwestern's shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-library link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22731 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–577–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2003.

Take notice that on August 26, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective October 1, 2003:

Third Revised Volume No. 1
Twentieth Revised Sheet No. 14
Original Volume No. 2
Thirty-Fifth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to propose a decrease from 2.11% to 1.58% in the fuel reimbursement factor (Factor) applicable to Northwest's transportation service Rate Schedules. Northwest states that the Factor allows Northwest to be reimbursed in-kind for the fuel used during the transmission of gas and for the volumes of gas lost and unaccounted-for that occur as a normal part of operating the transmission system.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eLibrary'' link.

Comment Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22730 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–580–000]

OkTex Pipeline Company; Notice of Annual Charge Adjustment

August 29, 2003.

Take notice that on August 27, 2003, OkTex Pipeline Company (OkTex) tendered for filing Tariff Sheets Nos. 5A and 5B to revise the Annual Charge Adjustment (ACA).

OkTex states that the purpose of the filing is to reflect the correct ACA surcharge of $0.0021 to OkTex's tariff rates for the period October 1, 2003 through September 30, 2004. OkTex explains that, during the previous 12 months, the ACA surcharge billed was $0.0021 per Dth, but due to a typographical error, the tariff sheets on file with the Commission reflected an inaccurate ACA surcharge of $0.022. This filing corrects the ACA rates inadvertently displayed on Tariff sheets 5A and 5B from .$0.0022 to $0.0021.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the intervention and protest date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: September 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22733 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RT01–2–010]

PJM Interconnection, L.L.C.; Notice of Filing

August 29, 2003.

Take notice that on August 25, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing proposed changes to portions of the PJM Tariff and to Schedule 6 of the PJM Operating Agreement, PJM's Regional Transmission Expansion Planning Protocol. PJM states that the proposed amendments are submitted to comply with the Commission's Order in this proceeding dated July 24, 2003.

PJM states that copies of this filing have been served on all parties, as well as on all PJM Members and the state electric utility regulatory commissions in the PJM region.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: September 24, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22736 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–576–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

August 29, 2003.

Take notice that on August 25, 2003, Southern Natural Gas Company (Southern), tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised tariff sheets to become effective October 1, 2003:

Third Revised Sheet No. 101A
Second Revised Sheet No. 101B
Fifth Revised Sheet No. 116
Sixth Revised Sheet No. 117

Southern states that the tariff sheets filed by Southern set forth the terms and conditions under which Southern proposes to replace its first-come, first-served method of awarding primary firm receipt point capacity with a net present value (NPV) method. The NPV method is the same method that Southern uses for awarding available primary firm delivery point and pipeline capacity.

Southern states that it will be more equitable to award all available capacity under the same method. In addition, Southern is shortening the time period for an open season for requests for receipt point or delivery point amendments to be a minimum of 3 business days. Southern's existing open season time tables shall apply to open seasons for generally available capacity or requests for available capacity. Southern also clarifies that for purposes of determining whether a bid has met

the reserve price, bids entailing only amendments of points will be granted a value of zero.

Southern also proposes to change its Tariff to allow shippers to amend their primary Receipt Points for a limited consecutive term even when capacity at the Receipt Point is not available for the remainder of the primary term. In the event a Shipper amends its Receipt Point for a limited term, the previous Receipt Point will not revert back unless it was in the path of the amended point. Southern has requested to place the new capacity award methodology into effect on October 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eLibrary'' link.

Comment Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22729 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–111.006, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Filings

August 28, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., et al.

[Docket No. EL02–111–006]

Take notice that on August 22, 2003, in compliance with the Commission's July 23, 2003 Order in this proceeding, 104 FERC ¶ 61,105 (2003), PJM Interconnection, L.L.C. (PJM) filed revisions to the PJM Open Access Transmission Tariff, to eliminate PJM's through-and-out rate for transactions sinking within the proposed PJM/Midwest ISO footprint.

PJM states that the compliance tariff sheets have an effective date of November 1, 2003, as established by the July 23 Order.

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM Region and on all parties listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: September 29, 2003.

2. Westar Energy, Inc.

[Docket No. ER03–1183–001]

Take notice that on August 22, 2003, Westar Energy, Inc. (Westar) submitted for filing corrections to Sheet No. 7, Second Revised Rate Schedule FERC No. 264, Electric Transmission and Service Contract between Westar and Kansas Electric Power Cooperative, Inc. (KEPCo) and Sheet No. 7, Original Rate Schedule FERC No. 183, Electric Power Transmission and Service Contract between Westar's wholly owned subsidiary, Kansas Gas and Electric Company, Inc. and KEPCo. Westar states that the revised sheets lists the date of May 19, 2003 for the Stipulation and Agreement among Westar, KEPCo and Midwest Energy, Inc. to replace the incorrect date of March 19, 2003 listed in their August 8, 2003 filing.

Westar states that a copy of this filing was served upon the Kansas Corporation Commission and KEPCo.

Comment Date: September 12, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22702 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2181–014]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

August 29, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License for a Major Water Power Project.

b. *Project No.:* P–2181–014.

c. *Date Filed:* February 10, 2003.

d. *Applicant:* Northern States Power Company (d/b/a Xcel Energy).

e. *Name of Project:* Menomonie Hydroelectric Project.

f. *Location:* On the Red Cedar River, City of Menomonie, Dunn County,

Wisconsin. This project would not use Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William Zawacki, Director, Hydro Plants, or Ms. Kristina Bourget, Esq., Northern States Power Company (d/b/a Xcel Energy), 1414 West Hamilton Avenue, PO Box 8, Eau Claire, Wisconsin 54702–0008, 715–836–1136 or 715–839–1305, respectively.

i. *FERC Contact:* John Ramer, (202) 502–8969.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* CFR 385.200 (a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The Menomonie Project consists of the following existing facilities: (1) A 624-foot-long by about 40-foot-high dam, topped with five, 40-foot-wide by 19-foot-high and one, 9-foot-high by 25-foot-wide, steel Tainter gates, with a total dam discharge capacity of 62,000 cubic feet per second (cfs); (2) a 1,405-acre reservoir (Lake Menomin) with a gross storage capacity of about 15,000-acre feet; (3) a 72-foot-long by about 50-foot-wide by 40-foot-high powerhouse containing two vertical-shaft Kaplan turbine-generators with a combined total maximum hydraulic capacity of 2,700 cfs and a total installed generating capacity of about 5.4 megawatts (MW), producing a total of 23,358,292 kilowatt-hours (kWh) annually; (4) a 4,160-volt bus with three bundles of underground cables, approximately 50-feet-long, leading to a substation containing a 69-kilovolt (kV) bus from which power flows to serve the applicant's interconnected electrical system, or to a 12.5-kV local distribution system; and (5) appurtenant facilities. The dam and existing project facilities are owned by Northern States Power Company (d/b/a Xcel Energy).

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22722 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

August 29, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License for a Major Water Power Project.

b. *Project No.:* P–2697–014.

c. *Date Filed:* February 10, 2003.

d. *Applicant:* Northern States Power Company (d/b/a Xcel Energy).

e. *Name of Project:* Cedar Falls Hydroelectric Project.

f. *Location:* On the Red Cedar River, Towns of Tainter, Red Cedar, and Sherman, Dunn County, Wisconsin. This project would not use Federal lands. g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William Zawacki, Director, Hydro Plants, or Ms. Kristina Bourget, Esq., Northern States Power Company (d/b/a Xcel Energy), 1414 West Hamilton Avenue, P.O. Box 8, Eau Claire, Wisconsin 54702–0008, 715–836–1136 or 715–839–1305, respectively.

i. *FERC Contact:* John Ramer, (202) 502–8969.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing Docket No. P–2697–014 documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* CFR 385.200 (a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The Cedar Falls Project consists of the following existing facilities: (1) A 510-foot-long by about 50-foot-high dam, topped with two, 23-foot-wide by 5-foot-high, steel Tainter gates, with a total dam discharge capacity of 57,000 cfs; (2) a 1,752-acre reservoir (Tainter Lake) with a gross storage capacity of about 23,000-acre feet; (3) a 140-foot-long by 150-foot-wide by 42-foot-high powerhouse containing three 2,000-kilowatt (kW) horizontal generators with Francis turbines, with a total maximum hydraulic capacity of 2,500 cfs and a total installed generating capacity of 7.1 MW, producing a total of 33,678,351 kWh annually; (4) a substation containing a 69-kV bus from which power flows to four 69-kV transmission lines that serve the applicant's interconnected electrical system, or to a 10,500-kva transformer that serves a local distribution load (no transmission lines are part of this project); and (5) appurtenant facilities. The dam and existing project facilities are owned by Northern States Power Company (d/b/a Xcel Energy).

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22723 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2161–006]

Rhinelander Paper Company, Wisconsin; Errata Notice

August 27, 2003.

On August 20, 2003, the Commission issued an ''Order Issuing New License'', 104 FERC ¶ 62,134 (2003), to operate and maintain the Rhinelander Hydroelectric Project located on River, County, Wisconsin. This notice corrects the license ordering paragraphs.

Ordering Paragraph (B)(1) is changed to read:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary approved in the previous license order for this project,[28] remain in affect.

Ordering Paragraph (E), Article 202 is changed to read:

Article 202. Within 45 days of the date of issuance of the license, the licensee shall file three sets of aperture cards of the approved exhibit drawings. The sets must be reproduced on silver or gelatin 35mm microfilm.

Prior to microfilming, the FERC Drawing Number (2161–1001 through 2161–1007) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (*e.g.*, F–1, G–1, *etc.*), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Chicago Regional Office.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22721 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

[28] 14 FERC ¶ 62,064 (1981).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–13–000]

Application of the Primary Function Test for Gathering on the Outer Continental Shelf; Notice for Extension of Time to File Comments

August 27, 2003.

On August 14, 2003, a notice was issued stating that on September 23, 2003, the Commission would convene a public conference to explore criteria for distinguishing gathering facilities from transmission facilities in shallow waters of the Outer Continental Shelf. The notice requested that comments in response to the notice be submitted to the Commission by September 3, 2003. On August 22, 2003, the Williams Companies, Inc. (Williams), submitted a request—supported by the Interstate Natural Gas Association of America, the Natural Gas Supply Association, Duke Energy Field Services, the KeySpan Delivery Companies, and BP Energy Company—for an extension of time to file comments in response to the notice of the conference.

Williams requests additional time because the period to prepare comments coincides with holidays. In view of the support favoring Williams' request, the time to submit comments will be extended by a week, from September 3 to September 10, 2003.

Although the date for comments is changed, the date for notifying the Commission of an intention to participate in the conference remains the same. Therefore, persons interested in speaking or making a presentation at the conference must indicate their interest no later than September 3, 2003; comments addressing the questions specified in the August 14 notice must be filed by September 10, 2003. There is no need to provide advance notice to the Commission simply to attend the conference.

A subsequent notice will provide further details on the conference, including the agenda and a list of participants, as plans evolve. For additional information, please contact Gordon Wagner, Office of General

Counsel, phone 202–502–8947, e-mail: *gordon.wagner@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22720 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7555–1]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed Consent Decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed Consent Decree. On August 15, 2003, Environmental Defense filed a complaint pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), alleging that the Environmental Protection Agency had failed to meet its mandatory duty to promulgate guidelines and requirements for Best Available Retrofit Technology (''BART'') for certain major stationary sources. *Environmental Defense* v. *Marianne Lamont Horinko,* No. 1:03CV01737 RMU (D.D.C.). On August 19, 2003, the United States Environmental Protection Agency lodged the proposed Consent Decree with the United States District Court for the District of Columbia Circuit. The proposed Consent Decree establishes a time frame for EPA to promulgate the BART regulations and guidelines.

DATES: Written comments on the Proposed Consent decree must be received by October 8, 2003.

ADDRESSES: Written comments should be sent to M. Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed Consent Decree are available from Phyllis J. Cochran, (202) 564–5566.

SUPPLEMENTARY INFORMATION: Environmental Defense alleges that EPA failed to promulgate BART regulations and guidelines by the Congressionally-enacted deadline.

Pursuant to sections 169A and 169B of the Clean Air Act, EPA promulgated regulations on July 1, 1999 to protect visibility in Federal Class I areas. 64 FR 35714 (''regional haze rule''). In addition, pursuant to section 169A(b), EPA proposed to promulgate guidelines for the implementation of the BART requirements of the regional haze rule on July 20, 2001, 66 FR 38108, but has not published final guidelines. The regional haze rule was challenged, and on May 24, 2002, the United States Court of Appeals for the District of Columbia Circuit (''D.C. Circuit'') vacated and remanded to EPA the BART provisions of the regional haze rule. *American Corn Growers Assoc.* v. *EPA*, 291 F.3d 1 (D.C. Cir. 2002).

Section 169B(e) of the CAA provides that EPA must carry out its regulatory responsibilities under section 169A of the Act to promulgate regulations to protect visibility by December 10, 1997.[1] These regulations must require each applicable implementation plan to contain measures to assure reasonable progress toward the national visibility goal, including requirements that certain major stationary sources procure, install, and operate BART. CAA section 169A(b)(2). The CAA also requires EPA to provide guidelines to the States on the implementation of the visibility program, including guidelines for the determination of BART emission limits for fossil-fuel fired generating plants with a total generating capacity in excess of 750 megawatts. CAA section 169A(b).

The Consent Decree provides that EPA will sign a notice of proposed rulemaking setting forth its proposed BART regulations and guidelines no later than April 15, 2004. It further provides that EPA will submit the notice of proposed rulemaking to the Office of Federal Register no later than five days following signature. The Decree also provides that EPA shall sign a final notice of rulemaking setting forth its BART regulations and guidelines no later than April 15, 2005, and that EPA will submit the notice of final rulemaking to the Office of Federal Register no later than five days following signature.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Consent Decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Consent Decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the Consent Decree will be final.

Dated: August 22, 2003.

Lisa K. Friedman,

Associate General Counsel.

[FR Doc. 03–22769 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

[1] Section 169B(e)(1) of the CAA requires EPA to issue regional haze rules within 18 months of the receipt of the final report of the Grand Canyon Visibility Transport Commission. This report was received by EPA on June 10, 1996.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7554–7]

Control of Emissions From New Highway Vehicles and Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial of petition for rulemaking.

SUMMARY: A group of organizations petitioned EPA to regulate emissions of carbon dioxide and other greenhouse gases from motor vehicles under the Clean Air Act. For the reasons set forth in this notice, EPA is denying the petition.

EFFECTIVE DATE: September 8, 2003.

ADDRESSES: Information relevant to this action is contained in Docket No. A–2000–04 at the EPA Docket Center, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Dockets may be inspected at this location from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on Government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Chitra Kumar, Office of Air and Radiation, (202) 564–1389.

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 1999, the International Center for Technology Assessment (ICTA) and a number of other organizations[1] petitioned EPA to

[1] Alliance for Sustainable Communities, Applied Power Technologies, Bio Fuels America, California Solar Energy Industries Association, Clements Environmental Corporation, Environmental Advocates, Environmental and Energy Study Institute, Friends of the Earth, Full Circle Energy Project, Green Party of Rhode Island, Greenpeace USA, Network for Environmental and Economic Responsibility of the United Church of Christ, New Jersey Environmental Watch, New Mexico Solar

regulate certain greenhouse gas (GHG) emissions from new motor vehicles and engines under section 202(a)(1) of the Clean Air Act (CAA). Specifically, petitioners seek EPA regulation of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), and hydrofluorocarbon (HFCs) emissions from new motor vehicles and engines. Petitioners claim these emissions are significantly contributing to global climate change.

EPA is authorized to regulate air pollutants from motor vehicles under title II of the CAA. In particular, section 202(a)(1) provides that ''the Administrator [of EPA] shall by regulation prescribe * * * in accordance with the provisions of [section 202], standards applicable to the emission of any air pollutant from any class or classes of new motor vehicle * * *, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.''

II. Summary of the Petition

Petitioners contend the test for regulating motor vehicle emissions under CAA section 202(a)(1) has been met for CO_2, CH_4, N_2O and HFCs. They claim statements made on EPA's Web site and in other documents constitute an Agency finding that the four GHGs may reasonably be anticipated to endanger public health or welfare. They also assert that motor vehicle emissions of the GHGs could be significantly reduced by increasing the fuel economy of vehicles, eliminating tailpipe emissions altogether, or using other current and developing technologies. Based on their analysis, they argue that EPA has a mandatory duty under section 202(a)(1) to regulate emissions of GHGs from motor vehicles.

Petitioners present their case for why EPA should, and even must, regulate motor vehicle GHG emissions under section 202(a)(1) in four parts. First, they assert that anthropogenic emissions of CO_2, CH_4, N_2O, and HFCs meet the CAA section 302(g) definition of ''air pollutant,'' which is ''any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive * * * substance or matter which is emitted into or otherwise enters ambient air. Such term includes any precursors to the formation of any air pollutant * * *.'' Citing international and national reports, petitioners contend that anthropogenic emissions of CO_2, CH_4, N_2O, and HFCs are accelerating global warming, and that motor vehicle emissions of these GHGs, particularly CO_2, significantly contribute to the U.S. GHG inventory. Petitioners argue that the contribution of motor vehicle GHG emissions to global climate change qualify them as ''air pollutants'' under the CAA.

Petitioners also claim that EPA has already determined CO_2 to be an air pollutant. They cite an April 10, 1998, memorandum from Jonathan Z. Cannon, then General Counsel of EPA, to Carol Browner, then Administrator of EPA, entitled ''EPA's Authority to Regulate Pollutants Emitted by Electric Power Generation Sources'' (hereinafter ''Cannon Memorandum''). The memorandum states that sulfur dioxide, nitrogen oxides, mercury, and CO_2 emitted from electric power generating units fall within the definition of ''air pollutant'' under CAA section 302(g). According to petitioners, it follows from the memorandum that the other three GHGs meet the CAA definition of ''air pollutant,'' too.

Second, petitioners argue that GHG emissions contribute to pollution that ''may reasonably be anticipated to endanger public health or welfare,'' a key criterion for regulation under section 202(a)(1). Petitioners state that the CAA does not require proof of actual harm, but allows the Administrator to make a precautionary decision to regulate an air pollutant if it ''may reasonably be anticipated'' to endanger public health or welfare. The petitioners point to statements made by the United Nations Intergovernmental Panel on Climate Change (IPCC), EPA and others about the potential effects of global climate change on public health and welfare as establishing that global climate change ''may reasonably be anticipated to endanger public health and welfare.'' Based on these statements, the petitioners allege numerous threats to public health and welfare.

Third, petitioners argue that it is technically feasible to reduce GHG emissions from new motor vehicles and engines. In particular, they note that CO_2 emissions can be reduced by increasing the fuel economy of passenger cars and light trucks, and that a number of currently available gasoline-powered cars get significantly better fuel economy than the 27.5 mpg corporate average fuel economy (CAFE) standard currently applicable to cars under Federal law. They also point to a congressional report identifying other technologies for further improving the fuel economy of gasoline-powered cars that have yet to be fully employed. In addition, petitioners note that several foreign and domestic car manufacturers are already marketing or developing hybrid-electric vehicles that get significantly better fuel mileage than the most fuel-efficient gasoline-powered car. Looking ahead to the next generation of vehicle technology, petitioners describe the potential for electric and hydrogen-celled vehicles to eliminate tailpipe emissions altogether. Petitioners recommend that EPA set a ''corporate average fuel-economy based standard'' under CAA section 202 that would result in the rapid market introduction of more fuel-efficient and zero-emission vehicles.

Petitioners suggest other potential ways of reducing CO_2 emissions such as setting a declining fleet average NO_X emission standard that would require manufacturers to add zero-emission vehicles to their fleets. They also note the availability of tire efficiency standards. Petitioners do not, however, address the potential for reducing motor vehicle emissions of the other three GHGs.

Finally, petitioners maintain that the Administrator has a mandatory duty to regulate motor vehicle GHG emissions under CAA section 202(a)(1). They contend that EPA has ''already made formal findings'' that motor vehicle GHG emissions ''pose[] actual or potential harmful effects [on] the public health and welfare.'' Noting that section 202(a)(1) provides the Administrator ''shall'' prescribe motor vehicle standards, petitioners argue that the use of ''shall'' creates a mandatory duty to promulgate standards when the requisite findings are made. They accordingly claim that the Administrator must establish motor vehicle standards for the four GHGs.

Petitioners further argue that ''the precautionary purpose of the CAA supports'' regulating these gases even if the Agency believes there is some scientific uncertainty regarding the actual impacts of global climate change. Petitioners cite several court cases recognizing the Administrator's authority to err on the side of caution in making decisions in areas of scientific uncertainty. They also assert that scientific uncertainty does not excuse a mandatory duty to regulate.

III. Request for Comment

On January 23, 2001, EPA requested public comment on the petition (*see* 66 FR 7486). The public comment period ended May 23, 2001.

EPA requested comment on all the issues raised in ICTA's petition. In particular, EPA requested comment on any scientific, technical, legal, economic or other aspect of these issues that may

Energy Association, Oregon Environmental Council, Public Citizen, Solar Energy Industries Association, SUN DAY Campaign.

be relevant to EPA's consideration of the petition.

IV. Summary of Public Comments

EPA received almost 50,000 comments on the petition. Most comments were relatively brief expressions of support for the petition sent by electronic mail; many were virtually identical. EPA also heard from a number of business and environmental groups. Most of the comments focused exclusively on CO_2. This section describes the significant points and arguments made in the public comments.

Several commenters addressed the issue of whether the four GHGs—CO_2, CH4, N20 and HFCs—are ''air pollutants'' under the CAA and thus potentially subject to regulation under the Act. Some of the commenters agreed with the petitioners that GHGs are air pollutants under the CAA. Like the petitioners, they noted that the definition of ''air pollutant'' in CAA section 302(g) is very broad and that the CAA itself refers to CO_2 as an ''air pollutant'' (*see* CAA section 103(g)). These commenters also cited to and agreed with the Cannon Memorandum and statements by Gary Guzy, EPA's General Counsel following Mr. Cannon, that CO_2 falls within the CAA definition of air pollutant.

Other commenters argued that EPA has never formally determined that any GHGs are air pollutants and that the Cannon Memorandum is not such a finding. Some commenters also argued that CO_2 is not an air pollutant because it is a naturally-occurring substance in Earth's atmosphere and is critical to sustaining life. Other commenters pointed out that EPA already regulates as air pollutants substances that have natural as well as anthropogenic sources where human activities have increased the quantities present in the air to levels harmful to public health, welfare or the environment (*e.g.*, sulfur dioxide, volatile organic compounds, particulate matter).

Another issue of concern to commenters was whether EPA has authority to regulate motor vehicle emissions of GHGs even if they meet the CAA definition of ''air pollutant.'' Commenters supportive of the petition noted the broad authority conferred by section 202(a)(1) to regulate motor vehicle emissions that cause or contribute to air pollution that may reasonably be anticipated to endanger public health and welfare. These commenters also noted that CAA section 302(h) defines ''welfare'' to include effects on weather and climate, as well as other aspects of the environment that may be affected by global climate change (*e.g.*, soils, water, crops, vegetation, animals, visibility).

Other commenters argued that the CAA does not authorize regulations to address global climate change, including motor vehicle GHG emission standards. They noted that no CAA provision specifically authorizes global climate change regulations, a Senate committee's proposal for mandatory CO_2 standards for motor vehicles did not survive Senate consideration, and other contemporaneous legislative proposals for mandatory GHG emission reductions failed to pass. They also pointed out that the only CAA provision that specifically mentions CO_2 authorizes only ''nonregulatory'' measures and expressly precludes its use as authority for imposing mandatory controls. They cited another CAA provision that calls on EPA to determine the ''global warming potential'' of certain pollutants but expressly precludes regulation on that basis as further indication that Congress did not intend EPA to regulate GHGs under the CAA.

Looking at the CAA more broadly, several commenters argued that the key statutory mechanism for controlling pervasive ''air pollutants''—establishing and implementing national ambient air quality standards under sections 108, 109 and 110—is unworkable for addressing an issue whose causes and effects are global in nature. Several commenters also pointed out that Congress addressed another global atmospheric issue, depletion of stratospheric ozone by man-made substances, explicitly and in discrete portions of the Act, specifically part B of title 1 prior to the CAA Amendments of 1990 and title VI following the 1990 amendments. Moreover, both incarnations of CAA stratospheric ozone authority included recognition of the international nature of the problem and provisions to facilitate and augment international cooperation in achieving a solution. These commenters argued that if Congress had intended EPA to address global climate change under the CAA, it would have made that clear by including analogous provisions.

Placing the CAA in a larger context, the commenters noted several other Federal statutes that specifically address global climate change and authorize only research and policy development, not regulation. Commenters also pointed out that Congress has expressed dissatisfaction with the Kyoto Protocol, negotiated under the auspices of the United Nations Framework Convention on Climate Change and requiring parties to the Protocol to reduce their GHG emissions by a specific amount. They further cited congressional actions taken since the 1990 CAA amendments to prevent EPA from implementing the Kyoto Protocol (the so-called Knollenberg amendments to the FY 1999 and 2000 VA–HUD and Independent Agency Appropriations Acts). Finally, they noted that Congress had rejected numerous legislative proposals mandating GHG reductions (*see, e.g.*, S. 1224, 101st Cong. (1989); H.R. 5966, 101st Cong. (1990)) . According to the commenters, these actions clearly signal that Congress awaits further scientific information and other technological and international developments before authorizing any regulation to address global climate change.

Finally, several commenters pointed to the Supreme Court's decision in *Food and Drug Administration* v. *Brown & Williamson Tobacco Corp.,* 120 S.Ct. 1291 (2000), finding that the FDA lacks authority to regulate tobacco products despite a facially broad grant of authority. These commenters warned that a reviewing court would closely scrutinize and likely strike down an EPA assertion of CAA authority to regulate for global climate change purposes when Congress specifically addressed the issue of global climate change, not in the CAA, but in other Federal statutes that do not authorize regulation.

On the other hand, several commenters pointed to, and agreed with, a letter from then EPA General Counsel Guzy to a congressional committee explaining that explicit mention of a pollutant is not a necessary prerequisite to regulation under a statutory provision granting broad authority to regulate pollutants, provided that the statutory criteria for regulation are met. These commenters also echoed Mr. Guzy's view that a congressional decision not to require standards does not affect pre-existing discretionary authority to set standards where the applicable criteria are met.

Many commenters considered the issue of whether anthropogenic GHG emissions contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Several commenters pointed out, as petitioners did, that EPA's climate website and other national and international reports describe hazards to human health and welfare that may result from global climate change. Other commenters claimed that there is no basis at this time for EPA to conclude that GHG emissions from U.S. motor vehicles endanger public health or welfare. Some commenters questioned

whether global warming was occurring or whether humans' impact on any global warming was significant. These commenters also suggested that global warming, if real, would have beneficial impacts (*e.g.*, helping prevent another ice age, increasing agricultural production) that could outweigh any adverse effects. Several commenters argued that since the causes and effects of global climate change occur on a worldwide basis, regulation of only U.S. motor vehicles would be neither effective nor fair.

Commenters also addressed whether it is technologically feasible to reduce GHG emissions from new motor vehicles. Some commenters described categories of technologies that can substantially reduce CO_2 emissions from gasoline-powered passenger cars and light trucks, including vehicle load reduction, engine improvements, improved transmissions, integrated starter generators, and hybrid-electric drive trains. Vehicle load reduction strategies include reduced vehicle mass, reduced aerodynamic drag, reduced tire rolling resistance, and reduced accessory loads. Engine improvement strategies include improved specific power and gasoline direct injection. Improved transmission strategies include 5- and 6-speed automatic transmissions, 5-speed motorized manual gearshifts, and continuously variable transmissions. Other commenters asserted that EPA may not regulate motor vehicle GHG emissions by setting fuel economy standards inasmuch as Congress entrusted fuel economy standard-setting to the Department of Transportation (DOT) under the Energy Policy and Conservation Act (EPCA).

Finally, commenters considered whether EPA has a mandatory duty to regulate motor vehicle GHG emissions. Some commenters agreed with petitioners that the Cannon Memorandum and EPA's website statements triggered an obligation under CAA section 202(a)(1) to set CO_2 standards. Other commenters countered that the Cannon Memorandum and EPA website statements are not formal EPA findings for the purposes of exercising statutory authority. They asserted that for findings to provide a sufficient legal basis for regulating under section 202(a)(1), they must be established through a public notice-and-comment process.

V. EPA Response

After careful consideration of petitioners' arguments and the public comments, EPA concludes that it cannot and should not regulate GHG emissions from U.S. motor vehicles under the CAA. Based on a thorough review of the CAA, its legislative history, other congressional action and Supreme Court precedent, EPA believes that the CAA does not authorize regulation [2] to address global climate change. Moreover, even if CO_2 were an air pollutant generally subject to regulation under the CAA, Congress has not authorized the Agency to regulate CO_2 emissions from motor vehicles to the extent such standards would effectively regulate car and light truck fuel economy, which is governed by a comprehensive statute administered by DOT.

In any event, EPA believes that setting GHG emission standards for motor vehicles is not appropriate at this time. President Bush has established a comprehensive global climate change policy designed to (1) answer questions about the causes, extent, timing and effects of global climate change that are critical to the formulation of an effective, efficient long-term policy, (2) encourage the development of advanced technologies that will enable dramatic reductions in GHG emissions, if needed, in the future, and (3) take sensible steps in the interim to reduce the risk of global climate change. The international nature of global climate change also has implications for foreign policy, which the President directs. In view of EPA's lack of CAA regulatory authority to address global climate change, DOT's authority to regulate fuel economy, the President's policy, and the potential foreign policy implications, EPA declines the petitioners' request to regulate GHG emissions from motor vehicles.

A. EPA's Legal Authority Under the CAA

As summarized above, many commenters on the petition raised important legal issues regarding EPA's authority to issue global climate change regulations under the CAA. Two EPA General Counsels previously addressed the issue of EPA's authority to impose CO_2 emission control requirements. Both found that CO_2 meets the CAA definition of ''air pollutant'' and could therefore be subject to regulation under one or more of the CAA's regulatory provisions if the applicable statutory criteria for regulation were met. Both also noted, however, that the Agency had not made the requisite findings under any CAA provision for regulation of CO_2 emissions. Significantly, the past general counsels reached their conclusions prior to the Supreme Court's decision in *Brown & Williamson*, which cautions agencies against using broadly worded statutory authority to regulate in areas raising unusually significant economic and political issues when Congress has specifically addressed those areas in other statutes.

Because the petition seeks CAA regulation of GHG emissions from motor vehicles to reduce the risk of global climate change, EPA has examined the fundamental issue of whether the CAA authorizes the imposition of control requirements for that purpose. As part of that examination, EPA's General Counsel, Robert E. Fabricant, reviewed his predecessors' memorandum and statements, as well as the public comments raising legal authority issues. The General Counsel considered the text and history of the CAA in the context of other congressional actions specifically addressing global climate change and in light of the Supreme Court's admonition in *Brown & Williamson* to ''be guided to a degree by common sense as to the manner in which Congress is likely to delegate a policy decision of such * * * magnitude to an administrative agency.'' In a memorandum to the Acting Administrator dated August 29, 2003, the General Counsel concluded that the CAA does not authorize EPA to regulate for global climate change purposes, and accordingly that CO_2 and other GHGs cannot be considered ''air pollutants'' subject to the CAA's regulatory provisions for any contribution they may make to global climate change. Accordingly, he withdrew the Cannon memorandum and statements by Mr. Guzy as no longer expressing the views of EPA's General Counsel. The General Counsel's opinion is adopted as the position of the Agency for purposes of deciding this petition and for all other relevant purposes under the CAA.

As summarized above, commenters supporting the petition claim that section 202 of the CAA provides EPA with broad authority to set standards for motor vehicle emissions of CO_2 and other GHGs to the extent those emissions cause or contribute to global climate change. At the same time, other commenters correctly note that (1) no CAA provision specifically authorizes global climate change regulation, (2) the only CAA provision specifically mentioning CO_2 authorizes only ''nonregulatory'' measures, (3) the codified CAA provisions related to global climate change expressly

[2] ''Regulation'' as used in this section of the notice refers to legally binding requirements promulgated by an agency under statutory authority. It does not include voluntary measures that emission sources may or may not undertake at their discretion.

preclude the use of those provisions to authorize regulation, (4) a Senate committee proposal to include motor vehicle CO_2 standards in the 1990 CAA amendments failed, (5) Federal statutes expressly addressing global climate change do not authorize regulation, and (6) numerous congressional actions suggest that Congress has yet to decide that such regulation is warranted. These indicia of congressional intent raise the issue of whether the CAA is properly interpreted to authorize regulation to address global climate change.

Congress was well aware of the global climate change issue when it last comprehensively amended the CAA in 1990. During the 1980s, scientific discussions about the possibility of global climate change led to public concern both in the U.S. and abroad. In response, the U.S. and other nations developed the United Nations Framework Convention on Climate Change (UNFCCC). President George H. W. Bush signed, and the U.S. Senate approved, the UNFCCC in 1992, and the UNFCCC took effect in 1994.

The UNFCCC established the ''ultimate objective'' of ''stabiliz[ing] greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'' (Article 2 of the UNFCCC). All parties to the UNFCCC agreed on the need for further research to determine the level at which GHG concentrations should be stabilized, acknowledging that ''there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof'' (findings section of UNFCCC).

Shortly before the UNFCCC was adopted in May 1992, Congress developed the 1990 CAA amendments. A central issue for the UNFCCC—whether binding emission limitations should be set—was also considered in the context of the CAA amendments. As several commenters noted, a Senate committee included in its bill to amend the CAA a provision requiring EPA to set CO_2 emission standards for motor vehicles. However, that provision was removed from the bill on which the full Senate voted, and the bill eventually enacted was silent with regard to motor vehicle CO_2 emission standards. During this same time period, other legislative proposals were made to control GHG emissions, some in the context of national energy policy, but none were passed (*see, e.g.*, S. 324, 101st Cong. (1989); S. 1224, 101st Cong. (1989); H.R. 5966, 101st Cong. (1990)).

In the CAA Amendments of 1990 as enacted, Congress called on EPA to develop information concerning global climate change and ''nonregulatory'' strategies for reducing CO_2 emissions. Specifically, uncodified section 821 of the CAA Amendments requires measurement of CO_2 emissions from utilities subject to permitting under title V of the CAA. New section 602 of the CAA directs EPA to determine the ''global warming potential'' of substances that deplete stratospheric ozone. And new section 103(g) calls on EPA to develop ''nonregulatory'' measures for the prevention of multiple air pollutants and lists several air pollutants and CO_2 for that purpose.

Notably, none of these provisions authorizes the imposition of mandatory requirements, and two of them expressly preclude their use for regulatory purposes (sections 103(g) and 602). Only the research and development provision of the CAA—section 103—specifically mentions CO_2, and the legislative history of that section indicates that Congress was focused on seeking a sound scientific basis on which to make future decisions on global climate change, not regulation under the CAA as it was being amended. Representatives Roe and Smith, two of the principal authors of section 103 as amended, explained that EPA's ''science mandate'' needed updating to deal with new, more complex issues, including ''global warming'' (A Legislative History of the Clean Air Act Amendments of 1990, 103 Cong., 1st Sess., S. Prt. 103–38, Vol. 2, pp. 2776 and 2778). They expressed concern that EPA's research budget had been too heavily focused on supporting existing regulatory actions when the Agency also needed to conduct long-term research to ''enhance EPA's ability to predict the need for future action'' (*id.* at 2777).

In providing EPA with expanded research and development authority, however, Congress did not provide commensurate regulatory authority. In section 103(g), Congress directed EPA to establish a ''basic engineering research and technology program to develop, evaluate and demonstrate'' strategies and technologies for air pollution prevention and specifically called for improvements in such measures for preventing CO_2 as well as several specified air pollutants. But it expressly provided that nothing in the subsection ''shall be construed to authorize the imposition on any person of air pollution control requirements.'' As if to drive home the point, section 103(g) was revised in conference to include the term ''nonregulatory'' to describe the ''strategies and technologies'' the subsection was intended to promote. In its treatment of the global climate change issue in the CAA amendments, Congress made clear that it awaited further information before making decisions on the need for regulation.

Beyond Congress' specific CAA references to CO_2 and global warming, another aspect of the Act cautions against construing its provisions to authorize regulation of emissions that may contribute to global climate change. The CAA provisions addressing stratospheric ozone depletion demonstrate that Congress has understood the need for specially tailored solutions to global atmospheric issues, and has expressly granted regulatory authority when it has concluded that controls may be needed as part of those solutions. Like global climate change, the causes and effects of stratospheric ozone depletion are global in nature. Anthropogenic substances that deplete stratospheric ozone are emitted around the world and are very long-lived; their depleting effects and the consequences of those effects occur on a global scale. In the CAA prior to its amendment in 1990, Congress specifically addressed the problem in a separate portion of the statute (part B of title I) that recognized the global nature of the problem and called for negotiation of international agreements to ensure world-wide participation in research and any control of stratospheric ozone-depleting substances. In the 1990 CAA amendments, Congress again addressed the issue in a discrete portion of the statute (title VI) that similarly provides for coordination with the international community. Moreover, both incarnations of the CAA's stratospheric ozone provisions contain express authorization for EPA to regulate as scientific information warrants. In light of this CAA treatment of stratospheric ozone depletion, it would be anomalous to conclude that Congress intended EPA to address global climate change under the CAA's general regulatory provisions, with no provision recognizing the international dimension of the issue and any solution, and no express authorization to regulate.

EPA's prior use of the CAA's general regulatory provisions provides an important context. Since the inception of the Act, EPA has used these provisions to address air pollution problems that occur primarily at ground level or near the surface of the earth. For example, national ambient air quality standards (NAAQS) established under CAA section 109 address concentrations of substances in the ambient air and the related public health and welfare problems. This has meant setting

NAAQS for concentrations of ozone, carbon monoxide, particulate matter and other substances in the air near the surface of the earth, not higher in the atmosphere. Concentrations of these substances generally vary from place to place as a result of differences in local or regional emissions and other factors (*e.g.*, topography), although long range transport may also contribute to local concentrations in some cases. CO_2, by contrast, is fairly consistent in concentration throughout the *world's* atmosphere up to approximately the lower stratosphere. Problems associated with atmospheric concentrations of CO_2 are much more like the kind of global problem Congress addressed through adoption of the specific provisions of Title VI.

In assessing the availability of CAA authority to address global climate change, it is also useful to consider whether the NAAQS system—a key CAA regulatory mechanism—could be used to effectively address the issue. Unique and basic aspects of the presence of key GHGs in the atmosphere make the NAAQS system fundamentally ill-suited to addressing these gases in relation to global climate change. Many GHGs reside in the earth's atmosphere for very long periods of time. CO_2, by far the most pervasive of anthropogenic GHGs, has a residence time of roughly 50–200 years. This long lifetime along with atmospheric dynamics means that CO_2 is well mixed throughout the atmosphere, up to approximately the lower stratosphere. The result is a vast global atmospheric pool of CO_2 that is fairly consistent in concentration, everywhere along the surface of the earth and vertically throughout this area of mixing.

While atmospheric concentrations of CO_2 are fairly consistent globally, the potential for either adverse or beneficial effects in the U.S. from these concentrations depends on complicated interactions of many variables on the land, in the oceans, and in the atmosphere, occurring around the world and over long periods of time. Characterization and assessment of such effects and the relation of such effects to atmospheric concentration of CO_2 in the U.S. would present scientific issues of unprecedented complexity in the NAAQS context. The long-lived nature of the CO_2 global pool would also make it extremely difficult to evaluate the extent over time to which effects in the U.S. would be related to anthropogenic emissions in the U.S. Finally, the nature of the global pool would mean that any CO_2 standard that might be established would in effect be a worldwide ambient air quality standard, not a national standard—the entire world would be either in compliance or out of compliance.

Such a situation would be inconsistent with a basic underlying premise of the CAA regime for implementation of a NAAQS—that actions taken by individual states and by EPA can generally bring all areas of the U.S. into attainment of a NAAQS. The statutory NAAQS implementation regime is fundamentally inadequate when it comes to a substance like CO_2, which is emitted globally and has relatively homogenous concentrations around the world. A NAAQS for CO_2, unlike any pollutant for which a NAAQS has been established, could not be attained by any area of the U.S. until such a standard were attained by the entire world as a result of emission controls implemented in countries around the world. The limited flexibility provided in the Act to address the impacts of foreign pollution transported to the U.S. was not designed to address the challenges presented by long-lived global atmospheric pools such as exists for CO_2. The globally-pervasive nature of CO_2 emissions and atmospheric concentrations presents a unique problem that fundamentally differs from the kind of environmental problem that the NAAQS system was intended to address and is capable of solving.

Other congressional actions confirm that Congress did not authorize regulation under the CAA to address global climate change. Starting in 1978, Congress passed several pieces of legislation specifically addressing global climate change. With the National Climate Program Act of 1978, 15 U.S.C. 2901 *et seq.*, Congress established a ''national climate program'' to improve understanding of ''climate processes, natural and man induced, and the social, economic, and political implications of global climate change'' through research, data collection, assessments, information dissemination, and international cooperation. In the Global Climate Protection Act of 1987, 22 U.S.C. 2651 note, Congress directed the Secretary of State to coordinate U.S. negotiations concerning global climate change, and EPA to develop and propose to Congress a coordinated national policy on the issue. Three years later, Congress passed the Global Change Research Act of 1990, 15 U.S.C. 2931 *et seq.*, establishing a Committee on Earth and Environmental Sciences to coordinate a 10-year research program. That statute was enacted one day after the CAA Amendments of 1990 was signed into law. Also in 1990, Congress passed Title XXIV of the Food and Agriculture Act, creating a Global Climate Change Program to research global climate agricultural issues (section 2401 of Pub. L. 101–624).

With these statutes, Congress sought to develop a foundation for considering whether future legislative action on global climate change was warranted and, if so, what that action should be. From Federal agencies, it sought recommendations for national policy and further advances in scientific understanding and possible technological responses. It did not authorize any Federal agency to take any regulatory action in response to those recommendations and advances. In fact, Congress declined to adopt other legislative proposals, contemporaneous with the bills to amend the CAA in 1989 and 1990, to require GHG emissions reductions from stationary and mobile sources (see, *e.g.*, S. 1224, 101st Cong. (1989); H.R. 5966, 101st Cong. (1990)). While Congress did not expressly preclude agencies from taking regulatory action under other statutes, its actions strongly indicate that when Congress was amending the CAA in 1990, it was awaiting further information before deciding *itself* whether regulation to address global climate change is warranted and, if so, what form it should take.

Since 1990, Congress has taken other actions consistent with the view that Congress did not authorize CAA regulation for global climate change purposes. In the 1992 Energy Policy Act, Congress called on the Secretary of Energy to assess various GHG control options and report back to Congress, and to establish a registry for reporting *voluntary* GHG emissions. Following ratification of the UNFCCC, nations party to the Convention negotiated the Kyoto Protocol calling for mandatory reductions in developed nations' GHG emissions. While the Kyoto Protocol was being negotiated, the Senate in 1997 adopted by a 95–0 vote the Byrd-Hagel Resolution, which stated that the U.S. should not be a signatory to any protocol that would result in serious harm to the economy of the U.S. or that would mandate new commitments to limit or reduce U.S. GHG emissions unless the Protocol also mandated new, specific, scheduled commitments to limit or reduce GHG emissions for developing countries within the same compliance period. Although the Clinton Administration signed the Kyoto Protocol, it did not submit it to the Senate for ratification out of concern that the Senate would reject the treaty. Congress also attached language to appropriations bills that barred EPA from implementing the Kyoto Protocol

without Senate ratification (*see, e.g.*, Knollenberg amendments to the FY 1999 and 2000 VA-HUD and Independent Agencies Appropriations Acts). Since enactment of the 1990 CAA amendments, numerous bills to control GHG emissions from mobile and stationary sources have failed to win passage (see, *e.g.*, H.R. 2993, 102d Cong., 1st Sess. 137 *Cong. Rec.* H4611 (daily ed. 1991)).

Against this backdrop of consistent congressional action to learn more about the global climate change issue before specifically authorizing regulation to address it, the CAA cannot be interpreted to authorize such regulation in the absence of any direct or even indirect indication of congressional intent to provide such authority. EPA is urged on in this view by the Supreme Court's decision in *Brown & Williamson,* which struck down FDA's assertion of authority to regulate tobacco products under the Food, Drug and Cosmetic Act (FDCA). That statute contains a broadly worded grant of authority for FDA to regulate ''drugs'' and ''devices,'' terms which the statute also broadly defines. However, the FDCA does not specifically address tobacco products while other Federal laws expressly govern the marketing of those products.

Notwithstanding the FDCA's facially broad grant of authority, the Supreme Court explained that ''[i]n extraordinary cases, * * * there may be reason to hesitate before concluding that Congress has intended such an implicit delegation.'' The Court noted that FDA was ''assert[ing] jurisdiction to regulate an industry constituting a significant portion of the American economy,'' despite the fact that ''tobacco has its own unique political history'' that had led Congress to create a distinct regulatory scheme for tobacco products. The Court concluded that FDA's assertion of authority to regulate tobacco was ''hardly an ordinary case.'' The Court analyzed FDA's authority in light of the language, structure and history of the FDCA and other federal legislation and congressional action specifically addressing tobacco regulation, including failed legislative attempts to confer authority of the type FDA was asserting. Based on that analysis, it determined that Congress did not ''intend[] to delegate a decision of such economic and political significance * * * in so cryptic a fashion.''

It is hard to imagine any issue in the environmental area having greater ''economic and political significance'' than regulation of activities that might lead to global climate change. Virtually every sector of the U.S. economy is either directly or indirectly a source of GHG emissions, and the countries of the world are involved in scientific, technical, and political-level discussions about climate change. We believe, in fact, that an effort to impose controls on U.S. GHG emissions would have far greater economic and political implications than FDA's attempt to regulate tobacco.

The most abundant anthropogenic GHG, CO_2, is emitted whenever fossil fuels such as coal, oil, and natural gas are used to produce energy. The production and use of fossil fuel-based energy undergirds almost every aspect of the U.S. economy. For example, approximately 70 percent of the electric energy used in this country is generated from fossil fuel, and the U.S. transportation sector is almost entirely dependent on oil.

Proposals to reduce CO_2 emissions from these sectors have focused on four major approaches: (1) Improve fuel efficiency; (2) capture and sequester CO_2; (3) switch to alternative non-fossil fuel sources; and (4) reduce vehicle usage by switching to alternative forms of transportation. Congress has already addressed the first approach in other statutes—not the CAA—by giving other Departments and agencies—not EPA—regulatory authority to deal with fuel and energy efficiency. For example, Congress has authorized DOT to set fuel economy standards for motor vehicles and the Department of Energy to set efficiency standards for products such as air conditioners and appliances that consume electricity.

The other approaches for reducing CO_2 emissions all have substantial economic implications. While it may eventually be possible to achieve widespread capture and sequester CO_2 emissions from power plants, such an approach would require a new generation of power plants and would be very costly, even if implemented over many years. As for the use of alternative fuels, governments and private companies around the world are investing billions of dollars to explore the possibility of using non-fossil fuels for power generation and transportation. Any widespread effort to switch away from fossil fuels in either sector would likewise require a wholesale transformation of our methods for producing power and transporting goods and people. As for alternative modes of transportation, Congress and many states have already adopted measures to encourage public transportation, car pooling, bike usage, and land-use planning designed to minimize commuting distances. EPA supports these measures and believes that they provide many environmental benefits. However, widespread substitution of alternative forms of transportation for transportation based on fossil fuel energy would also require a wholesale remaking of this sector. It is hard to overstate the economic significance of making these kinds of fundamental and widespread changes in basic methods of producing and using energy.

The issue of global climate change also has enormous political significance. It has been discussed extensively during the last three Presidential campaigns; it is the subject of debate and negotiation in several international bodies; and numerous bills have been introduced in Congress over the last 15 years to address the issue.

In light of Congress' attention to the issue of global climate change, and the absence of any direct or even indirect indication that Congress intended to authorize regulation under the CAA to address global climate change, it is unreasonable to conclude that the CAA provides the Agency with such authority. An administrative agency properly awaits congressional direction before addressing a fundamental policy issue such as global climate change, instead of searching for authority in an existing statute that was not designed or enacted to deal with the issue. We thus conclude that the CAA does not authorize regulation to address concerns about global climate change.

It follows from this conclusion, that GHGs, as such, are not air pollutants under the CAA's regulatory provisions, including sections 108, 109, 111, 112 and 202. CAA authorization to regulate is generally based on a finding that an air pollutant causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. CAA section 302(g) defines ''air pollutant'' as ''any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive * * * substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant[.]'' The root of the definition indicates that for a substance to be an ''air pollutant,'' it must be an ''agent'' of ''air pollution.'' Because EPA lacks CAA regulatory authority to address global climate change, the term ''air pollution'' as used in the regulatory provisions cannot be interpreted to encompass global climate change. Thus, CO_2 and other GHGs are not ''agents'' of air pollution and do not satisfy the CAA section 302(g) definition of ''air pollutant'' for purposes of those provisions. We reserve judgment on

whether GHGs would meet the CAA definition of ''air pollutant'' for regulatory purposes were they subject to regulation under the CAA for global climate change purposes.[3]

B. Interference With Fuel Economy Standards

Even if GHGs were air pollutants generally subject to regulation under the CAA, Congress has not authorized the Agency to regulate CO_2 emissions from motor vehicles to the extent such standards would effectively regulate the fuel economy of passenger cars and light duty trucks. No technology currently exists or is under development that can capture and destroy or reduce emissions of CO_2, unlike other emissions from motor vehicle tailpipes. At present, the only practical way to reduce tailpipe emissions of CO_2 is to improve fuel economy. Congress has already created a detailed set of mandatory standards governing the fuel economy of cars and light duty trucks, and has authorized DOT—not EPA—to implement those standards. The only way for EPA to proceed with CO_2 emissions standards without upsetting this statutory scheme would be to set a standard less stringent than CAFE for cars and light duty trucks. But such an approach would be meaningless in terms of reducing GHG emissions from the U.S. motor vehicle fleet.[4]

Congress' care in designing the CAFE program makes clear that EPCA is the only statutory vehicle for regulating the fuel economy of cars and light duty trucks. Under EPCA, DOT may set only ''corporate average'' standards that automakers meet on a fleetwide basis. Automakers thus have flexibility to design different vehicle models having different fuel economy so long as the average of the vehicles sold by the automaker in a given model year and class meets the CAFE standard for that year. In fact, EPCA offers automakers additional flexibility by allowing them to meet the CAFE standard for a given model year by ''carrying back'' or ''carrying forward'' the excess fuel economy performance of their fleets for the three years before or after the applicable model year.

EPCA also builds in an opportunity for congressional oversight of CAFE standard-setting that reinforces the notion that Congress intended fuel economy to be governed by EPCA alone. The statute specifies a CAFE standard of 27.5 miles per gallon for passenger cars in model years 1984 and beyond (49 U.S.C. 32902(b)), but authorizes DOT to amend the standard to the ''maximum feasible average fuel economy level'' for the relevant model year. However, to the extent DOT raises or lowers the standards beyond specified levels, EPCA provides an automatic opportunity for Congress to disapprove and effectively void the amended standard (49 U.S.C. 32902(c)). Given that the only practical way of reducing tailpipe CO_2 emissions is by improving fuel economy, any EPA effort to set CO_2 tailpipe standards under the CAA would either abrogate EPCA's regime (if the standards were effectively more stringent than the applicable CAFE standard) or be meaningless (if they were effectively less stringent).

C. No Mandatory Duty

As explained above, in light of the language, history, structure and context of the CAA and Congress' decision to give DOT authority to regulate fuel economy under EPCA, it is clear that EPA does not have authority to regulate motor vehicle emissions of CO_2 and other GHGs under the CAA. In any event, the CAA provision authorizing regulation of motor vehicle emissions does not impose a mandatory duty on the Administrator to exercise her judgment. Instead, section 202(a)(1) provides the Administrator with discretionary authority to address emissions in addition to those addressed by other section 202 provisions (*see, e.g.*, sections 202(a)(3) and (b)). While section 202(a)(1) uses the word ''shall,'' it does not require the Administrator to act by a specified deadline and it conditions authority to act on a discretionary exercise of the Administrator's judgment regarding whether motor vehicle emissions cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

The Web site statements, legal memorandum and other documents cited by petitioners and commenters in support of the petition are not sufficient to satisfy the criteria for setting standards under section 202(a)(1). Exercise of section 202(a)(1) authority turns on the judgment made by the *Administrator,* and CAA section 301 does not permit the Administrator to delegate her standard-setting authority under section 202(a)(1). None of the statements petitioners claim constitute the requisite endangerment finding for GHGs under section 202(a)(1) were made, or subsequently adopted, by the Administrator. As the Cannon memorandum stated in 1998, no Administrator had made a finding under any of the CAA's regulatory provisions that CO_2 meets the applicable statutory criteria for regulation. (Notably, the Web site statements on which the petitioners partly rely were in existence at the time Mr. Cannon issued his memorandum.) That statement remains true today—no Administrator has made any finding that satisfies the criteria for setting CO_2 standards for motor vehicles or any other emission source. In any event, for such findings to suffice for standard-setting purposes, they must be established through a notice-and-comment process.

EPA also disagrees with the premise of the petitioners' claim—that if the Administrator were to find that GHGs, in general, may reasonably be anticipated to endanger public health or welfare, she must necessarily regulate GHG emissions from motor vehicles. Depending on the particular problem, motor vehicles may contribute more or less or not at all. An important issue before the Administrator is whether, given motor vehicles' relative contribution to a problem, it makes sense to regulate them. In the case of some types of air pollution, motor vehicles may be one of many contributors, and it may make sense to control other contributors instead of, or in tandem with, motor vehicles. The discretionary nature of the Administrator's section 202(a)(1) authority allows her to consider these important policy issues and decide to regulate motor vehicle emissions as appropriate to the air pollution problem being addressed. Accordingly, even were the Administrator to make a formal finding regarding the potential health and welfare effects of GHGs in general, section 202(a)(1) would not require her to regulate GHG emissions from motor vehicles.

D. Different Policy Approach

Beyond issues of authority and interference with fuel economy standards, EPA disagrees with the regulatory approach urged by petitioners. We agree with the President that ''we must address the issue of global climate change'' (February 14, 2002). We do not believe, however, that

[3] As General Counsel Fabricant notes in his memorandum, a substance does not meet the CAA definition of ''air pollutant'' simply because it is a ''physical, chemical, biological, radioactive * * * substance or matter which is emitted into or otherwise enters the ambient air.'' It must also be an ''air pollution agent.''

[4] Although the ICTA petition focuses on passenger cars and light duty trucks, it seeks regulation of GHG emissions generally from motor vehicles and engines, which include heavy duty engines and trucks. Passenger cars and light duty trucks are subject to CAFE standards; heavy duty trucks are not. The contribution of heavy duty trucks to the U.S. motor vehicle GHG inventory is relatively small, about 16 percent. EPA believes it would be ineffective, inefficient, and unreasonable to set CO_2 and other GHG reductions from the many types of sources of these emissions.

it would be either effective or appropriate for EPA to establish GHG standards for motor vehicles at this time. As described in detail below, the President has laid out a comprehensive approach to climate change that calls for near-term voluntary actions and incentives along with programs aimed at reducing scientific uncertainties and encouraging technological development so that the government may effectively and efficiently address the climate change issue over the long term.

Petitioners cited numerous studies and other sources of information in contending that anthropogenic emissions of CO_2, CH_4, N_2O, and HFCs are accelerating global climate change and that emission of these compounds from motor vehicles contribute to the problem. Numerous commenters agreed with petitioners and a few cited additional information or studies as further support. *See* ''Summary of Climate Petition Comments on Science'' in the docket for this action. Other commenters disagreed with petitioners' contentions, citing different data and studies or in some cases interpreting the same data and studies differently or emphasizing different aspects of the information provided. *Id.* We reviewed the information submitted by petitioners and commenters and concluded that all of the information was widely available and in the public domain at the time we solicited comments on the petition. The information submitted does not add significantly to the body of information available to the National Research Council (NRC) when it prepared its 2001 report, *Climate Change Science: An Analysis of Some Key Questions.* We rely in this decision on NRC's objective and independent assessment of the relevant science. The comments submitted to the record do not include information that causes us to question the validity of the NRC's conclusions.

As the NRC noted in its report, concentrations of GHGs are increasing in the atmosphere as a result of human activities (pp. 9–12). It also noted that ''[a] diverse array of evidence points to a warming of global surface air temperatures'' (p. 16). The report goes on to state, however, that ''[b]ecause of the large and still uncertain level of natural variability inherent in the climate record and the uncertainties in the time histories of the various forcing agents (and particularly aerosols), a casual linkage between the buildup of greenhouse gases in the atmosphere and the observed climate changes during the 20th century cannot be unequivocally established. The fact that the magnitude of the observed warming is large in comparison to natural variability as simulated in climate models is suggestive of such a linkage, but it does not constitute proof of one because the model simulations could be deficient in natural variability on the decadal to century time scale'' (p. 17).

The NRC also observed that ''there is considerable uncertainty in current understanding of how the climate system varies naturally and reacts to emissions of [GHGs] and aerosols'' (p. 1). As a result of that uncertainty, the NRC cautioned that ''current estimate of the magnitude of future warming should be regarded as tentative and subject to future adjustments (either upward or downward).'' *Id.* It further advised that ''[r]educing the wide range of uncertainty inherent in current model predictions of global climate change will require major advances in understanding and modeling of both (1) the factors that determine atmospheric concentrations of [GHGs] and aerosols and (2) the so-called 'feedbacks' that determine the sensitivity of the climate system to a prescribed increase in [GHGs].'' *Id.*

The science of climate change is extraordinarily complex and still evolving. Although there have been substantial advances in climate change science, there continue to be important uncertainties in our understanding of the factors that may affect future climate change and how it should be addressed. As the NRC explained, predicting future climate change necessarily involves a complex web of economic and physical factors including: Our ability to predict future global anthropogenic emissions of GHGs and aerosols; the fate of these emissions once they enter the atmosphere (*e.g.*, what percentage are absorbed by vegetation or are taken up by the oceans); the impact of those emissions that remain in the atmosphere on the radiative properties of the atmosphere; changes in critically important climate feedbacks (*e.g.*, changes in cloud cover and ocean circulation); changes in temperature characteristics (*e.g.*, average temperatures, shifts in daytime and evening temperatures); changes in other climatic parameters (*e.g.*, shifts in precipitation, storms); and ultimately the impact of such changes on human health and welfare (*e.g.*, increases or decreases in agricultural productivity, human health impacts). The NRC noted, in particular, that ''[t]he understanding of the relationships between weather/climate and human health is in its infancy and therefore the health consequences of climate change are poorly understood'' (p. 20). Substantial scientific uncertainties limit our ability to assess each of these factors and to separate out those changes resulting from natural variability from those that are directly the result of increases in anthropogenic GHGs.

Reducing the wide range of uncertainty inherent in current model predictions will require major advances in understanding and modeling of the factors that determine atmospheric concentrations of greenhouse gases and aerosols, and the processes that determine the sensitivity of the climate system. Specifically, this will involve reducing uncertainty regarding:

- The future global use of fossil fuels and future global emissions of methane,
- The fraction of fossil fuel carbon that will remain in the atmosphere and contribute to radiative forcing versus exchange with the oceans or with the land biosphere,
- The impacts (either positive or negative) of climate change on regional and local systems,
- The nature and causes of the natural variability of climate and its interactions with human-induced changes, and
- The direct and indirect effects of the changing distribution of aerosols.

Knowledge of the climate system and of projections about the future climate is derived from fundamental physics, chemistry and observations. Data are then incorporated in global circulation models. However, model projections are limited by the paucity of data available to evaluate the ability of coupled models to simulate important aspects of climate. The U.S. and other countries are attempting to overcome these limitations by developing a more comprehensive long-term observation system, by making more extensive regional measurements of greenhouse gases, and by increasing the computing power required to handle these expanded data sets.

A central component of the President's policy is to reduce key uncertainties that exist in our understanding of global climate change. Important efforts are underway to address these uncertainties. In particular, the Federal Government has expanded scientific research efforts through its Climate Change Research Initiative (CCRI). President Bush announced this new initiative in June 2001 and called for it ''to study areas of uncertainty and identify priority areas where investments can make a difference.'' The CCRI recently issued its final ''Strategic Plan for the Climate Change Research Program'' to ensure that scientific efforts are focused where they are most critical and that the key scientific uncertainties identified are

addressed in a timely and effective manner for decision makers.

The President has also stated, however, that ''while scientific uncertainties remain, we can begin now to address the factors that contribute to climate change'' (June 11, 2001). Thus, along with stepped-up efforts to reduce scientific uncertainties, the President's policy calls for public-private partnerships to develop break-through technologies that could dramatically reduce the economy's reliance on fossil fuels without slowing its growth. Large-scale shifts away from traditional energy sources, however, will require not only the development of abundant, cost-effective alternative fuels, but potentially wholesale changes in the way industrial processes and consumer products use fuel. Such momentous shifts do not take place quickly. As the President has explained, ''[a]ddressing global climate change will require a sustained effort, over many generations' (*www.whitehouse.gov/news/releases/2002/02/climatechange.html).*

By contrast, establishing GHG emission standards for U.S. motor vehicles at this time would require EPA to make scientific and technical judgments without the benefit of the studies being developed to reduce uncertainties and advance technologies. It would also result in an inefficient, piecemeal approach to addressing the climate change issue. The U.S. motor vehicle fleet is one of many sources of GHG emissions both here and abroad, and different GHG emission sources face different technological and financial challenges in reducing emissions. A sensible regulatory scheme would require that all significant sources and sinks of GHG emissions be considered in deciding how best to achieve any needed emission reductions.

Unilateral EPA regulation of motor vehicle GHG emissions could also weaken U.S. efforts to persuade key developing countries to reduce the GHG intensity of their economies. Considering the large populations and growing economies of some developing countries, increases in their GHG emissions could quickly overwhelm the effects of GHG reduction measures in developed countries. Any potential benefit of EPA regulation could be lost to the extent other nations decided to let their emissions significantly increase in view of U.S. emission reductions.[5] Unavoidably, climate change raises important foreign policy issues, and it is the President's prerogative to address them.

In light of the considerations discussed above, EPA would decline the petitioners' request to regulate motor vehicle GHG emissions even if it had authority to promulgate such regulations. Until more is understood about the causes, extent and significance of climate change and the potential options for addressing it, EPA believes it is inappropriate to regulate GHG emissions from motor vehicles.

In any event, the President's policy includes efforts to reduce motor vehicle petroleum consumption through increases in motor vehicle fuel economy. As noted previously, petitioners specifically suggested that EPA set a ''corporate average fuel economy-based standard,'' but only DOT is authorized to set motor vehicle fuel economy standards. DOT considered increasing fuel economy standards and recently promulgated a final rule increasing the CAFE standards for light trucks, including sports utility vehicles, by 1.5 miles per gallon over a three-year period beginning with model year 2005. The new standards are projected to result in savings of approximately 3.6 billion gallons of gasoline over the lifetime of the affected vehicles, with the corresponding avoidance of 31 million metric tons of carbon dioxide emissions. For the longer term, the President has established a new public-private partnership with the nation's automobile manufacturers to promote the development of hydrogen as a primary fuel for cars and trucks, with the goal of building a commercially viable zero-emissions hydrogen-powered vehicle. In the near-term, the President has sought $3 billion in tax credits over 11 years for consumers to purchase fuel cell and hybrid vehicles.

Aside from fuel economy-based standards, petitioners only other suggestions for reducing CO_2 from motor vehicles are tire efficiency standards and a declining fleet-averaged NO_X standard to force the introduction of zero-emitting vehicles. In the case of tire efficiency standards, it is questionable whether such standards would qualify as ''standards applicable to the *emission*'' of an air pollutant from a motor vehicle under section 202(a)(1), since such standards would presumably apply to the vehicle's tires, not its CO_2 emissions (emphasis added). As for zero emission vehicles, further technological developments are needed before they could be a practical choice for most consumers.

With respect to the other GHGs—CH4, N20, and HFCs—petitioners make no suggestion as to how those emissions might be reduced from motor vehicles. GHG emissions from motor vehicles primarily consist of CO_2 from fuel combustion. In 1999, N20 represented 4 percent, HFCs 1 percent, and CH4 less than 1 percent of transportation GHG emissions. As byproducts of combustion, there is a direct proportional relationship between CO_2 emissions and fuel economy levels. EPA believes parameters other than fuel economy are more relevant to N2O and HFC formation. HFCs come from mobile air conditioners, while N2O is influenced by catalytic converter design. CH4 is a byproduct of combustion, like CO_2, but can also be affected by catalytic converter design. As noted above, N20, HFCs, and CH4 represent a very small percentage of total U.S. transportation GHG emissions. As such, they would not be an effective or efficient target for regulation in the absence of regulation of CO_2 emissions.

VI. Administration Global Climate Change Policy

Lack of CAA authority to impose GHG control requirements does not leave the Federal Government powerless to take sensible measured steps to address the global climate change issue. As described in this notice, the President has laid out a comprehensive approach to global climate change that calls for near-term voluntary actions and incentives along with programs aimed at reducing scientific uncertainties and encouraging technological development so that the government may effectively and efficiently address the global climate change issue over the long term. The CAA and other Federal statutes provide the Federal Government with ample authority to conduct the research necessary to better understand the nature, extent and effects of any human-induced global climate change and to develop technologies that will help achieve GHG emission reductions to the extent they prove necessary. The CAA and other statutes also authorize, and EPA and other agencies have established, nonregulatory programs that provide effective and appropriate means of addressing global climate change while scientific uncertainties are addressed.

As part of that effort, the President in February 2002 called for voluntary reductions in GHG intensity, including

[5] The U.S. faced a similar dilemma in its efforts to address stratospheric ozone depletion. Early U.S. controls on substances that deplete stratospheric ozone were not matched by many other countries. Over time, U.S. emission reductions were more than offset by emission increases in other countries. The U.S. did not impose additional domestic controls on stratospheric ozone-depleting substances until key developed and developing nations had committed to controlling their own emissions under the Montreal Protocol on Substances that Deplete Stratospheric Ozone.

through fuel economy improvements. GHG intensity is the ratio of GHG emissions to economic output. The President's goal is to lower the U.S. rate of emissions from an estimated 183 metric tons per million dollars of gross domestic product (GDP) in 2002 to 151 metric tons per million dollars of GDP in 2012. Meeting this commitment will prevent GHG emissions of over 500 million metric tons of carbon equivalent (MMTCE) from entering the atmosphere cumulatively over the next ten years, and is equivalent to taking 70 million (or one out of three) cars off the road.

The ''Climate VISION'' (Voluntary Innovative Sector Initiatives: Opportunities Now) program, a Presidential initiative launched by the Department of Energy (DOE) in February 2003, is a voluntary public-private partnership designed to pursue cost-effective strategies to reduce the growth of GHG emissions, especially by energy-intensive industries. Working with trade associations and other groups, the program assists industry in its efforts to accelerate the transition to energy technologies and manufacturing processes that are cleaner, more efficient, and capable of capturing or sequestering GHGs. Climate VISION links these objectives with technology development and deployment activities primarily at DOE, but also at other participating agencies. Since Climate VISION was launched, 14 industry groups have become program partners with DOE.

EPA is also pursuing a number of nonregulatory approaches to reducing GHG emissions. In February 2002, EPA launched EPA's Climate Leaders program, a new voluntary partnership program between government and industry. Through Climate Leaders, companies will work with EPA to evaluate their GHG emissions, set aggressive reduction goals, and report their progress toward meeting those goals. To date, more than 40 companies from almost all of the most energy-intensive industry sectors have joined Climate Leaders.

EPA's Energy Star program is another example of voluntary actions that have substantially reduced GHG emissions. Energy Star is a voluntary labeling program that provides critical information to businesses and consumers about the energy efficiency of the products they purchase. Over the past decade more than 750 million Energy Star products have been purchased across more than 30 product categories (*e.g.*, computers, microwaves, washing machines). Reductions in GHG emissions from Energy Star purchases were equivalent to removing 10 million cars from the road last year. Businesses and consumers not only reduced their GHG emissions, but also saved $5 billion last year through their use of Energy Star products.

EPA is also working to encourage voluntary GHG emission reductions from the transportation sector. The key elements of this effort are the SmartWay Transport Partnership and the Best Workplaces for Commuters program. The SmartWay Transport Partnership works with the trucking and railroad industry to develop and deploy more fuel-efficient technologies and practices to achieve substantial fuel savings and emission reductions. The goal of Best Workplaces for Commuters is to offer innovative solutions to commuting challenges faced by U.S. employers and employees by promoting outstanding commuter benefits that reduce vehicle trips and miles traveled. EPA estimates that these voluntary programs have the potential to reduce GHG emissions by 9 MMTCE annually by 2010.

EPA has voluntary programs aimed specifically at reducing methane emissions from a variety of sources. For example, the Agency has partnerships with natural gas companies to reduce emissions from leaky pipelines and distribution equipment, solid waste landfill facilities to capture and reuse emissions from landfills, and coal mining companies to capture and reuse methane escaping from mines. Together, these programs are projected to reduce methane emissions to below 1990 levels through 2010.

In addition, EPA has extensive partnerships with industries responsible for emissions of the most potent industrial GHG (*e.g.*, sulfur hexafluoride, per fluorocarbons and HFCs). Through partnerships with EPA, the aluminum sector has exceeded their goal of reducing PFC emissions by 45% from 1990 levels by 2000 and is now in discussions about a new, more aggressive goal. The semiconductor manufacturing sector has agreed to reduce their emissions by 10% below 1995 levels by 2010. This year, a new agreement was reached with the magnesium sector under which they have agreed to completely phase-out their SF6 emissions by 2010.

The Federal Government's voluntary climate programs are already achieving significant emission reductions. In 2000 alone, reductions in GHG emissions totaled 66 MMTCE when compared to emissions in the absence of these programs.

Importantly, the President's initiative will improve our ability to accurately measure and verify GHG emissions through an enhanced national GHG registry system. The U.S. will improve the voluntary registry's accuracy, reliability, and verifiability, taking into account emerging domestic and international approaches. Organizations participating in the new registry will be provided with transferable credits for achieving voluntary emissions reductions. These credits will be available for use under any future incentive-based or mandatory programs. We believe the enhanced standards for the new registry will strengthen the current voluntary trading systems.

The President's 2003 budget also seeks $4.5 billion for global climate change-related programs, a $700 million increase over 2002. This includes $1.7 billion for science research under the Climate Change Research Initiative, and $1.3 billion for climate change technologies under the National Climate Change Technology initiative. This commitment is unmatched in the world. The 2003 budget seeks $555 million in clean energy incentives to spur investments in solar, wind, and biomass energy, co-generation, and landfill gas conversion.

New and expanded international policies will complement our domestic policies, including tripled funding for the ''Debt-for-Nature'' Tropical Forest Conservation Program, fully funding the Global Environment Facility for its third four-year replenishment, enhanced support for climate observation systems and climate technology assistance in developing countries, and sustained level funding for USAID climate programs, including technology transfer and capacity building in developing countries.

In the transportation sector, the Administration's global climate change plan includes promoting the development of fuel-efficient motor vehicles and trucks, researching options for producing cleaner fuels, and implementing programs to improve energy efficiency. The plan calls for expanding Federal research partnerships with industry, providing market-based incentives, and updating current regulatory programs that advance our progress in this area. This commitment includes expanding fuel cell research, in particular through the ''FreedomCAR'' initiative.

FreedomCAR is a new public-private partnership with the nation's automobile manufacturers. It seeks to promote the development of hydrogen as a primary fuel for cars and trucks, with the goal of building a commercially viable zero-emissions hydrogen-powered vehicle. FreedomCAR focuses on technologies to enable mass production of affordable hydrogen-

powered fuel cell vehicles and the hydrogen-supply infrastructure to support them.

Developing new technologies to improve the energy efficiency of transportation in the U.S. will be a key element in achieving future reductions in GHG emissions. The President's 2003 budget seeks more than $3 billion in tax credits over 11 years for consumers to purchase fuel cell and hybrid vehicles. The Administration's global climate change plan supports increasing automobile fuel economy and encouraging new technologies that reduce our dependence on imported oil, while protecting passenger safety and jobs.

EPA will play an important role in efforts to develop advanced motor vehicle technologies that improve fuel economy and reduce emissions. The Agency's Clean Automotive Technology (CAT) program is working to develop advanced clean and fuel-efficient automotive technology. Under the program, EPA's goal is to develop technology by the end of the decade that will satisfy stringent emissions requirements and achieve up to a doubling of fuel efficiency in personal vehicles such as SUVs, pickups, and urban delivery vehicles—while simultaneously meeting the more demanding size, performance, durability, and power requirements of these vehicles. EPA will also play a leadership role in advancing fuel cell vehicle and hydrogen fuel technologies and influencing the direction of technological and policy progress in support of U.S. environmental, energy, and national security goals.

To address GHG emissions from the electric utility sector, DOE in February of this year announced FutureGen, a $1 billion government/industry partnership to design, build and operate a nearly emission-free, coal-fired electric and hydrogen production plant. The 275-megawatt prototype plant will serve as a large scale engineering laboratory for testing new clean power, carbon capture, and coal-to-hydrogen technologies. It will be the cleanest fossil fuel-fired power plant in the world. The project is a direct response to the President's Climate Change and Hydrogen Fuels Initiatives.

In all, the President's global climate change policy sets the U.S. on a path to slow the growth of GHG emissions and, as the science justifies, to stop and then reverse that growth. This policy supports vital global climate change research and lays the groundwork for future action by investing in science, technology, and institutions. In addition, the President's policy emphasizes international cooperation and promotes working with other nations to develop an efficient and coordinated response to global climate change. In taking prudent environmental action at home and abroad, the U.S. is advancing a realistic and effective long-term approach to the global climate change issue.

VII. Conclusion

For the reasons discussed above, and after considering the ICTA petition, public comment, EPA's legal authority, and other relevant information, EPA hereby denies the ICTA petition requesting that EPA regulate certain GHG emissions from new motor vehicles and engines under CAA section 202(a)(1).

Dated: August 28, 2003.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 03–22764 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7555–2]

State and Tribal 8-Hour Ozone Air Quality Designation Recommendations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has posted State and Tribal 8-hour Ozone Air Quality Designation Recommendations on the web as they have been received.

ADDRESSES: State and tribal recommendations are available for public inspection at EPA's Web site at: *http://www.epa.gov/oar/oaqps/glo/designations/* and at the Office of Air and Radiation (OAR) Docket Center, Docket Number OAR 2003–0083, respectively.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Reinders, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5284 or by e-mail at: *reinders.sharon@epa.gov* or Ms. Annie Nikbakht, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5246 or by e-mail at: *nikbakht.annie@epa.gov.* Mr. Barry Gilbert can be contacted for Air Quality Technical Issues: Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541—-5238 or by email at: *gilbert.barry@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of This Document?

1. *Docket.* The EPA has established an official docket for this action under Docket ID Number 2003–0083. 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 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 OAR Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, 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 Public Reading Room is (202) 566–1744, and the telephone number for the OAR Docket is (202) 566–1742.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Intranet under the **Federal Register** listings at *http://www.epa.gov/fedrgstrl.*

List of Subjects

Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Authority: 42 U.S.C. 7408, 42 U.S.C. 7410, 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: August 22, 2003.

Henry C. Thomas,

Acting Director, Office of Air Quality, Planning and Standards.

[FR Doc. 03–22767 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7554–8]

RIN 2060–AF01

Availability of Additional Documents Relevant to Anticipated Revisions to Guideline on Air Quality Models Addressing a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: We are providing notice that additional information in the form of two documents relevant to revisions of the *Guideline on Air Quality Models*—hereafter, the *Guideline*—have been placed in Docket No. A–99–05. The revisions would enhance the Guideline by incorporating a new, general purpose dispersion model called the AMS/EPA Regulatory MODel (AERMOD) to replace the existing Industrial Source Complex (ISC3) model in many air quality assessments and incorporate a new downwash algorithm—PRIME. An earlier version of AERMOD was proposed, and we have considered recommendations made both in public comment on that proposal and by beta testers of the model's computer code. The two documents discussed today provide information on the performance of AERMOD when the model is modified in a manner suggested by public comment. We invite comment on these documents.

DATES: Comments must be in writing and either postmarked or received at the address below by October 8, 2003.

ADDRESSES: Copies of both documents have been placed in Docket No. A–99–05. These new documents are available for inspection at the EPA Docket Center, (EPA/DC) EPA West (MC 6102T), 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room (B102) is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Leader, Air Quality Modeling Group (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5562.

SUPPLEMENTARY INFORMATION: We have placed the two documents described below in Docket No. A–99–05:

1. USEPA, ''AERMOD: Latest Features and Evaluation Results.'' Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711; EPA Report No. EPA–454/R–03–003, July 2003.

2. USEPA, ''Comparison of Regulatory Design Concentrations: AERMOD vs. ISCST3, CTDMPLUS, ISD–PRIME.'' Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711; EPA Report No. EPA–454/R–03–002, July 2003.

These reports are also available on our modeling Web site (*http://www.epa.gov/scram001*) and provide technical details on AERMOD revisions since it was proposed in the **Federal Register** (65 FR 21506) on April 21, 2000. On April 15, 2003 (68 FR 18440), we promulgated proposed changes and additions to the *Guideline* (Appendix W to 40 CFR part 51) that were supported by public comments and that we deemed ready to finalize. Components of the proposal that we did not act on include: (1) Adopting AERMOD to replace ISCST3 in many assessments, (2) revising ISCST3 by incorporating a new downwash algorithm (PRIME) and renaming the model ISC–PRIME, and (3) updating the Emissions and Dispersion Modeling System (EDMS 3.1) in appendix A of the *Guideline*.

Nearly every commenter on the April 2000 proposal urged us to integrate the aerodynamic downwash PRIME algorithm into AERMOD (*i.e.*, not to require two models for some analyses), and no comments were received which contradicted these requests. In response to our request that this comment be addressed, AERMIC (the American Meteorological Society (AMS)/EPA Regulatory Model Improvement Committee) successfully revised AERMOD (version 02222), incorporating the PRIME algorithm and making other incidental modifications to respond to public comments and issues identified by beta testers of the code. Documentation of AERMOD (02222) and its computer code has since been available on our Web site (*http://www.epa.gov/scram001/tt26.htm#aermod*).

Also proposed in April 2000 was an EDMS upgrade to version 3.1. Since that proposal, the model developer—Federal Aviation Administration (FAA)—decided to further upgrade EDMS to incorporate AERMOD in a version 4.0. Performance evaluation and adequate documentation was requested in public comments (A–99–05), and in our April 15, 2003, notice we said that this new information would be forthcoming. Recently, however, FAA has decided to withdraw EDMS from the *Guideline's* appendix A. No new information is therefore provided in this action; we support this removal from appendix A and will address the details more fully in a future promulgation of the *Guideline.*

The most significant changes made to AERMOD in response to public comments include the following:

- addition of the PRIME downwash algorithms;
- modifications of the complex terrain algorithms to make AERMOD less sensitive to the selection of the domain of the study area;
- modification of (a) urban dispersion for low-level emission sources, such as area sources, to produce more realistic urban dispersion and (b) minimum mixing layer depths used to calculate the effective dispersion parameters for all dispersion settings;
- addition of plume meander to all stable and unstable conditions; and
- upgrades of AERMOD to include all the newest features that exist in the latest version of ISCST3 such as FORTRAN 90 compliance, allocatable arrays, EVENTS processing, and the TOXICS option.

The effect of these changes is now documented in the two reports cited above.

The performance analysis of model accuracy is summarized in: ''AERMOD: Latest Features and Evaluation Results.'' Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA Report No. EPA–454/R–03–003, July 2003. That analysis provides comparisons of model estimates with measured air quality concentrations for a variety of source types and locations. Based on this analysis, we have concluded that (1) the performance of the revised version of AERMOD (02222) is slightly better than the April 2000 proposal and both versions of AERMOD significantly outperform ISCST3 and (2) AERMOD (02222) with PRIME performs slightly better than ISC–PRIME for aerodynamic downwash cases.

The consequence analysis of effects on design concentrations is summarized in: ''Comparison of Regulatory Design Concentrations: AERMOD vs. ISCST3, CTDMPLUS, ISD–PRIME.'' Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA Report No. EPA–454/R–03–002, July 2003. That analysis provides comparisons of design concentrations (on which emission control limits might be based) for a wide variety of source configurations and settings. The analysis indicates that:

- for non-downwash settings, the revised version of AERMOD (02222), on average, tends to predict concentrations closer to ISCST3 with somewhat smaller

variations than the April 2000 proposal of AERMOD;

• where downwash is a significant factor in the air dispersion analysis, the revised version of AERMOD predicts maximum concentrations that are very similar to ISC–PRIME;

• for those source scenarios where maximum 1-hour cavity concentrations are calculated, the average AERMOD predicted cavity concentration tends to be about the same as the average ISC–PRIME cavity concentrations; and

• in general, the consequences of using the revised AERMOD, instead of the older model ISCST3, in complex terrain remained essentially unchanged, although they varied in individual circumstances.

Based on evaluations of the revisions described above, it appears that the modified AERMOD is ready to be incorporated into the *Guideline,* and we intend to promulgate the modified AERMOD (02222). This Notice of Data Availability concerning performance studies of the modified model is being provided to inform the public about the model performance and range of impacts which the improved version of AERMOD could have on estimated air quality concentrations. We invite public comment on the new studies (see **DATES**). Comments on the documents noticed today should be sent to the Docket Office (see **ADDRESSES**), and should clearly reference this Notice of Data Availability and Docket No. A–99–05.

Dated: August 26, 2003.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–22766 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0053; FRL–7327–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 1, 2003 to August 15, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0053 and the specific PMN number or TME number, must be received on or before October 8, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0053. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0053. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0053 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0053 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 1, 2003 to August 15, 2003, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 20 PREMANUFACTURE NOTICES RECEIVED FROM: 08/01/03 TO 08/15/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0753	08/01/03	10/29/03	Bedoukian Research, Inc.	(S) Fragrances uses as per FFDCA; fragrances uses; scented papers, detergents, candles, etc.	(S) 6-nonen-1-ol, acetate, (6z)-*
P–03–0754	08/01/03	10/29/03	CBI	(G) Industrial structural materials	(G) Telechelic polyacrylates
P–03–0755	08/01/03	10/29/03	CBI	(G) Additive for paints and coatings	(G) Cross-linked acrylic copolymer
P–03–0756	08/04/03	11/01/03	BASF Corporation	(G) Component used in the manufacture of polyurethane parts	(G) Polyesterpolyol, reaction product of aliphatic alcohols and dicarboxylic acids
P–03–0757	08/04/03	11/01/03	CBI	(G) An open, non-dispersive use	(G) Polymeric modified vegetable oil
P–03–0758	08/04/03	11/01/03	Dupont Company	(G) Film	(G) Polyetherester
P–03–0759	08/04/03	11/01/03	Great Lakes Chemical Corporation	(G) Lubricant additive	(S) Phosphonic acid, di-C_{12-20}-alkyl esters
P–03–0760	08/04/03	11/01/03	Norquay Technology Inc.	(G) Surfactant	(S) 1-octanesulfonic acid
P–03–0761	08/04/03	11/01/03	Degussa Corporation	(S) Polyurethane monomer	(S) 6-nonyl-1,3,5-triazine-2,4-diamine
P–03–0762	08/06/03	11/03/03	CBI	(G) Hardener	(G) Modified polyisocyanate
P–03–0763	08/06/03	11/03/03	CBI	(G) Hardener	(G) Modified polyisocyanate
P–03–0764	08/08/03	11/05/03	CMP Coatings, Inc.	(S) Binder polymer in paints	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with ethyl 2-propenoate, zinc bis(2-methyl-2-propenoate) and zinc di-2-propenoate, 2,2′-azobis[2-methylbutanenitrile]- and 2,2′-azobis[2-methylpropanenitrile]-initated
P–03–0765	08/08/03	11/05/03	Vantico Inc.	(S) Epoxy curing agent	(G) Phenol, 4,4′-(1-methylethylidene)bis, polymer with (chloromethyl)oxirane, reaction products with a cycloaliphatic amine
P–03–0766	08/08/03	11/05/03	CBI	(S) Monomeric intermediate	(G) Alkoxysilyldiesteramine
P–03–0767	08/08/03	11/05/03	BASF Corporation	(G) Components in composite formulations	(G) Aromatic isocyanate methacrylate blocked
P–03–0768	08/11/03	11/08/03	CBI	(S) Reactive dyestuff for the coloration of cellulosic fiber materials	(G) Reactive azo dye
P–03–0769	08/12/03	11/09/03	CBI	(S) Dispersnt for solvent based coating	(G) Polyacrylate
P–03–0770	08/12/03	11/09/03	CBI	(G) Thickening agent	(G) Hydrophobically modified hydroethylcellulose
P–03–0771	08/13/03	11/10/03	CBI	(G) 1. Multi-purpose adhesive, open, non-dispersive use; 2. Laminating adhesive, open, non-dispersive use	(G) Polyurethane prepolymer; Polyurethane adhesive
P–03–0772	08/14/03	11/11/03	CBI	(G) Pigment dispersant	(G) Phosphated polyalkoxylate

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 13 NOTICES OF COMMENCEMENT FROM: 08/01/03 TO 08/15/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–02–0150	08/05/03	05/21/03	(G) *N*-substituted-2-methyl-2-propenamide, polymer with 2-propenoic acid, sodium salt
P–02–0287	08/01/03	07/07/03	(G) Ethoylated alkyl alcohol
P–03–0093	08/05/03	07/14/03	(G) Polyglycidyl ether of (*p*-hydroxy styrene) novolak
P–03–0306	08/05/03	07/14/03	(G) Polyalkyl-triethoxysilyl-alkyl-substituted heteromonocycle
P–03–0367	08/01/03	07/20/03	(G) Amino ketal
P–03–0370	08/11/03	07/14/03	(G) Polyol ester
P–03–0385	08/15/03	08/01/03	(G) Cyano substituted phenyl sulfonamide
P–03–0394	08/06/03	07/30/03	(S) 1,3,2-dioxaphosphorinane, 2-[2,4-bis(1,1-dimethylethyl)phenoxy]-5-butyl-5-ethyl-
P–03–0424	08/01/03	07/22/03	(G) Amines adduct of epoxy resin
P–03–0470	08/05/03	07/22/03	(G) Acrylic ester, polymer with ethenyl acetate, hydrolyzed, sodium salt
P–03–0521	08/07/03	07/31/03	(G) Salt of a copolymer of acrylic acid and acrylic acid derivatives
P–03–0532	08/13/03	08/07/03	(G) Unsaturated alkyl grignard reagent
P–99–1120	08/05/03	08/03/03	(G) Amide resin

List of Subjects

Environmental protection, Chemicals, Premanufacture notices

Dated: September 2, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–22765 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7552–8]

Notice of Clarification of the Final National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator (RA) of EPA Region 4 (the ''Region'') is today issuing a notice of clarification to the final National Pollutant Discharge Elimination System (NPDES) general permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (General Permit No. GMG280000), to address Notice of Intent (NOI) requirements for discharges covered by the permit after April 30, 2003. This permit was published at 63 FR 55745 on October 16, 1998, modified on March 14, 2001 at 66 FR 14988, and further revised on April 6, 2001 at 66 FR 18253 for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A). The permit issued by Region 4, authorizes discharges from exploration, development, and production facilities located in and discharging to all Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas.

This notice is applicable to new oil and gas operations (operations), which obtained coverage under the existing general permit coverage after April 30, 2003, and existing operations requesting continued coverage. The purpose of the notice is to clarify the procedure for these operations to request coverage under a continued general permit, since it does not clearly discuss this procedure. The language in the current permit referring to April 30, 2003, as the deadline for existing operations to submit Notices of Intent (NOIs) requesting continued coverage under this permit has been deleted. The clarification applies to both existing and new operations. Also, the word ''Subsequent'' in the title of Part I.A.6. of the current permit has been replaced with the word ''Continued.'' The change is made because the language in this Section does not provide a procedure to obtain coverage under a subsequently issued (renewed) general permit. Part I.A.6. is clarified as discussed above:

6. Intent to be Covered by a Continued Permit

This permit shall expire on October 31, 2003. However, an expired general permit continues in force and effect until a new general permit is issued. Permittees must submit a new (a second) NOI in order to continue coverage under this general permit after it expires. In lieu of providing the information required by paragraph 4. of the section, the permittee may submit a list of facilities covered by the general permit and their associated permit coverage numbers. Facilities that have not submitted another NOI under the permit by the expiration date cannot become authorized to discharge under any continuation of this NPDES general permit. All NOI's from permittees requesting coverage under a continued permit should be sent by certified mail to: Director, Water Management Division, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960.

DATES: This clarification is effective September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Karrie-jo Robinson-Shell, USEPA, Region 4, NPDES and Biosolids Permits Section at (404) 562–9308 or by e-mail at *shell.karrie-jo@epa.gov.*

Gail Mitchell,

Acting Director, Water Management Division.

[FR Doc. 03–22768 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Opportunity Commission.

ACTION: Notice of information collection—no change: Local Union Report (EEO–3).

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a one-year extension of the existing collection as described below.

DATES: Written comments on this notice must be submitted on or before November 7, 2003.

ADDRESSES: Comments should be sent to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX 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: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9220, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: The Commission solicits public comment to enable it to:

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

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

Collection Title: Local Union Report (EEO–3).

OMB Number: 3046–0006.

Frequency of Report: Biennial.

Type of Respondent: Referral local unions with 100 or more members.

Description of Affected Public: Referral local unions and independent or unaffiliated referral unions and similar labor organizations.

Responses: 3,000.

Reporting Hours: 3,000 (4,500 including recordkeeping).

Cost to Respondents: $67,500.

Federal Cost: $50,000 (Annualized).

Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirements for various kinds of labor organizations—Referral local unions with 100 or more members have been required to submit EEO–3 reports since 1967 (biennially since 1986). The individual reports are confidential.

EEO–3 data are used by the EEOC to investigate charges of discrimination against referral local unions. In addition, the data are used to support EEOC decisions and conciliations, and for research. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–3 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs) and other government agencies.

Burden Statement: The respondent burden for this information collection is minimal. The estimated number of respondents included in the biennial EEO–3 survey is 3,000 referral unions. Since each union files one EEO–3 report, the number of responses is 3,000. The biennial reporting is estimated to take 3,000 hours, and total biennial reporting and recordkeeping is 4,500 hours.

Dated: August 29, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–22719 Filed 9–5–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

August 28, 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 of 1995, Pub. L. 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: Persons wishing to comment on this information collection should submit comments November 7, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0441.

Title: Section 90.621(b)(4), Selection and Assignment of Frequencies.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 250.

Estimated Time Per Response: .5 hours for respondents who choose to contract out the requirement; 1.5 hours for respondents who will employ in-house staff.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 188 hours.

Annual Reporting and Recordkeeping Cost Burden: $19,000.

Needs and Uses: This rule section requires Specialized Mobile Radio (SMR) applicants who wish to locate co-channel systems less than 70 miles from an existing system operating on the same channel may do so upon a specific request. If the requested distance falls within the parameters of a table provided in the rules, the applicant must provide certain information about the co-channel stations, but no waiver of the short spacing rule is required. If the request is for distances less than those prescribed in the table, a waiver of the short spacing rule is required. Incumbent licensees seeking to utilize an 18 dBMU signal strength interference contour, and that are unsuccessful in obtaining the consent of affected co-channel incumbents, may submit to any certified frequency coordinator of 800 MHz band channels an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. The incumbent may then provide to the Commission in their modified applications a statement from a certified frequency coordinator that no harmful interference will occur to a co-channel licensee. The Commission will submit this information collection to the OMB after the requisite 60 day comment period as an extension (no change) to obtain the full three year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22678 Filed 9–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 22, 2003.

SUMMARY: The Federal Communications Commissions, 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, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov;* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562, or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0716.

Title: Blanketing Interference.

From Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; and Not-for-profit institutions.

Number of Respondents: 21,000.

Estimated Time Per Response: 1 to 2 hours.

Frequency of Response: Third party disclosure.

Total Annual Burden: 41,000 hours.

Total Annual Costs: None.

Needs and Uses: Under 47 CFR 72.88 (AM), 73.318 (FM), and 73.685(d) (TV), the licensee is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a licensee is only required to provide technical assistance to determine the cause of the interference. The FCC has an outstanding Notice of Proposed Rulemaking (NPRM) in MM Docket No. 96–62, *In the Matter of Amendment of Part 73 of the Commission's Rules to More Effectively Resolve Broadcast Blanketing Interference, Including Interference to Consumer Electronics and Other Communications Devices.* The NPRM has proposed to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. The NPRM has also proposed to consolidate all blanketing interference rules under a new section 47 CFR 73.1630, ''Blanketing Interference.'' This new rule has been designed to facilitate the resolution of broadcast interference problems and set forth all responsibilities of the licensee/permittee of a broadcast station. To date, final rules have not been adopted.

OMB Control Number: 3060–0581.

Title: Section 76.503, National Subscriber Limits.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 1 hour (multiple responses annually).

Frequency of Response: On occasion reporting requirements.

Total annual burden: 20 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 76.503 requires that prior to acquiring additional multichannel video-programming providers (MVPD), any cable operator that serves 20 per cent or more of the MPVP subscribers nationwide shall certify to the FCC, concurrent with its application to the FCC for transfer of license at issue in the acquisition, that no violation of the national subscriber limits prescribes in this section will occur as a result of such acquisition. The FCC uses the certification filings to ensure that cable operators do not violate the 30 percent share rule in their acquisitions of additional multi-channel programming providers. The FCC uses 47 CFR 76.503, Note 1, certification filings to verify that limited partners who so certify are not involved in management or operations of the media-related activities of the partnership.

OMB Control Number: 3060–0924.

Title: Report and Order in MM Docket No. 99–25 Creation of Low Power Radio Service.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Not-for-profit entities; and State, local or tribal governments.

Number of Respondents: 1,200 (multiple responses).

Estimated Time Per Response: 0.0025 to 12 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 27,354 hours.

Total Annual Cost: $23,850.

Needs and Uses: The information collection requirements contained in MM Docket No. 99–25, Report and Order, will ensure that the integrity of the FM spectrum is not compromised. It will also ensure that unacceptable interference will not be caused to existing radio services and that the statutory requirements are met. These rules will ensure that the stations are operated in the public interest.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22679 Filed 9–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 25, 2003.

SUMMARY: The Federal Communications Commissions, 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, as required by the Paperwork Reduction Act of 1995, Pub. L. 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 October 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0055.

Title: Application for Cable Television Relay Service Station (CARS) Authorization, FCC Form 327.

Form Number: FCC 327.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 973.

Estimated Time per Response: 3.166 hours (avg.).

Frequency of Response: On occasion and/or every five years reporting requirements.

Total Annual Burden: 3,081 hours.

Total Annual Costs: $214,060.

Needs and Uses: On March 13, 2003, the Commission adopted a Report and Order (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Sections 78.11–78.40 of FCC Rules, an applicant files FCC Form 327 to obtain an initial license or modification, transfer, assignment, or renewal of an existing Cable television Relay Service (CARS) microwave radio license. Franchised cable systems and other eligible services use the 12 GHz and 18 GHz CARS bands for microwave relays pursuant to 47 CFR part 78 of the Commission's Rules. CARS is principally a video transmission service used for intermediate links in a distribution network, *i.e.*, CARS stations relay broadcast television, low power television, AM, FM, and cablecasting video and audio signal transmissions for and supply program material to these various broadcast transmission systems using point-to-point and point-to-multipoint transmissions. The Commission has restructured FCC Form 327 primarily to make it conform to the online filing system.

OMB Control Number: 3060–0647.

Title: Annual Survey of Cable Industry Prices.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities; and State, local, or tribal governments.

Number of Respondents: 720.

Estimated Time per Response: 7 hours.

Frequency of Response: Annual reporting requirements.

Total annual burden: 5,040 hours.

Total Annual Costs: None.

Needs and Uses: Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish an annual statistical report on average rates for basic cable service, cable programming and equipment. The report must compare the prices charged by cable systems subject to effective competition and those not subject to effective competition. The annual Price Survey is intended to collect data needed to prepare this report.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22680 Filed 9–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 29, 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 of 1995, Pub. L. 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 Paperwork Reduction Act (PRA) comments should be submitted on or before October 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission 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.: 3060–0105.

Title: Licensee Qualification Report for Multipoint Distribution Service.

Form No: FCC Form 430.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and not-for-profit institutions.

Number of Respondents: 500.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 1,000 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 430 is filed by new applicants or annually by licensees if substantial changes occur in the organizational structure to provide information concerning corporate structure, alien ownership, and character of applicant or licensee. FCC Form 430 is also filed by applicants soliciting authority for assignment or transfer of control. The information is used by the Commission to determine whether the applicant is legally qualified to become or remain a licensee, as required by the Communications Act of 1934, as amended. Without such information, the Commission would be unable to fulfill its responsibility under the Communications Act to make a finding as to the legal qualifications of an applicant or licensee. The Commission is submitting this information collection to OMB as an extension (no change) to obtain the full year clearance.

OMB Control No.: 3060–0767.

Title: Auction Forms and License Transfer Disclosures—Supplement for the Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order in WT Docket No. 97–82.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 22,000.

Estimated Time Per Response: .25–5.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 770,250 hours.

Total Annual Cost: $47,452,000.

Needs and Uses: Commission rules require small business applicants to submit ownership information and gross revenue calculations, and all applicants must submit joint bidding agreements. In the case of default, the Commission retains the discretion to re-auction such licenses. Finally, licensees transferring licenses within three years are required to maintain a file of all documents and contracts pertaining to the transfer. Certification is required for entities dropping out of auction to secure certain ownership interests in participants.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22681 Filed 9–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Wednesday, September 10, 2003

September 3, 2003.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, September 10, 2003, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Tele-Communications	*Title:* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services (WT Docket No. 02–381); 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services (WT Docket No. 01–14); and Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation. *Summary:* The Commission will consider a Notice of Proposed Rulemaking to examine ways of amending spectrum regulations and policies in order to promote the rapid and efficient deployment of quality spectrum-based services in rural areas.
2	Office of Engineering and Technology	*Title:* Modification of parts 2 and 15 of the Commission's Rules for unlicensed devices and equipment approval. *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning modifications to parts 2 and 15 of the rules to provide flexibility in the design and authorization of unlicensed devices.
3	International	The International Bureau will report on the first in a series of annual reports on the commercial satellite industry.

Item No.	Bureau	Subject
4	Wireless Tele-Communications	The Wireless Telecommunications Bureau and the National Coordination Committee (NCC) Chair will report on the Committee's recommendations for interoperable public safety use of the 700 MHz band.
5	Wireline Competition	*Title:* Section 10(d) Limitation on Forbearance from sections 251(c) and 271. *Summary:* The Commission will consider a Notice of Proposed Rulemaking seeking comment on the conditions under which sections 251(c) and 271 of the Communications Act of 1934, as amended, should be deemed to be ''fully implemented'' under section 10(d) of the Act.
6	Wireline Competition	*Title:* Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers. *Summary:* The Commission will consider a Notice of Proposed Rulemaking to review the Commission's cost-based pricing rules for unbundled network elements.
7	Media	*Title:* Implementation of section 304 of the Telecommunications Act of 1996 (CS Docket No. 97–80); Commercial Availability of Navigation Devices; and Compatibility Between Cable Systems and Consumer Electronics Equipment (PP Docket No. 00–67). *Summary:* The Commission will consider a Second Report and Order regarding regulations to facilitate the connection of customer premises equipment purchased from retail outlets to multichannel video programming distibutor systems.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322.

Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, (703) 834–1470, Ext. 19; Fax (703) 834–0111.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22965 Filed 9–4–03; 3:12 pm]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open portion of the meeting of the Board of Directors is scheduled to begin at 1 p.m. on Wednesday, September 10, 2003. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION OF MEETING:

Proposed Rule Regarding Registration of Federal Home Loan Bank Securities Under the Securities Exchange Act of 1934. Consideration of a proposed rule to require each Bank to register a class of its securities with the Securities and Exchange Commission under the provisions of section 12(g) of the Securities Exchange Act of 1934.

Appointment of the Private Citizen Member of the Office of Finance Board of Directors. Consideration of the nomination of an individual to serve as the private citizen member and chair of the Office of Finance board of directors.

Withdrawal of Proposed Rule Regarding Acquired Member Assets (AMA). Withdrawal of a proposed rule (68 FR 39027 (July 12, 2003)) that would have revised the AMA regulation to create less prescriptive requirements, to provide each Federal Home Loan Bank (Bank) with greater responsibility for managing its AMA program, and to codify a prior Federal Housing Finance Board (Finance Board) decision regarding interests in whole loans.

Federal Housing Finance Board Fiscal Year 2004 Budget.

MATTERS TO BE CONSIDERED AT THE CLOSED PORTION OF MEETING:

Periodic Update of Examination Program Development and Supervisory Findings.

FOR FURTHER INFORMATION CONTACT: Mary Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at *gottliebm@fhfb.gov.*

Dated: September 3, 2003.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 03–22950 Filed 9–4–03; 2:55 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 22, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Frances E. Powers, Defiance, Iowa; to acquire additional voting shares of Union Bancorporation, Defiance, Iowa, and thereby indirectly acquire additional voting shares of Defiance State Bank, Defiance, Iowa.

Board of Governors of the Federal Reserve System, September 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–22744 Filed 9–5–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Munchener Ruckversicherungs–Gesellschaft Aktiengesellschaft, Munich, Germany; to acquire 26.2 percent through its subsidiaries, Hypo Real Estate Holding, AG, Munich, Germany, and Hypo Real Estate Capital Corporation, Wilmington, Delaware, in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–22743 Filed 9–5–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Physical Fitness and Sports

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, President's Council on Physical Fitness and Sports.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the President's Council on Physical Fitness and Sports will hold a meeting. This meeting is open to the public. A description of the Council's functions is included with this notice.

DATE AND TIME: September 29, 2003, from 8:30 a.m. to 4 p.m.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Penelope S. Royall, Acting Executive Director, President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738H, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–5187.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports (PCPFS) was established originally by Executive Order 10673, dated July 16, 1956. PCPFS was established by President Eisenhower after published reports indicated that American boys and girls were unfit compared to the children of Western Europe. Authorization to continue Council operations was given at appropriate intervals by subsequent Executive Orders. The Council has undergone two name changes and several reorganizations. Presently, the PCPFS is a program office located organizationally in the Office of Public Health and Science within the Office of the Secretary in the U.S. Department of Health and Human Services.

On June 6, 2002, President Bush signed Executive Order 13256 to reestablish the PCPFS. Executive Order 13256 was established to expand the focus of the Council. This directive instructed the Secretary to develop and coordinate a national program to enhance physical activity and sports participation. The Council currently operates under the stipulations of the new directive. The primary functions of the Council include: (1) To advise the President, through the Secretary, on the progress made in carrying out the provisions of the enacted directive and recommend actions to accelerate progress; (2) to advise the Secretary on ways and means to enhance opportunities for participation in physical fitness and sports, and, where possible, to promote and assist in the facilitation and/or implementation of such measures; (3) to advise the Secretary regarding opportunities to extend and improve physical activity/fitness and sports programs and services at the national, state and local levels; and (4) to monitor the need for the enhancement of programs and educational and promotional materials sponsored, overseen, or disseminated by the Council and advise the Secretary, as necessary, concerning such needs.

The PCPFS holds at a minimum, one meeting in the calendar year to (1) assess ongoing Council activities and (2) discuss and plan future projects and programs.

Dated: August 29, 2003.

Penelope S. Royall,

CDR, USPHS, Acting Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 03–22745 Filed 9–5–03; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Data Coordinating Center for Autism and Other Developmental Disabilities Surveillance and Epidemiologic Research

Announcement Type: New.

Funding Opportunity Number: PA 04014.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: October 8, 2003

Application Deadline: November 14, 2003

I. Funding Opportunity Description

Authority: This program is authorized under sections 301, 311, and 317(C) of the

Public Health Service Act, [42 U.S.C. Sections 241, 243, and 247b-4, as amended].

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for a new Data Coordinating Center (DCC) to support surveillance data and research data management related to developmental disabilities, such as Autism Spectrum Disorders (ASD) and other Developmental Disabilities (DD). This program addresses the ''Healthy People 2010'' focus area of Maternal, Infant, and Child Health.

The purpose of the program is to support a DCC to coordinate and facilitate data management activities across both the Autism and Developmental Disabilities Monitoring Network (ADDM) surveillance grantees, and the Centers of Excellence for Autism and Developmental Disabilities Research and Epidemiology (CADDRE) surveillance and epidemiologic research grantees. The Children's Health Act of 2000 established a national mandate for autism surveillance activities and for research to address etiologic questions and identify effective interventions. The DCC is the third component necessary to provide a coordinated and standardized collection and output of information between and from these two grantee programs. The DCC is necessary to ensure accurate and timely processing and reporting of both surveillance data and research data related to ASD and DD. The data collected from these grantee sites will be stored at the DCC. Data activities related to other birth conditions and developmental disabilities may be added in the future, based on needs.

The ADDM, CADDRE, and DCC cooperative agreements have been developed to assist us with our goal of preventing ASDs and DDs. The first step in preventing these conditions is to understand their scope. Specifically, we need to know how many children are affected, the health outcomes for these children, the costs to the family and to the community, and the risk factors or protective factors for each condition. This information is needed to set priorities, design studies of causes and develop effective interventions in the public setting.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Center on Birth Defects and Developmental Disabilities (NCBDDD): To improve the data on the prevalence of birth defects and developmental disabilities, and find causes and risk factors of birth defects and developmental disabilities in order to develop prevention strategies.

Activities:

Awardee activities for this program are as follows:

a. Support the cooperative activities of the research sites through meetings, telephone conferences, and web support.

b. Develop, after the initial meeting/discussions with research sites, a work plan for all activities proposed for the DCC (See Attachment 1 posted with this announcement on the CDC Web site).

c. Develop the needed documentation, testing requirements, and a relational database application after CDC's approval of the work plan. This application should contain all of the necessary computerized data collection forms for autism and other DD surveillance.

d. Develop a secure Web site for surveillance and research sites to access the individual and pooled data sets for analysis. Note that all data collected and accessible through the secure Web site is confidential and should be maintained in accordance with all federal, state, and local rules, regulations, and laws governing privacy of personal health and health-related data (no personal identifiers will be forwarded to the DCC).

e. Assist the research sites in administering questionnaires to individuals they identify.

f. Develop manuals and plans for training of research site personnel, and conduct on-site training on the use of the relational database application and transmission of study data to DCC.

g. Prepare written system documentation for the relational database application and secure Web site.

h. Develop a plan to transfer the data and source code to CDC at the end of the funding period.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC activities for this program are as follows:

a. Assist with protocol development, including reviewing and commenting on each stage of the program before subsequent stages are started.

b. Assist in the analysis and interpretation of findings.

c. Assist in the reporting of findings in scientific literature, other media, and among the public.

d. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially, and on at least an annual basis until the research project is completed.

e. Provide technical guidance as to the development of the relational database application and secure Web site.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year (FY) of Funds: 2004.

Approximate Total Funding: $700,000 per budget period.

Approximate Number of Awards: 1.

Anticipated Award Date: April 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years. Throughout the project period, continuation awards will be based on the availability of funds, and evidence of progress as documented in required reports.

III. Eligibility Information

Eligible Applicants: Applications may be submitted by:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Technical schools.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally-recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

If you are applying as a bona fide agent of a state or local government, you must provide a letter from the State as documentation of your status. Place this letter behind the face page of your application form.

Other Eligibility Requirements:

To be eligible applicants must:

1. Propose a Principal Investigator who shall expend at least 20 percent annual effort on the award in each year of support. This 20 percent effort may not be in-kind support.

2. Proposed Principal Investigator cannot be the current Autism and

Developmental Disabilities Monitoring (ADDM) or Centers for Autism and Developmental Disabilities Research and Epidemiology (CADDRE) Principal Investigator on an existing funded project. Other individuals from their institutions are eligible applicants.

Applications will be reviewed upon receipt at CDC for the above eligibility requirements. Applications that do not meet each requirement will be found ineligible and will be returned to the applicant without review.

Cost sharing or matching: Matching funds are not required for this program.

Title 2 of the United States Code Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

IV. Application and Submission Information

How to Obtain Application Forms: To apply for this funding opportunity, use application Form PHS–398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction Sheet (For PHS–398 the errata sheet is posted with the application forms on the CDC Web site). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

You are encourage to obtain a DUNS number now if you believe you will be submitting an application to any Federal agency on or after October 1, 2003. Proactively obtaining a DUNS number at the same time will facilitate the receipt and acceptance of applications after September 2003.

To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.

Content and Form of Submission:

Letter of Intent (LOI):

CDC requests that you send a LOI if you intend to apply for this program. Your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Your LOI must be submitted in the following format:

- Maximum number of pages—2.
- Font size—12-point unreduced.
- Paper size—8.5 by 11 inches.
- Page margin size—one-inch margins.
- Printed only on one side of paper.
- Single-spaced.

Your LOI must contain the following information: Name, address, and telephone number of the Principal Investigator; names of other key personnel; participating institutions; number and title of this program announcement.

Applications

You must submit a signed original and two copies of your application forms. The PHS–398 grant application form requires the applicant to enter the project title on page 1 (Form AA, ''face page'') and the project description (abstract) on page 2 (Form BB).

- Applicants must submit a separate typed abstract of their proposal consisting of no more than two single-spaced pages.
- Applicants should also include a table of contents for the project narrative and related attachments.
- The main body of the application narrative should not exceed 30 single-spaced pages. The narrative must address activities to be conducted over the entire length of the project period. Please note that this maximum number of pages allowed exceeds the maximum number of pages (25 pages) indicated in the PHS–398 grant application form (Form CC, ''Research Grant Table of Contents''). The budget justification and biographical sketch sections do not count toward the maximum page limit. Pages must be numbered and printed on only one side of the page.
- All material must be typewritten, with 10 characters per inch type (12 point) on 8½″ by 11″ white paper with one inch margins, no headers and footers (except for applicant-produced forms such as organizational charts, graphs and tables, etc.). Applications must be held together only by rubber bands or metal clips, and not bound together in any other way. Attachments to the application should be held to a minimum in keeping to those items required or referenced by this announcement.
- If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement.

LOI Deadline Date: October 8, 2003

LOI Submission Address: Submit your LOI by mail, delivery service, or e-mail to: Ms. Joanne Wojcik, Public Health Analyst, Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disabilities, 1600 Clifton Road, Mailstop E–86, Atlanta, Georgia 30333, Email address: *jcw6@cdc.gov,* Telephone: 404–498–3848.

Application Deadline Date: November 14, 2003

Application Submission Address: Submit your application by mail or delivery service to: Technical Information Management-PA #04014, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted by fax or other electronic means.

Submission, Date, Time and Address:

Explanation of Deadlines: Applications must be received in the Procurement and Grants Office (PGO) at CDC by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery services, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after the closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's problem. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

If your application does not meet the criteria above, it will not be eligible for competition, and will be discarded. You will be notified of the failure to meet the submission requirements.

CDC Acknowledgement of Application Receipt: A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Intergovernmental Review of Applications: Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html*

V. Application Review Information

Review Criteria: Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Each application will be evaluated individually against the following criteria relevant to the successful establishment and performance of a DCC. It is suggested that applications be organized to be compatible with the evaluation criteria, as that is the process by which the review committee will assess the quality of the applications.

1. *Organizational experience and capabilities, including, but not limited to:* Adequacy of site support; governance support; staff training plans; including onsite training; adequacy of plans to guarantee the quality and integrity of collected data; adequacy of plans to maintain accurate and timely information on the progress of research and site performance; adequacy of plans to facilitate and maintain close communication with CDC and among the other surveillance and research sites; evidence of high-quality past performance in relevant data coordination activities; flexibility of plans to respond to the changing analytic needs of the surveillance and research sites; adequacy of plans and procedures for monitoring DCC expenditures; and demonstrated willingness and ability to adhere to the terms and conditions of the cooperative agreement award.

2. *Staff experience and capabilities, including, but not limited to:* Adequacy of the proposed resources; including staffing; for supporting the surveillance and research sites; demonstration of innovative analytic approaches to organizing and evaluating research data; and adequacy of the qualifications and research experience of the management and analytic team.

3. *Specialized capabilities and experience in large scale network coordination, including, but not limited to:* Adequacy of experience in, and plans for, conducting periodic onsite monitoring of multi-site research; adequacy of previous experience with design; administration; management; and coordination of multi-site research; surveillance sites; and demonstrated willingness and ability to expand resources, personnel, and facilities to serve as the DCC for other CDC initiatives if deemed appropriate to meet future needs.

4. *Protections:* Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

5. *Inclusion:* Does the application adequately address the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

6. *Budget:* The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

Application Review Process: Applications will be reviewed by CDC staff for completeness and responsiveness as outlined in the ''Other Eligibility Requirements''. Incomplete applications and applications that are non-responsive will be returned to the applicant without further consideration.

Applications, which are complete and responsive, will be subjected to a preliminary evaluation (triage) by a Special Emphasis Panel (SEP) to determine if the application is of sufficient technical and scientific merit to warrant further review by the SEP. Applications that are determined to be non-competitive will not be considered, and the SEP will promptly notify the investigator/program director and the official signing for the applicant organization. A dual review process will evaluate applications then determined to be competitive.

VI. Award Administration Information

Award Notices: If your application is to be funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Administrative and National Policy Requirements: 45 CFR part 74 or 92.

The following additional requirements apply to this project:

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–21 Small, Minority, and Women-Owned Businesses
AR–22 Research Integrity
AR–24 HIPAA Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov.*

Reporting Requirements:

You must provide CDC with original, plus two copies of the following reports:

1. Interim Progress Report for a PHS Grant (PHS–2590), no less than 90 days before the end of the budget period (date to be determined at time of award).

(a) The progress report should represent the accomplishments of the project during the reporting period. You do not need to limit the progress report to two pages as specified in the instructions (page 2, item A).

(b) The report should describe the work, which has been accomplished to date. Please describe accomplishments in terms of the specific aims/timetable.

(c) List each specific aim separately and elaborate on the progress that has been made and where you are in terms of the time schedule.

(d) A detailed budget with justification.

(e) Include a copy of your most current IRB approval.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, Procurement and Grants Office, Centers

for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Rick Jaeger, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2727, E-mail address: *ryj4@cdc.gov.*

For program technical assistance, contact: Joanne Wojcik, Public Health Analyst, Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disabilities, Division of Birth Defects and Developmental, Disabilities, 1600 Clifton Road, Mail Stop–E86, Atlanta, Georgia 30333, Email address: *jwojcik@cdc.gov,* Telephone: 404–498–3848.

Dated: September 2, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22715 Filed 9–5–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10005]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection; *Title of Information Collection:* Ticket to Work and Work Incentives: Medicaid Infrastructure Grants; *Form Number:* CMS–10005 (OMB approval #: 0938–0811); *Use:* Section 203 of the Ticket to Work and Work Incentives Act of 1999 provides for the establishment of a grants program for states that build infrastructures designed to support people with disabilities. State agencies have applied for these grants and will be submitting ''continuation applications'' for these grants; *Frequency:* Annually; *Affected Public:* State, local or tribal govt.; *Number of Respondents:* 40; *Total Annual Responses:* 40; *Total Annual Burden Hours:* 2,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: August 28, 2003.

Dawn Willinghan,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–22694 Filed 9–5–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–2744 and CMS–2746]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: End Stage Renal Disease Medical Information System ESRD Facility Survey and Supporting Regulations in 42 CFR 405.2133; *Form No.:* CMS–2744 (OMB# 0938–0447); *Use:* The ESRD Facility Survey form (CMS–2744) is completed annually by Medicare-approved providers of dialysis and transplant services. The CMS–2744 is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 4,360; *Total Annual Responses:* 4,360; *Total Annual Hours:* 34,880.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Death Notification, Pub. L. 95–292; 42 CFR 405.2133; 45 CFR 5, 5b; 20 CFR parts 401, 422E; *Form No.:* CMS–2746 (OMB# 0938–0448); *Use:* The ESRD Death Notification is to be completed upon the death of ESRD patients. Its primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients; *Frequency:* Other: One-time (patient death); *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal Government; *Number of Respondents:* 4,360; *Total Annual Responses:* 69,760; *Total Annual Hours:* 34,880.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections

referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 28, 2003.

Dawn Willinghan,

Acting CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–22695 Filed 9–5–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Implementation of a Feedback Form for MCH Alert Subscribers—NEW

The MCH Alert is a free weekly electronic newsletter that provides timely reference to research findings, policy developments, recently released publications, and new programs and initiatives affecting the maternal and child health (MCH) community. The goal is to make MCH news and policy more accessible to health professionals, policymakers, family advocates, community service professionals, MCH/public health faculty and students, families, and the public. Each Friday, MCH Alert is electronically distributed to over 4,000 subscribers across the country. Visitors to the Web site can review archives of past issues, search for specific topics, link to reports and resources discussed, and find subscription information.

The overall goal of the Feedback Form is to determine whether the MCH Alert topics and format continue to meet subscriber needs. Specifically, the form will provide a means for assessing (1) the usefulness of the information and service and (2) the effectiveness of targeted outreach efforts.

Form	Number of respondents	Responses per respondent	Total responses	Minutes per response	Total burden hours
Electronic customer satisfaction feedback form	1,200	1	1,200	10	200

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 day of this notice.

Dated: September 2, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–22752 Filed 9–5–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: October 22, 2003, 9 a.m. to 5 p.m.; October 23, 2003, 8 a.m. to 12 noon.

Place: Westchester Marriott Hotel, 670 White Plains Road, Tarrytown, New York 10591, Phone: (914) 631–2200; Fax: (914) 631–7819.

Status: The meeting will be open to the public.

Agenda: The agenda includes an overview of general Council business activities. In addition, the Council will hear presentations from experts on farmworker issues, including an update from the 404 Committee (section 404 of Pub. L. 107–251) regarding the progress on the study of the barriers members of America's migrant and seasonal farmworker community face when accessing Medicaid and State Children's Health Insurance Program (SCHIP) benefits.

Finally, the Council will be holding a public hearing at which migrant farmworkers will have the opportunity to testify before the Council regarding matters that affect their health. The hearing is scheduled for Thursday, October 23, from 9 a.m. to 12 noon, at the Westchester Marriott Hotel.

The Council meeting is being held in conjunction with the Annual East Coast Migrant Stream Forum sponsored by the

North Carolina Primary Health Care Association, which is being held in Tarrytown, New York, during the same period of time.

Agenda items are subject to change as priorities indicate.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–0367.

Dated: September 2, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–22751 Filed 9–5–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974: Revision to Existing System of Records; Correction

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notification of an Altered System of Records; correction.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Health Resources and Services Administration published in the **Federal Register** of August 18, 2003, a document concerning a notice of a proposal to revise an existing system of records, 09–15–0055, Organ Procurement and Transplantation Network (OPTN) Data System. In notice FR Doc. 03–20685 on page 49491, the last line in the first paragraph of the **SUPPLEMENTARY INFORMATION** section states:

The notice is published below in its entirety, as amended.

The system of records notice was inadvertently omitted from the document. This document corrects that mistake. Accordingly, the notice is published below in its entirety, as amended.

FOR FURTHER INFORMATION CONTACT: James Burdick, M.D., Director, Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: September 2, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

09–15–0055

SYSTEM NAME:

Organ Procurement and Transplantation Network (OPTN)/ Scientific Registry of Transplant Recipients (SRTR) Data System, HHS/ HRSA/OSP/DoT.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Data collected by the OPTN are maintained by the OPTN contractor and shared on a monthly basis with the contractor for the SRTR and the DoT, within HRSA, the Federal entity that oversees the OPTN and SRTR contracts.

OPTN Contractor: United Network for Organ Sharing (UNOS), P.O. Box 2484, 700 North Fourth Street, Richmond, Virginia 23218.

SRTR Contractor: University Renal Research and Education Association (URREA), 315 West Huron, Suite 260, Washtenaw County, Ann Arbor, Michigan, 48103.

Division of Transplantation: Office of Special Programs, HRSA, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons from whom organs have been obtained for transplantation, persons who are candidates for organ transplantation, and persons who have been recipients of transplanted organs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Donor registration, transplant recipient registration, histocompatibility forms, and transplant recipient follow-up forms. Data items include: name, Social Security number (voluntary), identifiers assigned by OPTN and SRTR contractors, hospital and hospital provider number, State and zip code of residence, citizenship, race/ethnicity, gender, date and time of organ recovery and transplantation, name of transplant center, histocompatibility status, donor cause of death and condition, patient condition before and after transplantation, immunosuppressive medication, cause of death (if appropriate), health care coverage, employment and education level.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 274 requires that the Secretary, by contract, provide for the establishment and operation of an OPTN, and 42 U.S.C. 274a requires that the Secretary, by grant or contract, develop and maintain a Scientific Registry of the recipients of organ transplants. 42 CFR part 121 authorizes collection of the information included in this system by the OPTN.

PURPOSE(S):

To (1) match donor organs with recipients; (2) monitor compliance of member organizations with OPTN requirements; (3) review and report periodically to the public on the status of organ donation and transplantation in the United States; and (4) provide data to researchers and government agencies to study the scientific and clinical status of organ transplantation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Departmental contractors who have been engaged by the Department to assist in accomplishment of a departmental function relating to the purposes for this system of records and who need to have access to the records in order to assist the Department.

2. HRSA, independently and through its contractor(s), may disclose records regarding organ donors, organ transplant candidates, and organ transplant recipients to transplant centers, histocompatibility laboratories, and organ procurement organizations, provided that such disclosure is compatible with the purpose for which the records were collected including: matching donor organs with recipients, monitoring compliance of member organizations with OPTN requirements, reviewing and reporting periodically to the public on the status of organ donation and transplantation in the United States. These records consist of Social Security numbers, other patient identification information and pertinent medical information.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to affect directly the operation of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable the

Department to present an effective defense.

4. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

5. A record may be disclosed for a research purpose, when the Department, independently or through its contractor(s):

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that a bona fide research/analysis purpose exists;

(c) Has required the recipient to: (1) Establish strict limitations concerning the receipt and use of patient-identified data; (2) establish reasonable administrative, technical, and physical safeguards to protect the confidentiality of the data and to prevent the unauthorized use or disclosure of the record; (3) remove, destroy, or return the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information; and (4) make no further use or disclosure of the record except as authorized by HRSA or its contractor(s) or when required by law;

(d) has determined that other applicable safeguards or protocols will be followed; and

(e) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, magnetic tapes, and disc packs.

SAFEGUARDS:

1. *Authorized users:* Access is limited to authorized HRSA and contract personnel responsible for administering the program. Authorized personnel include the System Manager and Project Officer, and the HRSA Automated Information System (AIS) Systems Security Officer; and the program managers/program specialists who have responsibilities for implementing the program. Both HRSA and its contractor(s) shall maintain current lists of authorized users.

2. *Physical safeguards:* Magnetic tapes, disc packs, computer equipment, and hard-copy files are stored in areas where fire and life safety codes are strictly enforced. All automated and nonautomated documents are protected on a 24-hour basis in locked storage areas. Security guards perform random checks on the physical security of the records storage area. The OPTN and SRTR contractors are required to maintain off site a complete copy of the system and all necessary files to run the computer organ donor-recipient match and update software.

3. *Procedural safeguards:* A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. All authorized users must sign a nondisclosure statement. Access to records is limited to those staff members trained in accordance with the Privacy Act and Automated Data Processing (ADP) security procedures. The contractor(s) is required to assure that the confidentiality safeguards of these records will be employed and that it complies with all provisions of the Privacy Act. All individuals who have access to these records must have the appropriate ADP security clearances. Privacy Act and ADP system security requirements are included in the contracts. The HRSA Project Officer(s) and the System Manager(s) oversee compliance with these requirements. The HRSA authorized users will make visits to the contractors' facilities to assure security and Privacy Act compliance. The contractor(s) is/are required to adhere to a HRSA approved system security plan.

RETENTION AND DISPOSAL:

Each donor, candidate, and recipient record shall be retained for 25 years beyond the known death of the organ recipient.

SYSTEM MANAGER AND ADDRESS:

Chief, Operations and Analysis Branch, Division of Transplantation, HRSA, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Requests by mail: To determine if a record about you exists, write to the OPTN contractor (*see* System Location). The request should contain the name and address of the individual; the Social Security number if the individual chooses to provide it; the name of his/her transplant center, a notarized written statement that the requester is the person he/she claims to be and that he/she understands that the request or acquisition of records pertaining to another individual under false pretenses is a criminal offense subject to a $5,000 fine. These procedures are in accordance with the Department's regulations (45 CFR part 5b).

Requests in person: The individual must meet all the requirements stated above for a request by mail, providing the information in written form, or provide at least one piece of tangible identification. The individual should recognize that in order to maintain confidentiality, and thus the accuracy of data released through repeated internal verification, securing the information by request in person will be time consuming. These procedures are in accordance with the Department's regulations (45 CFR part 5b).

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also provide a reasonable description of the record being sought. Requestors also may request an accounting of disclosures that have been made of their records, if any. A parent or guardian who requests notification of, or access to, a minor's/incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the minor/incompetent person as well as his/her own identity. These procedures are in accordance with the Department's regulations (45 CFR part 5b).

CONTESTING RECORDS PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, and the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Organ procurement organizations, histocompatibility laboratories, and organ transplant centers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–22750 Filed 9–5–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Policy, Management and Budget; Intent To Reestablish the Joint Fire Science Program Stakeholder Advisory Group Charter and Call for Non-Federal Nominations

AGENCY: Office of the Assistant Secretary for Policy, Management and Budget, Interior.

ACTION: Second call for nominations.

SUMMARY: The Secretary of the Interior and the Secretary of Agriculture intend to reestablish the Charter for the Joint Fire Science Program Stakeholder Advisory Group. This is the second notice soliciting nominations for new members for the Group. Individuals nominated under the previous **Federal Register** published July 16, 2003 (Vol. 68, No. 136) should not resubmit materials. The Group advises the Secretaries through the Governing Board of the Joint Fire Science Program concerning research priorities on wildland fuels issues, post-fire emergency stabilization and rehabilitation practices, restoration of fire-adapted ecosystems, and fire management procedures on lands administered by Interior and Agriculture. The Joint Fire Science Program provides scientific information and tools to support the wildland fire management program.

DATES: Nominations should be submitted to the address listed below September 29, 2003.

ADDRESSES: Submit all nominations to Dr. Bob Clark, Joint Fire Science Program Manager, National Interagency Fire Center, 3833 S. Development Ave., Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Dr. Bob Clark, Joint Fire Science Program Manager, National Interagency Fire Center, 3833 S. Development Ave., Boise, Idaho 83705, (208) 387–5349. Internet: *Bob_Clark@nifc.blm.gov.*

SUPPLEMENTARY INFORMATION: The Joint Fire Science Program was established in 1998 to provide scientific information and tools in support of the wildland fire management program. Since its inauguration the Program has funded 220 research projects. The results of completed projects are made available to field offices to provide guidance for wildland fire management, and fuels treatment and rehabilitation project planning. All program projects require scientist-manager partnerships along with a strong emphasis on technology transfer.

The Stakeholder Advisory Group will consist of not more than 15 members, 5 Federal and 10 nonfederal. This call for nominations will establish the nonfederal membership on the Group. Group membership will be balanced in terms of categories of interest and geographic regions represented. Any individual or organization may nominate one or more persons to serve on the Joint Fire Science Program Stakeholder Advisory Group. Individuals may also nominate themselves for Group membership.

All nomination letters should include the name, address, profession, relevant biographic data, and reference sources for each nominee, and should be sent to the address in the **ADDRESSES** section. Letters of support should be from interests or groups that nominees claim to represent. This material will be used to evaluate nominees' expertise and qualifications for advising the Secretaries on matters pertaining to research into wildland fuels problems, implementation of strategies and solutions for managing increasing fuel loadings, and post fire rehabilitation on federally administered wildlands. Nominations may be made for the following categories of interest:

Wildland fire suppression and operations
Prescribed fire management
Air quality and smoke management
Burned area emergency stabilization and rehabilitation
Fire ecology and ecosystem restoration
Forest and woodland management
Rangeland management
Wildlife Management
Soil and water management
Conservation
Social science and economics
Modeling and remote sensing
Tribal government
State or local agencies
Public at large

Each Stakeholder Advisory Group Member will be appointed to serve a 2-year term. Terms will be staggered to maintain continuity on the Group. Initially, appointment terms for half of the non-federal members will be for three years. At the end of the member' term, the member may continue to serve at the discretion of the Secretary of the Interior and Secretary of Agriculture for an interim period, which will not exceed 120 days, in order to ensure continuity on the Stakeholder Advisory Group.

Members will serve without salary, but non-federal members will be reimbursed for travel and per diem expenses at current rates for Government employees. The Group will meet at least twice annually. Additional meetings may be called in connection with special needs for advice. The Department of the Interior's Director, Office of Wildland Fire Coordination will be the Designated Federal Officer who will call meetings of the Group. This notice is published in accordance with section 9 (a)(2) of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. App.).

Dated: August 28, 2003.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget, Department of the Interior.

[FR Doc. 03–22780 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–J4–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Assessment for Illinois River National Wildlife and Fish Refuge (NWFR), Havana, IL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for Illinois River NWFR, Havana, Illinois. The CCP was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, and using the preferred alternative, goals and objectives, we describe how the Service intends to manage these refuges over the next 15 years.

DATES: Comments must be received by close of business Monday, October 20, 2003.

ADDRESSES: Copies of the draft CCP and EA are available on compact diskette or hard copy, you may obtain a copy by writing to: Illinois River National Wildlife and Fish Refuge Complex, 19031 East County Road 2105 North, Havana, Illinois 62644. Comments can be addressed to the same address. The draft CCP and EA is also available online at *http://midwest.fws.gov/planning/Ilrivtop.htm* and comments can be submitted through the Web site.

FOR FURTHER INFORMATION CONTACT: Ross Adams, Refuge Manager, Illinois River NWFR at 309/535–2290.

SUPPLEMENTARY INFORMATION: Comprehensive conservation plans guide management decisions over the course of 15 years.

The Illinois River NWFR Complex includes three national wildlife refuges: Chautauqua NWR in Mason County; Meredosia NWR in Cass and Morgan Counties; and Emiquon NWR in Fulton County. The planning process began in 1998.

Three management alternatives were considered. Alternative 3, Refuge Resource Area Focus, is the preferred alternative. This alternative would increase conservation efforts in the Illinois River Focus Areas and enhance, protect and restore fish and wildlife habitat within the boundaries of the Illinois River Refuges. There will be no expansion of existing authorized boundaries.

The CCP will identify wildlife-dependent recreational opportunities available to the public, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Dated: July 30, 2003.

Marvin Moriarity,

Acting Regional Director.

[FR Doc. 03–22712 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Deemed Approved Technical Amendment between the State of Wisconsin and the Forest County Potawatomi Community.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the Technical Amendment to the Class III gaming compact between the State of Wisconsin and the Forest County Potawatomi Community is considered approved. By the terms of IGRA, the Technical Amendment is considered approved, but only to the extent the compact is consistent with the provisions of IGRA. The Technical Amendment provides the following: application of the arbitration section to the payment section of the Compact; deletion of payment to the University of Wisconsin; provision that state law will apply for any reimbursement payments to the tribe; and waiver of all sovereign immunity with respect to the enforcement of any provision of this Compact.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 26, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–22788 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

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 to correct the date of availability of the draft environmental impact statement/environmental impact report (EIS/EIR).

SUMMARY: This notice corrects the date of availability of the Draft EIS/EIR for the Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion, for Southern Steelhead Trout, Santa Barbara County, California. An incorrect date, April 2003, was erroneously reported in the **Federal Register** (68 FR 43748, July 24, 2003). The correct, actual date for the availability of the Draft EIS/EIR is July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. David Young, Bureau of Reclamation, South-Central California Area, 1243 N Street, Fresno, CA 93721, 559–487–5127.

Dated: September 2, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–22714 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Southern Delivery System Project, Fryingpan-Arkansas Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Regional Water Infrastructure Authority (RWIA) is proposing to construct a pipeline and related facilities known as the Southern Delivery System (SDS) that will deliver Fryingpan-Arkansas Project (Fry-Ark) water and non-Fry-Ark water from the Arkansas River near the City of Pueblo to an area east of Colorado Springs. On February 19, 2003, RWIA and its individual participants, the cities of Colorado Springs and Fountain, along with the Security Water District, requested a long-term water conveyance contract from the Bureau of Reclamation (Reclamation). On July 14, 2003, Colorado Springs Utilities (Springs Utilities) made a request for a long-term storage contract for Pueblo Reservoir in association with this project. Because the RWIA proposal involves long-term storage and conveyance contracts from Reclamation, it has been determined that Reclamation should be the lead Federal agency for compliance with National Environmental Policy Act of 1969 (NEPA).

DATES: *See* **SUPPLEMENTARY INFORMATION** section for the dates and times of the scoping meetings.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** section for the locations of the scoping meetings.

Please send comments on potentially significant issues or the proposed alternatives to the attention of Pat Mangan, Southern Delivery System EIS, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, CO 80537; or FAX to (303) 445–6328 or (303) 445–2236; or e-mail to *pmangan@do.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Anyone interested in more information about the EIS or the project may contact Pat Mangan by telephone at (303) 445–2236 or by e-mail at *pmangan@do.usbr.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of NEPA, Reclamation will prepare an environmental impact statement (EIS) to identify and disclose the environmental effects of the proposed project. Cooperating agencies may be identified at a later date.

Reclamation will use the NEPA compliance process to ensure that the public has opportunities to review and comment on the direct and indirect effects of Reclamation's long-term storage and conveyance contract(s), the pipeline and related facilities, and changes to Fry-Ark operations for the SDS project. Reclamation and RWIA will hold five public scoping meetings in which Federal, State, and local government agencies, non-governmental organizations, and the public are invited to participate in an open exchange of information to identify potentially significant issues and to submit comments on the proposed scope of the EIS. Written comments concerning issues and alternatives to be evaluated in the EIS will be accepted and considered during preparation of the EIS. To be most effective, comments should be postmarked or e-mailed no later than 30 days following the final public scoping meeting.

In 2000, Reclamation evaluated a request from the Pueblo Board of Water Works (PBWW) to connect a pipeline to the Pueblo Reservoir Municipal Outlet Works (South Outlet Works), construct a pipeline across Reclamation land, and execute related storage and conveyance contracts. As this request was being considered, Springs Utilities and PBWW agreed to enlarge the upper portion of the pipeline (referred to below as the ''Joint Use Manifold and Pipeline'') to accommodate potential future use by Springs Utilities. As a part of the environmental compliance process for PBWW's request, Reclamation prepared an environmental assessment (EA) to evaluate the impacts of construction and operation of the Joint Use Manifold and Pipeline. The EA acknowledged additional environmental compliance would be needed when Springs Utilities requested approval to convey their non-Fry-Ark water through the South Outlet Works to the Joint Use Manifold and Pipeline. Springs Utilities has now made that request through the RWIA request for Reclamation's approval of water-related contracts associated with the SDS project.

The proposed SDS Project would be located in the Arkansas River basin extending northward from the Arkansas River at or downstream of Pueblo Reservoir to the City of Colorado Springs. As proposed, the project includes construction and operation of the following components:

- An approximately 43-mile long, 66-inch diameter raw water pipeline and pump stations;
- A water treatment plant to provide potable water for municipal and industrial use;
- Distribution pipelines to convey potable water;
- A terminal raw water storage reservoir; and
- A water exchange reservoir.

The proposed system would be sized to meet water demands from Pueblo Reservoir in the year 2040 that are projected to be 78 million gallons per day (mgd).

The use of Pueblo Reservoir to store water is an important component of the proposed SDS project. Pueblo Reservoir is part of Reclamation's Fry-Ark Project and is a State Water Court-approved exchange reservoir for Colorado Springs' Arkansas River water rights. Reclamation will prepare an EIS prior to making decisions on the proposed Federal actions involved in the SDS project including storing non-Fry-Ark water in Pueblo Reservoir and conveying Fry-Ark and non-Fry-Ark water through Pueblo Reservoir to Colorado Springs. The EIS may also be used by other Federal agencies involved in permitting or approving specific aspects of the proposed project.

Purpose and Need

The purpose of the proposed SDS is to deliver up to 78 mgd of water from the Arkansas River at or downstream of Pueblo Reservoir to the service areas of the City of Colorado Springs, the City of Fountain, and the Security Water District (Project Participants) to meet their projected municipal and industrial water needs through 2040. The Project Participants have existing Arkansas River water rights that can be used to meet their projected water needs. However, their existing infrastructure lacks sufficient capacity to deliver the water and to fully utilize the Project Participants' decreed water rights. The purpose of the proposed SDS project is to meet that need for additional delivery capacity. Delivering this water is necessary to meet projected growth demands within the Project Participant's service areas and to fully utilize their existing Arkansas River water rights. The proposed SDS is also needed to provide redundancy for the Project Participant's existing Arkansas River basin water delivery systems to improve operational reliability, drought resiliency, and to maximize the use of existing water rights.

The Project Participants are currently using water conservation and related programs to reduce consumption. However, the Project Participants have determined that even with these programs, water needs in their service areas will increase in the future beyond their existing infrastructure's ability to supply water.

Proposed Alternatives

Technical, environmental, and economic screening criteria were used to identify potential alternatives capable of meeting the proposed project's purpose and need. The raw water pipeline would draw from one of four possible sources:

1. Directly from Pueblo Reservoir, using a new tap northwest of Pueblo Dam;
2. The Joint Use Manifold east of the South Outlet Works of Pueblo Reservoir, west of the City of Pueblo;
3. The Joint Use Pipeline, east of the Joint Use Manifold; or
4. The Arkansas River, just upstream of its confluence with Fountain Creek.

The pipeline would run north to a site east of Colorado Springs where it is anticipated to terminate at a water treatment plant located near Jimmy Camp Creek. There are several pipeline alignments associated with each possible source water location.

As required by Council on Environmental Quality implementing regulations (40 CFR 1502.2(e)), a full range of reasonable alternatives that meet the purpose and need and a no action alternative will be evaluated in the EIS. The EIS will evaluate potential environmental impacts of each alternative along with engineering and socioeconomic considerations. A preferred alternative has not been identified at this time.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. This list is preliminary and is intended to facilitate public comment on the scope of this EIS.

- What are the impacts of constructing the pipeline, including:
- Maintenance access roads,
- Substations,
- Construction lay down, staging, and borrow areas?
- Are there growth-inducing impacts?
- Are there environmental justice issues?
- What are the impacts to aquatic resources?
- What would be the impact to streams and wetlands?
- How would wildlife habitat be affected?
- Would new reservoirs provide recreational opportunities?
- Would significant cultural resources be affected?
- How would water quality in the Arkansas River and Fountain Creek be affected?
- How would the proposed project affect operation of the Fry-Ark project

and the existing storage and conveyance contracts?

• How would streamflow in the Arkansas River be affected?

• Would this project affect water levels in Pueblo Reservoir?

• Will this project and other reasonably-foreseeable projects result in significant cumulative effects?

Timing

Reclamation plans to issue the draft EIS in the fall of 2004. Availability of the draft EIS will be publicized. Federal, State, and local government agencies, non-governmental organizations, and the general public will have an opportunity to review and comment on the draft EIS.

Scoping Meetings

Scoping meeting will be held from 6 to 8:30 p.m. on the following dates:

• Wednesday, September 24 , 2003, Buena Vista, Colorado

• Thursday, September 25, 2003, Fountain, Colorado

• Tuesday, October 7, 2003, La Junta, Colorado

• Thursday, October 9, 2003, Pueblo, Colorado

• Wednesday, October 15, 2003, Colorado Springs, Colorado

Meetings will be held at the following locations:

• Buena Vista Community Center, Pinon Room, 715 E. Main, Buena Vista, Colorado

• Fountain-Fort Carson High School Cafeteria, 900 Jimmy Camp Creek Road, Fountain, Colorado

• Koshare Indian Museum, Kiva Room, 115 West 18th, La Junta, Colorado

• Colorado State University—Pueblo, Occhiato Center—West Colorado Ball Room, 2200 Bonforte Blvd., Pueblo, Colorado

• Colorado Springs City Auditorium, 221 E. Kiowa, Colorado Springs, Colorado

Issues raised at the scoping meetings will be documented and summarized in a report that will be distributed to public libraries near the meeting locations, posted on Reclamation's Web site, and mailed upon request. This report will identify those issues that will be evaluated in the EIS.

Public Disclosure Statement

Comments received in response to this notice will become part of the administrative record for this project and are subject to public inspection. Comments, including names and home addresses of respondents, will be available for public review. Individual respondents may request that Reclamation withhold their home address from public disclosure, which will be honored to the extent allowable by law. There also may be circumstances in which Reclamation would withhold a respondent's identity from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. Reclamation will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public disclosure in their entirety.

Dated: August 29, 2003.

Gerald W. Kelso,

Acting Regional Director, Great Plains Region.

[FR Doc. 03–22710 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Windy Gap Firming Project, Colorado-Big Thompson Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: On April 14, 2003, the Municipal Subdistrict of the Northern Colorado Water Conservancy District, acting by and through the Windy Gap Firming Project (Firming Project) Water Activity Enterprise (Subdistrict), requested approval from the Bureau of Reclamation (Reclamation) to connect the proposed Firming Project to Reclamation's Colorado-Big Thompson Project (C–BT). If connection to the C–BT is approved, the Subdistrict would construct facilities that would be required to meet the purpose and need of the project. This could include construction of one or more new reservoirs. Because the Subdistrict's proposal involves a physical connection to C–BT facilities, it was determined that Reclamation should be the lead Federal agency for NEPA compliance.

DATES: Written comments on the scope of the issues and alternatives to be evaluated in the EIS will be accepted and should be postmarked or e-mailed by November 7, 2003, to be most effective.

Public scoping meetings, each beginning at 6:30 p.m., will be held on the following dates:

• September 30, 2003—Granby, Colorado

• October 1, 2003—Loveland, Colorado

• Date to be determined—Lyons, Colorado

ADDRESSES: The meeting locations are:

• Granby—Inn at Silver Creek (2 miles south of Granby, east side of highway), 62927 U.S. Highway 40, Granby, CO 80446.

• Loveland—McKee Conference Center, 2000 North Boise Avenue, Loveland, CO 80538.

• Lyons—Location will be announced through mailings, paid advertisements, and news releases to news media in the area.

Please send comments on the alternatives or other issues pertaining to the proposed project to the attention of Will Tully, Windy Gap Firming Project EIS, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, CO 80537; or FAX to (970) 663–3212 or (970) 962–4216; or e-mail to *wtully@gp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Anyone interested in more information about the EIS or the project may contact Will Tully by telephone at (970) 962–4368 or by e-mail at *wtully@gp.usbr.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, Reclamation will prepare an environmental impact statement (EIS) to identify the environmental effects of the proposed project. Cooperating agencies will be identified at a later date.

Reclamation will use the NEPA compliance process to ensure that the public has opportunities to review and comment on the direct and indirect effects of the proposed action. Public comments are invited regarding both the scope of environmental and socioeconomic issues and alternatives that should be evaluated in the EIS.

Reclamation and the Subdistrict will hold at least three public scoping meetings in which Federal, State, local and tribal government agencies, non-governmental organizations, and the public are invited to participate in the open exchange of information and to submit comments on the proposed scope of the EIS. Comments received will be considered in preparation of the EIS.

During the 1960's, six entities (the cities of Boulder, Greeley, Longmont, Loveland, and Fort Collins and the Town of Estes Park) in northeastern Colorado determined that additional water supplies were needed to meet their projected municipal demands. The Municipal Subdistrict of the Northern Colorado Water Conservancy District,

consisting of the incorporated areas of the six entities, was formed in 1970 to develop the Windy Gap Project. Subsequently, the Platte River Power Authority acquired all of the City of Fort Collins allotment contracts, as well as one-half of the City of Loveland and the Town of Estes Park contracts. The Windy Gap Project water was proposed to be stored by and conveyed through the C–BT Project facilities prior to delivery to Windy Gap Project allotees for storage and ultimate use.

In 1981, Reclamation completed an environmental impact statement on the effects of using C–BT project facilities for the ''storage, carriage and delivery'' of Windy Gap Project water. That EIS addressed the environmental and other effects of annually diverting an average of 56,000 acre-feet of water from the Upper Colorado River Basin through the Windy Gap Project and C–BT Project facilities. The Record of Decision for that EIS allowed Reclamation to negotiate a contract with the Municipal Subdistrict of the Northern Colorado Water Conservancy District for the conveyance, through C–BT Project facilities, of an average of about 56,000 acre-feet of Windy Gap Project water annually from the Colorado River, with maximum diversions limited to 93,300 acre-feet in any 1 year. Average annual deliveries to the allottees of the Windy Gap Project were estimated to be about 48,000 acre-feet, following conveyance and evaporation losses and allocations to the Middle Park Water Conservancy District. Each unit of Windy Gap water is 1/480th of the annual yield of the Windy Gap Project and originally estimated to be 100 acre-feet per unit. Reclamation, the Municipal Subdistrict of the Northern Colorado Water Conservancy District, and the Northern Colorado Water Conservancy Distrct (District) then entered into a contract for the ''storage, carriage and delivery'' of Windy Gap Project water in C–BT facilities. Construction of the Windy Gap Project reservoir, pipeline, and pumping facility was completed in 1985.

Average annual yield per unit since completion of construction has been approximately 17 acre-feet/unit compared to the original estimated 100 acre-feet/unit. There are several reasons for this low yield. During the early years after construction, not all of the Project allotees needed their full allocation of water from the Project. They had not grown into the full demand for which the Project was developed. Also, the Windy Gap Project cannot divert water every year because more senior water rights upstream and downstream have a higher priority to divert water. Additionally, under the contract between the Municipal Subdistrict of the Northern Colorado Water Conservancy District, the District, and Reclamation, water conveyed and stored for the C–BT Project has priority over water conveyed and stored for the Windy Gap Project. In years when the C–BT system is full, there is no conveyance or storage capacity in the C–BT system for Windy Gap Project water. In years when Windy Gap Project water is stored in the C–BT system, Windy Gap Project water is sometimes spilled from the system to make room for C–BT Project water.

Purpose of and Need for the Federal Action

The purpose of the proposed Firming Project is to maximize the use of existing water rights associated with the Windy Gap Project by improving the delivery and reliability of the existing Windy Gap Project water supply. For some Firming Project participants, the proposed project does not firm all of their Windy Gap Project units and not all of the owners of Windy Gap Project water are seeking to firm their units. Thus, only a portion of the 48,000 acre-feet of Windy Gap Project water would be ''firmed'' by the proposed action.

The specific purpose of the project is to provide an annual delivery of up to 30,000 acre-feet of water by 2008 depending on the identified needs of the Firming Project participants. Each Firming Project participant owns varying amounts of Windy Gap Project water and each Firming Project participant has determined its firm water supply needs from the Windy Gap Project and the timing of those needs. For some of the Firming Project participants, an increased water supply is needed immediately to meet current demands; other participants' needs are expected to increase over the next several years creating a foreseeable future need for their Windy Gap Project water.

The Firming Project is a non-Federal project. It is proposed to be constructed and operated by the Subdistrict. Federal actions related to the proposed project may include decisions on permitting the connection of Firming Project facilities to C–BT facilities, granting of right-of-way permits and/or easements across Federal lands, and issuance of a Federal Clean Water Act Section 404 permit.

Proposed Alternatives

Over the past several years, the Subdistrict has investigated a wide range of alternative actions with the potential to meet the needs of the Firming Project participants. These investigations concluded with an Alternative Plan Formulation Report that was finalized in 2003.

The primary goals in developing alternatives for the proposed project were:

- To identify a cooperative regional project that could be integrated with existing water delivery systems;
- To allow maximum use of the existing Windy Gap Project diversion, pumping and pipeline facilities, and water rights.

To provide the Firming Project participants a consistent annual yield of up to 30,000 acre-feet, approximately 110,000 acre-feet of new storage is needed specifically for Windy Gap Project water. This is approximately the size of the existing Carter Lake southwest of Loveland, Colorado.

The alternatives study evaluated a variety of project elements including non-structural and operational opportunities; new reservoir sites; enlargement of existing reservoirs; and ground water aquifer storage. Storage on both the East and West Slope of the Continental Divide was evaluated. Technical, environmental, and economic screening criteria were used to identify and compare alternatives capable of meeting the project purpose and need. A combination of alternatives may be necessary to meet the project purpose and need. In addition, refinements in C–BT system operations may be used to enhance the yield of new reservoir storage. These refinements might include options for storage of C–BT Project water in a new Firming Project reservoir or borrowing storage from the C–BT Project. The Firming Project participants' varying needs and timing of those needs could allow the proposed project to be constructed in stages depending on the alternative configuration.

As required by Council on Environmental Quality (CEQ) implementing regulations (40 CFR 1502.2[e]), a full range of reasonable alternatives will be evaluated in the EIS. These alternatives will include No Action and others that will meet the stated purpose and need for the Firming Project. The EIS will evaluate potential environmental impacts of specific alternatives together with engineering and socioeconomic considerations. A preferred alternative has not been identified at this time. Reclamation, with input from Federal, State, and local government agencies and the public, will evaluate the alternatives.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. This list is preliminary and is intended to facilitate public comment on the scope of this EIS.

- What are the impacts to aquatic resources including endangered Colorado River fish?
- How would water quality on the west and east slope be affected?
- How would the proposed project affect operation of the C–BT Project and the existing Windy Gap Project?
- How would streamflow in the Colorado River be affected?
- Would this project affect water levels in Lake Granby, Carter Lake, and Horsetooth Reservoir?
- What would be the impact to streams and wetlands?
- How would wildlife habitat be affected?
- Would new reservoirs provide recreational opportunities?
- Would significant cultural resources be affected?

Timing

Issues raised at the scoping meetings will be documented and summarized in a report that will be distributed to public libraries near the meeting locations, posted on Reclamation's web site, and mailed upon request. This report will summarize the comments received and identify those issues that will be evaluated in the EIS.

Reclamation plans to issue the draft EIS in the fall of 2004. Availability of the draft EIS will be publicized and Federal, State, local and tribal government agencies, non-governmental organizations, and the general public will have an opportunity to comment on the draft EIS.

Public Disclosure Statement

Comments received in response to this notice will become part of the administrative record for this project and are subject to public inspection. Comments, including names and home addresses of respondents, will be 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. Reclamation will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: September 2, 2003.

Gerald W. Kelso,

Acting Regional Director, Great Plains Region.

[FR Doc. 03–22711 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–029]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 12, 2003, at 11 a.m.

PLACE: Room 101, 500 E Street,SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–1048–1053 (Preliminary) Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan, and South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before September 15, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before September 22, 2003.)
5. Inv. Nos. 731–TA–1014 and 1017 (Final) (Polyvinyl Alcohol from China and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before September 24, 2003.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: September 3, 2003.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–22893 Filed 9–4–03; 10:58 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 018–2003]

Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Personnel Staff, Justice Management Division (JMD), Department of Justice, is removing a published Privacy Act system of records entitled ''Background Investigation Check-off Card, Justice/JMD–001.'' Justice/JMD–001 was last published in the **Federal Register** on October 13, 1989 (54 FR 42085).

In the past, the Personnel Staff, JMD, had a system of maintaining an index card for each employee of the Offices, Boards, and Divisions for whom the U.S. Office of Personnel Management conducted background investigations. The index card was used to annotate and monitor the progress of the name and fingerprint checks and the full-field character investigations of employees. When a full-field background investigation or National Agency Check was initiated, the background investigation check-off card was forwarded to the JMD Security Staff where it was ultimately merged in the system of records entitled ''Security Clearance Information System, Justice/JMD–008.''

The Personnel Staff has not used this system for approximately fourteen (14) years. The Personnel Staff eliminated the background investigation check off card and information on the cards was destroyed. In addition, recently, the Privacy Act notice for ''Security Clearance Information System, JMD–008'', was replaced by notice of a new Departmentwide system of records for background investigation records, entitled ''Personnel Investigation and Security Clearance Records for the Department of Justice, DOJ–006'', published September 24, 2002 (67 FR 59864).

Therefore, the ''Background Investigation Check-off Card, JMD–001'', is removed from the Department's compilation of Privacy Act systems of records.

Dated: August 27, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–22696 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–CG–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Employee Possessor Questionnaire.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 24, page 5924 on February 5, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 8, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Employee Possessor Questionnaire.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: ATF F5400.28 Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Other: Business. Abstract: Each employee possessor in the explosives business or operations is required to ship, transport, receive, or possess (actual or constructive), explosive materials must submit this form. ATF F5400.28 will determine the eligibility of the employee possessor to possess explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 10,000 respondents who will each require an average of 20 minutes to respondents who will each require an average of 20 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 3,334 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 29, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–22585 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–FY–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Long Term Implantable Glucose Monitor

Notice is hereby given that, on August 19, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Animas Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on behalf of the Long Term Implantable Glucose Monitor venture disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Innovative Photonic Solutions, Monmouth Junction, NJ has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Animas Corporation intends to file additional written notification disclosing all changes in membership.

On September 27, 2001, Animas Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 22, 2002 (67 FR 2909–03).

The last notification was filed with the Department on June 3, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 23, 2003 (68 FR 37176).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22761 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microcontaminant Reduction Venture

Notice is hereby given that, on August 14, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Microcontaminant Reduction Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the parties to the Venture,

KMG-Bernuth, Inc., Houston, TX, and Vulcan Materials Company, Birmingham, AL, have extended the term of the Venture from two to three years.

No other changes have been made in either the membership or planned activities of the group research project. Membership in this group research project remains open, and Microcontaminant Reduction Venture intends to file additional written notification disclosing all changes in membership.

On June 13, 2001, Microcontaminant Reduction Venture filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 19, 2001 (66 FR 37709).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22756 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on August 18, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Acqiris SA, Geneva, Switzerland; Artest Corporation, Sunnyvale, CA; Inovys Corporation, Pleasanton, CA; Pragmatics Technologies, Inc., San Jose, CA; Racal Instruments, Irvine, CA; Roos Instruments, Inc., Santa Clara, CA, Stargen, Inc., Marlborough, MA; and Wavecrest Corporation, Eden Prairie, MN have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 17, 2003 (68 FR 35913).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22759 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: The Consortium for NASGRO Development and Support

Notice is hereby given that, on August 7, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: The Consortium for NASGRO Development and Support has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Sikorsky Aircraft Corporation, Stratford, CT has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute: The Consortium for NASGRO Development and Support intends to file additional written notification disclosing all changes in membership.

On October 3, 2001, Southwest Research Institute: The Consortium for NASGRO Development and Support filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 22, 2002 (67 FR 2910).

The last notification was filed with the Department on July 26, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2002 (67 FR 56591).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22758 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Spoken Dialogue Interfaces for Cars

Notice is hereby given that, on July 14, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Spoken Dialogue Interfaces for Cars has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Robert Bosch Corporation, Research and Technology Center, Palo Alto, CA; and Volkswagen of America Inc., Electronic Research Lab, Pala Alto, CA. The nature and objectives of the venture are to develop and demonstrate a next generation language dialog system for the convenient and safe operation of in-car devices and services.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22757 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ultrasonic Metal Welding—Enabling the All Aluminum Vehicle

Notice is hereby given that, on August 6, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Ford Motor Company has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Ultrasonic Metal Welding—Enabling the All Aluminum Vehicle research venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Ford Motor Company, Dearborn, MI; Edison Welding Institute (EWI), Columbus, OH; Sonobond Ultrasonic, Inc., West Chester, PA; and American Technology, Inc. (AmTech), Danbury, CT. The nature and objectives of the venture are to conduct research on ultrasonic metal welding—enabling the all-aluminum vehicle. The activities of this joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22760 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, is conducting a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Through this notice, the Employment and Training Administration is soliciting comments concerning a proposed new collection of data on self-services provided by states and local workforce areas under the Workforce Investment Act and the Wagner-Peyser Act.

A copy of the proposed survey can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 7, 2003.

ADDRESSES: Daniel Ryan, U.S. Department of Labor, Employment and Training Administration, Office of Policy Development, Evaluation and Research, 200 Constitution Ave, NW., Room N–5637, Washington, DC 20210, (202) 693–3649 *Ryan.Dan@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel Ryan, tel. (202) 693–3649.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor's Employment and Training Administration (ETA) seeks to collect data from employers and other customers of One-Stop self-services, which are made available under the Workforce Investment Act (WIA) and Wagner-Peyser Act (W–P), as well as from a comparison group of job seekers who did not use WIA or W–P services. The data ETA seeks to collect will provide a snapshot of: (a) Employment-related outcomes that users might have achieved since they accessed self-services, (b) the demographic characteristics of users, (c) their patterns of usage and objectives in using these services, (d) their satisfaction with the services, and (e) other competing resources that they may have used.

Collecting this information is important because self-services—including informational and self-help core services authorized by WIA and self-directed labor exchange services provided as part of W–P—have become an important feature of the nation's workforce development system. Over the past decade, substantial amounts of resources have been expended in developing the infrastructure to support self-services, such as by establishing physical facilities in which ''Resource Rooms'' can be housed, developing an array of tools and resources to meet diverse needs, ensuring that these resources are user-friendly and are accessible from remote locations, and promoting access and use for customers with special needs. Moreover, the pace of investments has dramatically quickened since the enactment of WIA. It is expected that self-services must be an essential feature of every one of the nation's comprehensive One-Stop centers. WIA requires that access to these services must be universally available without eligibility restrictions.

Moreover, self-services are expected to play a critical role in meeting the nation's workforce development needs. The vision at the heart of WIA is that all adults should have easy access to an array of high-quality resources and information tools that they can use to make informed career decisions and that, more generally, will improve the efficiency of the labor market. Given WIA's emphasis on universal access and the limited public funding available to support staff-intensive workforce development systems, self-services become a critical means by which this vision can be realized.

Currently, however, little is known about how frequently customers use self-services and for what purposes, whether they are satisfied with the tools at their disposal, and whether use of these services improves their employment outcomes. This information vacuum occurs partly because users of self-services are not required to become registrants under either WIA or W–P, and these services are thus not covered by the programs' reporting requirements.

To fill the information gap, ETA is embarking on two data collection efforts focused on self-services. One, the Local Area Survey of Self-Directed Labor Exchange Services (OMB number 1205–0438, expiration date January, 31, 2006) was covered in a previous **Federal Register** notice (Vol. 67, No. 89, Wed, May 8, 2002: pp. 30965–30966). It elicits information from the nation's local workforce investment areas about the self-service tools and resources that they make available to customers. A second effort, to which this notice applies, will entail a questionnaire administered to customers of self-services in selected local areas, including both employers and other customers, as well as to a comparison group of job seekers. In addition to providing important information in its own right, the survey results will be combined with administrative data so that a quantitative analysis of the outcomes associated with self-services can be conducted.

II. Review Focus

The Department of Labor is particularly interested in comments that: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the utility, quality and clarity of the information to be collected; and

(d) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor's Employment and Training Administration will be seeking Office of Management and Budget (OMB) approval to administer the questionnaires to up to 2,000 employer customers, 10,400 other users of self-services, and 2,600 individuals in a job-seeker comparison group. The data will be used to provide a snapshot of customers' usage and satisfaction with One-Stop self-service systems.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Customer Surveys of Self-Directed Labor Exchange Services.

Affected Public: Customers of self-services and other job seekers.

Total Respondents: 2,000 employer customers of self-services, 10,400 other users of self-services, 2,600 other job seekers.

Frequency: Once.

Total Responses: 15,000.

Average Time Per Response: 10 minutes per Employer Survey, 20 minutes per Customer Survey, 10 minutes per Employment-Comparison Survey.

Estimated Total Burden Hours: 3,387.

Total Burden Cost for Capital and Startup: $0.

Total Burden Cost for Operation and Maintenance: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 13th day of August, 2003.

Maria K. Flynn,

Acting Administrator.

[FR Doc. 03–22742 Filed 9–5–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V–02–1]

Oak Park Chimney Corp. and American Boiler & Chimney Co.; Grant of a Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of a grant of a permanent variance.

SUMMARY: This notice announces the grant of a permanent variance to Oak Park Chimney Corp. and American Boiler & Chimney Co. (''the employers''). The permanent variance addresses the provision that regulates the tackle used for boatswains' chairs (§ 1926.452 (o)(3)), as well as the provisions specified for personnel hoists by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552. Instead of complying with these provisions, the employers must comply with a number of alternative conditions listed in this grant; these alternative conditions regulate rope-guided hoist systems used during inside or outside chimney construction to raise or lower employees in personnel cages, personnel platforms, and boatswains' chairs between the bottom landing of a chimney and an elevated work location. Accordingly, OSHA finds that these alternative conditions protect employees at least as well as the requirements specified by § 1926.452(o)(3)) and § 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16).

DATES: The effective date of the permanent variance is September 8, 2003.

FOR FURTHER INFORMATION CONTACT: For information about this notice contact Ms. Maryann S. Garrahan, Director, Office of Technical Programs and Coordination Activities, Room N–3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2110; fax (202) 693–1644. You may obtain additional copies of this notice from the Office of Publications, Room N–3101, OSHA, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone (202) 693–1888. For electronic copies of this notice, contact the Agency on its Webpage at *http://www.osha.gov* and select ''**Federal Register**,'' ''Date of Publication,'' and then ''2003.''

Additional information also is available from the following OSHA Regional Offices:

U.S. Department of Labor, OSHA, JFK Federal Building, Room E340, Boston, MA 02203, Telephone: (617) 565–9860, Fax: (617) 565–9827.

U.S. Department of Labor, OSHA 201 Varick St., Room 670, New York, NY 10014, Telephone: (212) 337–2378, Fax: (212) 337–2371.

U.S. Department of Labor, OSHA, The Curtis Center, Suite 740 West 170 South Independence Mall West, Philadelphia, PA 19106–3309, Telephone: (215) 861–4900, Fax: (215) 861–4904.

U.S. Department of Labor, OSHA, Atlanta Federal Center 61 Forsyth St., SW., Room 6T50, Atlanta, GA 30303, Telephone: (404) 562–2300, Fax: (404) 562–2295.

U.S. Department of Labor, OSHA 230 South Dearborn St., Room 3244, Chicago, IL 60604, Telephone: (312) 353–2220, Fax: (312) 353–7774

U.S. Department of Labor, OSHA, City Center Square 1100 Main St., Suite 800, Kansas City, MO 64105, Telephone: (816) 426–5861, Fax: (816) 426–2750.

U.S. Department of Labor, OSHA 525 Griffin St., Room 602, Dallas, TX 75202, Telephone: (214) 767–4731/–4736 (ext. 224), Fax: (214) 767–4693/–4188.

U.S. Department of Labor, OSHA, *Overnight:* 1999 Broadway, Suite 1690, Denver, CO 80202–5716, *Mail:* P.O. Box 46550, Denver, CO 80201–6550, Telephone: (303) 844–1600, Fax: (303) 844–1616.

U.S. Department of Labor, OSHA 71 Stevenson St., Room 420, San Francisco, CA 94105, Telephone: (415) 975–4310, Fax: (415) 744–4319.

U.S. Department of Labor, OSHA 1111 Third Ave., Suite 715, Seattle, WA 98101–3212, Telephone: (206) 553–5930, Fax: (206) 553–6499.

SUPPLEMENTARY INFORMATION:

I. Background

In the 1970s and 1980s, nine chimney-construction companies demonstrated to OSHA that several hoist-tower requirements (*i.e.*, paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552), as well as the tackle requirements for boatswains' chairs (*i.e.*, paragraph (o)(3) of § 1926.452), result in access problems that pose a serious danger to their employees. These companies requested permanent variances from these requirements, and proposed an alternative apparatus and procedures to protect employees while

being transported to and from their elevated worksites during chimney construction and repair. The Agency subsequently granted these companies permanent variances based on the proposed alternative (38 FR 8545, 50 FR 40627, and 52 FR 22552).

On June 2, 1999 and January 7, 2000, Oak Park Chimney Corp. and American Boiler & Chimney Co., respectively, applied for a permanent variance from the same hoist-tower and boatswains'-chair requirements as the previous companies, and proposed as an alternative to these requirements the same apparatus and procedures approved by OSHA in the earlier variances. The Agency published their variance application in the **Federal Register** on May 23, 2002 (*see* 67 FR 36263), and subsequently extended the period for submitting comments and hearing requests on July 10, 2002 (*see* 67 FR 45767). OSHA received no hearing requests in response to these **Federal Register** notices; however, several states submitted comments on the proposed alternative (see section IV below for a discussion of these comments).

Oak Park Chimney Corporation and American Boiler & Chimney Co. (''the employers'') construct, remodel, repair, maintain, inspect, and demolish tall chimneys made of reinforced concrete, brick, and steel. This work, which occurs throughout the United States, requires the employers to transport employees and construction material to and from elevated work platforms and scaffolds located, respectively, inside and outside tapered chimneys. While tapering contributes to the stability of a chimney, it necessitates frequent relocation of, and adjustments to, the work platforms and scaffolds so that they will fit the decreasing circumference of the chimney as construction progresses upwards.

To transport employees to various heights inside and outside a chimney, the employers proposed in their variance application to use a hoist system that lifts and lowers personnel-transport devices that include personnel cages, personnel platforms, or boatswains' chairs. In this regard, the employers proposed to use personnel cages, personnel platforms, or boatswains' chairs solely to transport employees with the tools and materials necessary to do their work, and not to transport only materials or tools on these devices in the absence of employees. In addition, the employers proposed to attach a hopper or concrete bucket to the hoist system to raise or lower material inside or outside a chimney.

The employers also proposed to use a hoist engine, located and controlled outside the chimney, to power the hoist system. The proposed system consisted of a wire rope that: Spools off the winding drum (also known as the hoist drum or rope drum) into the interior of the chimney; passes to a footblock that redirects the rope from the horizontal to the vertical planes; goes from the footblock through the overhead sheaves above the elevated platform; and finally drops to the bottom landing of the chimney where it connects to a personnel- or material-transport device. The cathead, which is a superstructure at the top of a derrick, supports the overhead sheaves. The overhead sheaves (and the vertical span of the hoist system) move upward with the derrick as chimney construction progresses. Two guide cables, suspended from the cathead, eliminate swaying and rotation of the load. If the hoist rope breaks, safety clamps activate and grip the guide cables to prevent the load from falling. The employers proposed to use a headache ball, located on the hoist rope directly above the load, to counterbalance the rope's weight between the cathead sheaves and the footblock.

Additional conditions that the employers proposed to follow to improve employee safety included:

- Attaching the wire rope to the personnel cage using a keyed-screwpin shackle or positive-locking link;
- Adding limit switches to the hoist system to prevent overtravel by the personnel- or material-transport devices;
- Providing the safety factors and other precautions required for personnel hoists specified by the pertinent provisions of § 1926.552(c), including canopies and shields to protect employees located in a personnel cage from material that may fall during hoisting and other overhead activities;
- Providing falling-object protection for scaffold platforms as specified by §1926.451(h)(1);
- Conducting tests and inspections of the hoist system as required by §§ 1926.20(b)(2) and 1926.552(c)(15);
- Establishing an accident-prevention program that conforms to §1926.20(b)(3);
- Ensuring that employees who use a personnel platform or boatswains' chair wear a full body harness and lanyard; and
- Securing the lifelines (used with a personnel platform or boatswains' chair) to the rigging at the top of the chimney and to a weight at the bottom of the chimney, to provide maximum stability to the lifelines.

II. Proposed Variance from § 1926.452(o)(3)

The employers noted in their variance request that it is necessary, on occasion, to use a boatswains' chair to transport employees to and from a bracket scaffold on the outside of an existing chimney during flue installation or repair work, or to transport them to and from an elevated scaffold located inside a chimney that has a small or tapering diameter. Paragraph (o)(3) of § 1926.452, which regulates the tackle used to rig a boatswains' chair, states that this tackle must ''consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum five-eighth (5/8) inch diameter first-grade manila rope [or equivalent rope].''

The primary purpose of this paragraph is to allow an employee to safely control the ascent, descent, and stopping locations of the boatswains' chair. However, the employers stated in their variance request that, because of space limitations, the required tackle is difficult or impossible to operate on some chimneys that are over 200 feet tall. Therefore, as an alternative to complying with the tackle requirements specified by § 1926.452(o)(3), the employers proposed to use the hoisting system described above in section I of this notice to raise or lower employees in a personnel cage to work locations both inside and outside a chimney. In addition, the employers proposed to use a personnel cage for this purpose to the extent that adequate space is available, and to use a personnel platform if using a personnel cage was infeasible because of limited space. When available space makes using a personnel platform infeasible, the employers proposed to use a boatswains' chair to lift employees to work locations. The proposed variance limited use of the boatswains' chair to elevations above the last work location that the personnel platform can reach; under these conditions, the employers proposed to attach the boatswains' chair directly to the hoisting cable only when the structural arrangement precludes the safe use of the block and tackle required by § 1926.452(o)(3).

III. Proposed Variance From § 1926.552(c)

Paragraph (c) of § 1926.552 specifies the requirements for enclosed hoisting systems used to transport employees from one elevation to another. This paragraph ensures that employers transport employees safely to and from elevated work platforms by mechanical means during the construction,

alteration, repair, maintenance, or demolition of structures such as chimneys. However, this standard does not provide specific safety requirements for hoisting employees to and from elevated work platforms and scaffolds in tapered chimneys; the tapered design requires frequent relocation of, and adjustment to, the work platforms and scaffolds. The space in a small-diameter or tapered chimney is not large enough or configured so that it can accommodate an enclosed hoist tower. Moreover, using an enclosed hoist tower for outside operations exposes employees to additional fall hazards because they need to install extra bridging and bracing to support a walkway between the hoist tower and the tapered chimney.

Paragraph (c)(1) of § 1926.552 requires employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the chimney; these enclosures must extend the full height of the hoist tower. The employers asserted in their proposed variance that it is impractical and hazardous to locate a hoist tower outside tapered chimneys because it becomes increasingly difficult, as a chimney rises, to erect, guy, and brace a hoist tower; under these conditions, access from the hoist tower to the chimney or to the movable scaffolds used in constructing the chimney exposes employees to a serious fall hazard. Additionally, they noted that the requirement to extend the enclosures 10 feet above the outside scaffolds often exposes the employees involved in building these extensions to dangerous wind conditions.

Paragraph (c)(2) of § 1926.552 requires that employers enclose all four sides of a hoist tower even when the tower is located inside a chimney; the enclosure must extend the full height of the tower. In the proposed variance, the employers contended that it is hazardous for employees to erect and brace a hoist tower inside a chimney, especially small-diameter or tapered chimneys or chimneys with sublevels, because these structures have limited space and cannot accommodate hoist towers; space limitations result from chimney design (*e.g.*, tapering), as well as reinforced steel projecting into the chimney from formwork that is near the work location.

As an alternative to complying with the hoist-tower requirements of § 1926.552(c)(1) and (c)(2), the employers proposed to use the rope-guided hoist system discussed in section I of this notice to transport employees to and from work locations inside and outside chimneys. They claimed that this hoist system should make it unnecessary for them to comply with other provisions of § 1926.552(c) that specify requirements for hoist towers, including:

- (c)(3)—Anchoring the hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates that prevent hoist movement when the doors or gates are open;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum-type hoisting; and
- (c)(16)—Construction specifications for personnel hoists, including materials, assembly, structural integrity, and safety devices.

The employers asserted that the proposed hoisting system protected employees at least as effectively as the hoist-tower requirements of § 1926.552(c). The following section of this preamble provides the comments received on the employers' proposed variance.

IV. Comments on the Proposed Variance

The private sector submitted no comments regarding the proposed variance. However, OSHA did receive comments from 14 of the 26 states and territories that have an autonomous occupational safety and health agency approved under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667). The Agency received the 14 comments after it sent each of these 26 states and territories a copy of the application and requested that they provide information on whether their standards (the ones that would be affected by the proposed variance) were identical to the corresponding Federal standards, and, if so, did they agree to accept the alternative conditions proposed by the employers.

Of the 14 states and territories that submitted comments, the following nine states reported that they have standards that are identical to the Federal standards, and that they agree to accept the alternative conditions: Alaska, Arizona, Kentucky, Maryland, New Mexico, North Carolina, Oregon, and Tennessee (Exs. 2–1 to 2–8). South Carolina (Ex. 2–9) indicated that it, too, has identical standards, and that it would accept the alternative conditions, but noted that a provision of its state code (Chapter 7, Article 1, Subarticle 2, SC Code of Laws 1976, as amended) requires that ''[i]n order that such a variance be honored by the Commissioner, it is and will be incumbent upon the employer to file the final rule or order of the [U.S.] Secretary of Labor with the Commissioner of Labor at his office in Columbia, South Carolina.''

Four State-plan states and one territory reported having identical standards, but did not accept the alternative conditions. Connecticut (Ex. 2–10) did not concur with the alternative conditions because its state-plan program regulates only public-sector employees and, therefore, it has ''its own statutory and regulatory authority pertaining to the issuance of variances in the public sector.'' Hawaii (Ex. 2–11) declined to accept the alternative conditions because it did not have ''a chance to do a thorough job of researching'' them. The Virgin Islands (Ex. 2–12) agreed with Hawaii's position. Washington State (Ex. 2–13) noted that while its standards were the same as the Federal standards, ''We anticipate updating the section of our standards with these particular codes and[,] therefore[,] their current numbering and possibly content may change in the next year or two[,] which means that granted variances would need to be updated.'' The Washington State response continued, ''[W]e have no objection to such a variance being issued. However, for the reasons stated * * * above regarding the coding system, it may be easier for the affected companies to directly submit variance requests to our attention so there is a record of which state specific codes have a variance in the event there [are] changes in the future of those codes.''

While Iowa (Ex. 2–14) also has standards that are identical to the Federal standards, it stated that ''[b]ecause the State of Iowa has a specific statute and regulations for variances, [the employers] would have to submit a request to Iowa for any work to be done here as opposed to accepting a variance granted by Federal OSHA.'' In addition, Iowa made several substantive comments regarding the proposed variance. First, it commented that ''[t]he lack of the safety clamps required under [proposed Condition 9] * * * would seem to indicate the company needs to comply with 1926.451(g)(1)(i) & (ii) for a work platform and boatswains' chair.'' In response, OSHA notes that paragraphs (c) and (d) of proposed Condition 7 would require, respectively, appropriately designed and constructed safety clamps, as well as clamps that, when used, apply tension to guide ropes without damaging them. Also, under proposed Condition 9, employers would have to attach safety clamps to each personnel cage; additionally, this

proposed condition specifies requirements that regulate the stopping capability and spring-compression force, as well as the operation and maintenance, of the clamps. OSHA has retained these proposed provisions, but has consolidated them under a single condition (Condition 11) in the permanent variance.

The proposed variance also would require employers to comply with paragraphs (g)(1)(i) and (g)(1)(ii) of §1926.451 as a condition of the permanent variance. In this regard, the third paragraph under ''General Conditions'' in the proposed variance notes that ''the applicants acknowledge that they would comply with all other applicable provisions of 29 CFR parts 1910 and 1926 if OSHA grants the variance applications.'' To clarify this requirement, OSHA is including this requirement as a distinct provision (Condition 1(b)) of the permanent variance; this provision states, ''Except for the requirements specified by §1926.452 (o)(3)) and §1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16), the employers must comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.''

Commenting further, Iowa noted that ''[a] fall protection system for the cage and a positioning device for the employee to keep him/her in the cage would need to be addressed.'' OSHA believes that the safety-clamp requirements specified in Conditions 7 and 9 of the proposed variance (Condition 11 of the permanent variance) are sufficient to prevent a personnel cage from falling should a hoist rope separate, while the construction requirements for personnel cages (*e.g.*, steel-frame construction, wire-enclosed sides, safe handholds) provided under Condition 8 of the proposed variance (Condition 10 of the permanent variance) will prevent employees from falling out of the cages.

Iowa also made the following comments:

- ''[T]here is no reference to protecting any of the cables or fall protection equipment during welding on the top platform. The application of requirements described in §1926.451(f)(17) should be considered.''
- ''The problems associated with hazards to employees on the upper deck with the lift mechanism or protection of the lift mechanism from damage [are] not addressed.''
- ''1910 issues are only mentioned in passing.''

These comments suggest that the proposed variance does not address the identified hazards. However, as we noted earlier, the ''General Conditions'' section of the proposed variance (and Condition 1(b) of the permanent variance) require employers to comply with any other requirements of 29 CFR parts 1910 and 1926 that pertain to hazards in these workplaces. Therefore, regarding the first of these comments, under the permanent variance, employers must still implement the precautions specified in §1926.451(f)(17) to prevent the welding current from arcing through the suspension cables when employees are performing welding operations on suspended scaffolds.

The second of these comments appears to assert that none of the proposed conditions would protect employees if a hoist machine strikes a scaffold (*i.e.*, ''hazards to employees on the upper deck with the lift mechanism''), or that none of these conditions would prevent damage to the hoist machine (*i.e.*, ''protection of the lift mechanism from damage''). Regarding the first assertion, OSHA believes that proper design, maintenance, inspection, and operation of hoist machines as specified by Conditions 1 and 2 of the proposed variance, as well as proper selection and training of hoist operators as provided by proposed Condition 3, would prevent a hoist machine from endangering employees located on a scaffold. In the unlikely event a hoist machine strikes a scaffold, employees on the scaffold would be protected against falls under §1926.451(g), and would have additional protection under §1926.28 and subpart E (''Personal Protective and Life Saving Equipment'') of 29 CFR part 1926.

Iowa's comment does not indicate what would cause damage to the hoist machine. OSHA assumes that such damage could only occur if a heavy object was to fall on or strike the machine. In this case, the Agency finds that the structural requirements listed in paragraphs (h) and (i) (''Frame'' and ''Stability,'' respectively) of proposed Condition 2 (''Hoist Machine'') would adequately protect the machine from damage. Proposed paragraph 2(h) would require that the frame of the machine be ''a self-supporting, rigid, welded steel structure, with holding brackets for anchor lines and legs for anchor bolts being integral components of the frame'; proposed paragraph 2(i) would prevent collapse of the hoist machine when struck by a heavy object by ensuring that the machine is secured ''in position to prevent movement, shifting, or dislodgement.'' The Agency has retained both of these provisions in the permanent variance as paragraphs (h) (''Frame'') and (i) (''Stability'') of Condition 4 (''Hoist Machine'').

As to Iowa's concerns about the coverage of 29 CFR part 1910, OSHA notes that the variance only covers construction provisions specified under 29 CFR part 1926. Condition 1(b) of the permanent variance states that any provisions of 29 CFR part 1910 that apply to the employers' work activities will remain in effect.

V. Multi-State Variance

The variance application stated that the employers perform chimney work in a number of geographic locations in the United States, some of which could include one or more locations in State-plan states and territories. As noted in the previous section of this preamble, OSHA sent a copy of the variance application to all State-plan states and territories for comment. Nine states responded that they had identical provisions and also agreed to accept the alternative conditions. These states are: Alaska, Arizona, Kentucky, Maryland, New Mexico, North Carolina, Oregon, South Carolina, and Tennessee. (South Carolina commented that its state code requires the employers to submit to its State Commissioner of Labor any permanent variance issued by OSHA.) The remaining four states and one territory that submitted comments did not accept the alternative conditions for a variety of reasons. Additionally, the Agency cannot determine the status of the 12 State-plan states and single territory that did not submit comments. Therefore, based on the comments submitted to the record, the permanent Federal variance also will be effective in the following nine states: Alaska, Arizona, Kentucky, Maryland, New Mexico, North Carolina, Oregon, South Carolina (provided the employers first submit a copy of the permanent variance to the State Commissioner of Labor), and Tennessee.

VII. Corrections to the Variance

The Agency has made a number of minor editorial corrections to the proposed variance to improve comprehension of, and compliance with, the specified conditions (*e.g.*, revising the term ''applicants'' to ''employers''). OSHA also made several technical (non-substantive) revisions to the proposed variance. These revisions are described in the following table.

Proposed condition	Revision made to the permanent variance	Rationale for the revision
A. General Conditions. * * * The applicants propose to use the hoist system inside and outside a chimney to raise or lower employees in a personnel cage to work locations..	Moved to Condition 1(a).	To make the provision more noticeable than it was in the proposal.
A. General Conditions. * * * Except for the provisions identified above in this section * * * , the applicants acknowledge that they would comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.* * * .	Moved to Condition 1(b).	To make the provision more noticeable than it was in the proposal.
A. General Conditions. * * * If available space makes using a personnel cage * * * infeasible, the applicants would use a personnel platform.* * *.	Moved to Condition 2(a).	To make the provision more noticeable than it was in the proposal.
A. General Conditions.* * * If available space makes using a personnel cage * * * infeasible, the applicants would use * * * a boatswains' chair. The applicants would limit use of the boatswains' chair to elevations above the last work location that the personnel cage and personnel platform can reach..	Moved to Condition 2(b). This condition clarifies that a boatswains' chair can be used only at the last location that a personnel platform (vice either a personnel platform or a personnel cage) can reach..	To make the provision more noticeable than it was in the proposal. Limiting use of the boatswains' chair makes this condition consistent with the discussion provided in the proposed variance (*see* 67 FR 36263).
Condition 2(b). Raising or lowering a transport. The applicants would ensure that * * * the hoist machine does not use belt drives..	Revised the provision to read, ''No belts are used between the power source and the winding drum,'' and moved it to Condition 4(b)(ii)(D)..	The language of paragraph 4.2(2) of ANSI A10.22–1990 (R1998) and previous OSHA variances suggest that the prohibition against using belt drives applies to that part of the drive system between the power source and the winding drum, making application to the entire hoist machine too broad. Moving the provision made it an integral part of the provisions that address the drive system.
Condition 2(b). Raising or lowering a transport. * * * Whenever they raise or lower a personnel or material hoist * * * the applicants would: * * * (ii) Interconnect, on a continuous basis, the drive system through a torque converter or mechanical (or equivalent) coupling..	Added the parenthetical statement ''(*e.g.,* electronic controllers, fluid clutches, hydraulic drivers)'' to the provision to provide examples of equivalent couplings (*see* Condition 4(b)(ii)(B))..	To provide an example of an equivalent coupling.
Condition 2(e). Line-speed indicator. The applicants would equip the hoist machine with a line-speed indicator.* * *.	Inserted the term ''operating'' before ''line-speed indicator'' (*see* Condition 4(e)(i))..	To clarify that the line-speed indicator must be functioning.
Condition 2(g). Slack-rope switch. The applicants would equip the hoist machine with a slack-rope switch to prevent rotation of the hoist drum under slack-rope conditions..	Revised the term ''hoist drum'' to ''winding drum'' (*see* Condition 4(g))..	To use a single term throughout the variance to describe the drum around which the hoist rope is spooled.
Condition 2(k). Drum and flange diameter. The applicants would provide a winding drum * * * with a flange diameter that is at least one and one-half (1½) times the rope-drum diameter..	Revised the term ''rope-drum'' to ''winding-drum'' (*see* Condition 4(k)(ii))..	To use a single term throughout the variance to describe the drum around which the hoist rope is spooled.
Condition 2(1). Spooling of the rope. The applicants would never spool the rope closer than two (2) inches (5.1 cm) from the outer edge of the hoist-drum flange..	Revised the term ''hoist-drum to ''winding-drum'' (*see* Condition 4(1))..	To use a single term throughout the variance to describe the drum around which the hoist rope is spooled.
Condition 3(a). Operator. The applicants would ensure that only trained and experienced employees, who are knowledgeable of hoist-system operations, control the hoist machine..	Retained the proposed requirement as Condition 5(a)(i), but moved from Condition 11(b)(ii) in the proposal to Condition 5(a)(ii) the requirement to train employees who use a personnel cage for transportation on how to operate the hoist system..	To consolidate the training requirements for hoist systems into a single provision.
Condition 4(b). Safety factor. The applicants would maintain a safety factor of at least eight (8) throughout the entire length of hoist rope..	Added the phrase ''times the safe workload'' between the terms ''(8)'' and ''throughout'' (*see* Condition 6(b))..	To clarify that the safety factor must be based on the safe workload.
Condition 4(d). Installation, removal, and replacement.	Replaced the term ''installation'' with the term ''inspection'' in Condition 6(d)..	To clarify that this condition specifies inspection, but not installation, requirements for hoist ropes.
Condition 5(c). * * * To ensure this diameter-to-diameter ratio, the applicants would inspect the hoist rope regularly, and immediately discard the rope if they find evidence of any of the conditions specified by § 1926.552(a)(3)..	Moved the diameter-to-diameter inspection requirement to Condition 6(d)(ii), and removed the reference to § 1926.552(a)(3)..	To consolidate the requirements for hoist ropes under a single condition. The reference to § 1926.552(a)(3) is redundant with the reference in Condition 6(d)(iii).

Proposed condition	Revision made to the permanent variance	Rationale for the revision
Condition 6(a). Qualified competent person. The applicants would use a qualified competent person to design and maintain the cathead (*i.e.,* overhead support)..	Moved to Condition 3(b).	To consolidate the requirements for a qualified competent person under a single condition.
Condition 6(d). Sheave safeguards.	Revised the title from ''Sheave safeguards'' to ''Rope guides'' (*see* Condition 8(c))..	To clarify that this condition specifies requirements for rope guides.
Condition 6(e). * * * To ensure this diameter-to-diameter ratio, the applicants would inspect the hoist rope regularly, and immediately discard the rope if they find evidence of any of the conditions specified by § 1926.552(a)(3)..	Moved the diameter-to-diameter inspection requirements to Condition 6(d)(ii), and removed the reference to § 1926.552(a)(3)..	To consolidate the requirements for hoist ropes under a single condition. The reference to § 1926.552(a)(3) is redundant with the reference in Condition 6(d)(iii).
Condition 7(a). Number of cables.	Revised the heading to ''Number and construction'' (*see* Condition 9(a))..	To clarify that this condition also addresses the physical characteristics of guide cables.
Condition 7(d). Application of tension. The applicants would never use safety clamps that damage the ropes..	Moved the requirement to Condition 10(a)(iii).	To consolidate the safety-clamp requirements into a single provision.
Condition 8(a). Construction. The applicants would use a personnel cage that: * * * (v) Has safe handholds (*e.g.,* rope grips—but not rails or hard protrusions—that accommodate each occupant)..	Inserted a footnote at the end of the parenthetical statement that explains the prohibition against rails or hard protrusions (*see* Condition 10(a))..	To clarify the safety hazards associated with rails or hard protrusions in personnel cages.
Condition 10. Overhead Protection. To protect employees located at the base of the chimney (*i.e.*, both inside and outside the chimney) from material and debris that may fall from above, the applicants would install a canopy or shield that is made of steel plate at least three-sixteenth (3/16) of an inch (4.763 mm) thick, or material of equivalent strength and impact resistance, and that slopes to the outside..	Removed the phrase ''located at the base of the chimney'' from the requirement, and added the phrases ''over the top of the personnel cage'' (*see* Conditions 12(a) and 12(b), respectively)..	To clarify the location of the canopy or shield consistent with the requirements of § 1926.800(t)(4)(v) (from which the conditions was adapted) and paragraph 10.6 of ANSI A10.22–1990 (R1998).
Condition 11(a). Location. The applicants would provide an emergency-escape device, with operating instructions attached to it, in the personnel cage or at the bottom landing. If the device is: (i) In the personnel cage, the applicants would ensure that it is long enough to reach the bottom landing from the highest possible escape point. (ii) At the bottom landing, the applicants would provide a means in the personnel cage for the occupants to raise the device to the highest possible escape point..	Moved the requirement regarding the attachment of operating instructions to Condition 13(b)..	To make the provision more noticeable than it was in the proposal.
Condition 11(b). Training. The applicants would instruct each employee who uses a personnel cage: (i) On how to operate the emergency-escape device prior to the employee using the personnel cage for transportation. (ii) Periodically, and as necessary, in the operation of the hoist system and the emergency-escape system..	Moved to Condition 5(a)(ii) the portion of proposed Condition 11(b)(ii) that refers to training employees who use a personnel cage for transportation in the operation of the hoist system..	To consolidate the training requirements for hoist systems into a single provision.
Condition 12(a). Personnel platform. The applicants would: (i) Be permitted to attach the hoisting cable to a personnel platform under the conditions specified above by section III.A (''General conditions'') of this application..	Retained the proposed requirement under Condition 14(a), but revised the reference to ''section III.A'' to ''Condition 2(a).''.	The requirements proposed under section III.A are now specified under Condition 2(a).
Condition 13(a). [The applicants would c]onduct inspections of the hoist system as required by § 1926.20(b)(2). These inspections would include a daily visual inspection of the systems..	Condition 15(a). The employers must: (i) Conduct inspections of the hoist system as required by § 1926.20(b)(2); (ii) Ensure that a competent person conducts daily visual inspections of the hoist system; and * * *.	To clarify that paragraph (a) consists of two separate requirements, and to emphasize the requirement in § 1926.20(b)(2) that a competent person must conduct the daily visual inspection of the hoist system.

VII. Decision

Oak Park Chimney Corp. and American Boiler & Chimney Co. seek a permanent variance from the provision that regulates the tackle used for boatswains' chairs (§1926.452(o)(3)), as well as the provisions specified for personnel hoists by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 1926.552. Paragraph (o)(3) of §1926.452 states that the tackle used for boatswains' chairs must ''consist of correct size ball bearings or bushed blocks containing safety hooks and properly ''eye-spliced'' minimum five-eighth (⅝) inch diameter first-grade manila rope [or equivalent rope].'' The primary purpose of this provision is to allow an employee to safely control the ascent, descent, and stopping locations of the boatswains' chair. The proposed alternative to these requirements allows the employer to use a boatswains' chair

to lift employees to work locations inside and outside a chimney when both a personnel cage and a personnel platform are infeasible. The employers proposed to attach the boatswains' chair to the hoisting system described as an alternative for paragraph (c) of §1926.552.

Paragraph (c) of §1926.552 specifies the requirements for enclosed hoisting systems used to transport personnel from one elevation to another. This paragraph ensures that employers transport employees safely to and from elevated work platforms by mechanical means during construction work involving structures such as chimneys. In this regard, paragraph (c)(1) of §1926.552 requires employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the structure; these enclosures must extend the full height of the hoist tower. Under the requirements of paragraph (c)(2) of §1926.552, employers must enclose all four sides of a hoist tower located inside a chimney; these enclosures must extend the full height of the tower.

As an alternative to complying with the hoist-tower requirements of §1926.552(c)(1) and (c)(2), the employers proposed to use a rope-guided hoist system to transport employees to and from elevated work locations inside and outside chimneys. The proposed hoist system includes a hoist machine, cage, safety cables, and safety measures such as limit switches to prevent overrun of the cage at the top and bottom landings, and safety clamps that grip the safety cables if the main hoist line fails. To transport employees to and from elevated work locations, the employers proposed to attach a personnel cage to the hoist system. However, when they can demonstrate that adequate space is not available for the cage, they can use a personnel platform above the last worksite that the cage can reach. Further, when the employers can show that space limitations make it infeasible to use a work platform for transporting employees, they have proposed to use a boatswains' chair above the last worksite serviced by the personnel platform. Using the proposed hoist system as an alternative to the hoist-tower requirements of §1926.552(c)(1) and (c)(2) eliminates the need to comply with the other provisions of §1926.552(c) that specify requirements for hoist towers. Accordingly, the employers have requested a permanent variance from these and related provisions (*i.e.*, paragraphs (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16)).

After reviewing the variance application, as well as the comments made to the record regarding the application, OSHA has made only minor editorial amendments and technical corrections to the proposed variance. Therefore, under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), and based on the record discussed above, the Agency finds that when the employers comply with the conditions of the following order, their employees will be exposed to working conditions that are at least as safe and healthful as they would be if the employers complied with paragraph (o)(3) of §1926.452, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552.

VIII. Order

OSHA issues this order authorizing Oak Park Chimney Corp. and American Boiler & Chimney Co. (''the employers'') to comply with the following conditions instead of complying with paragraph (o)(3) of §1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of §1926.552:

1. Scope of the Permanent Variance

(a) This permanent variance applies only when the employers use a rope-guided hoist system during inside or outside chimney construction to raise or lower their employees between the bottom landing of a chimney and an elevated work location on the inside or outside surface of the chimney.

(b) Except for the requirements specified by §1926.452(o)(3) and §1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16), the employers must comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.

2. Replacing a Personnel Cage With a Personnel Platform or a Boatswains' Chair

(a) *Personnel platform.* When the employers demonstrate that available space makes a personnel cage for transporting employees infeasible, they may replace the personnel cage with a personnel platform when they limit use of the personnel platform to elevations above the last work location that the personnel cage can reach.

(b) *Boatswains' chair.* When the employers demonstrate that available space makes a personnel platform for transporting employees infeasible, they may replace the personnel platform with a boatswains' chair when they limit use of the boatswains' chair to elevations above the last work location that the personnel platform can reach.

3. Qualified Competent Person

(a) The employers must:

(i) Provide a qualified competent person, as specified in paragraphs (f) and (m) of §1926.32, who is responsible for ensuring that the design, maintenance, and inspection of the hoist system comply with the conditions of this grant and with the appropriate requirements of 29 CFR part 1926 (''Safety and Health Regulations for Construction''); and

(ii) Ensure that the qualified competent person is present at ground level to assist in an emergency whenever the hoist system is raising or lowering employees.

(b) The employers must use a qualified competent person to design and maintain the cathead described under Condition 8 (''Cathead and Sheave'') below.

4. Hoist Machine

(a) *Type of hoist.* The employers must designate the hoist machine as a portable personnel hoist.

(b) *Raising or lowering a transport.* The employers must ensure that:

(i) The hoist machine includes a base-mounted drum hoist designed to control line speed; and

(ii) Whenever they raise or lower a personnel or material hoist (*e.g.*, a personnel cage, personnel platform, boatswains' chair, hopper, concrete bucket) using the hoist system:

(A) The drive components are engaged continuously when an empty or occupied transport is being lowered (*i.e.*, no ''freewheeling'');

(B) The drive system is interconnected, on a continuous basis, through a torque converter, mechanical coupling, or an equivalent coupling (*e.g.*, electronic controller, fluid clutches, hydraulic drives).

(C) The braking mechanism is applied automatically when the transmission is in the neutral position and a forward-reverse coupling or shifting transmission is being used; and

(D) No belts are used between the power source and the winding drum.

(c) *Power source.* The employers must power the hoist machine by an air, electric, hydraulic, or internal-combustion drive mechanism.

(d) *Constant pressure control switch.* The employers must:

(i) Equip the hoist machine with a hand-or foot-operated constant-pressure control switch (*i.e.*, a ''deadman control switch'') that stops the hoist immediately upon release; and

(ii) Protect the control switch to prevent it from activating if the hoist machine is struck by a falling or moving object.

(e) *Line-speed indicator.* The employers must:

(i) Equip the hoist machine with an operating line-speed indicator maintained in good working order; and

(ii) Ensure that the line-speed indicator is in clear view of the hoist operator during hoisting operations.

(f) *Braking systems.* The employers must equip the hoist machine with two (2) independent braking systems (*i.e.*, one automatic and one manual) located on the winding side of the clutch or couplings, with each braking system being capable of stopping and holding 150 percent of the maximum rated load.

(g) *Slack-rope switch.* The employers must equip the hoist machine with a slack-rope switch to prevent rotation of the winding drum under slack-rope conditions.

(h) *Frame.* The employers must ensure that the frame of the hoist machine is a self-supporting, rigid, welded-steel structure, and that holding brackets for anchor lines and legs for anchor bolts are integral components of the frame.

(i) *Stability.* The employers must secure hoist machines in position to prevent movement, shifting, or dislodgement.

(j) *Location.* The employers must:

(i) Locate the hoist machine far enough from the footblock to obtain the correct fleet angle for proper spooling of the cable on the drum; and

(ii) Ensure that the fleet angle remains between one-half degree (½°) and one and one-half degrees (1½°) for smooth drums, and between one-half degree (½°) and two degrees (2°) for grooved drums, with the lead sheave centered on the drum.[1]

(k) *Drum and flange diameter.* The employers must:

(i) Provide a winding drum for the hoist that is at least 30 times the diameter of the rope used for hoisting; and

(ii) Ensure that the winding drum has a flange diameter that is at least one and one-half (1½) times the winding-drum diameter.

(l) *Spooling of the rope.* The employers must *never* spool the rope closer than two (2) inches (5.1 cm) from the outer edge of the winding-drum flange.

(m) *Electrical system.* The employers must ensure that all electrical equipment is weatherproof.

(n) *Limit switches.* The employers must equip the hoist system with limit switches and related equipment that automatically prevent overtravel of a personnel cage, personnel platform, boatswains' chair, or material-transport device at the top of the supporting structure and at the bottom of the hoistway or lowest landing level.

5. Methods of Operation

(a) *Employee qualifications and training.* The employers must:

(i) Ensure that only trained and experienced employees, who are knowledgeable of hoist-system operations, control the hoist machine; and

(ii) Provide instruction, periodically and as necessary, on how to operate the hoist system, to each employee who uses a personnel cage for transportation.

(b) *Speed limitations.* The employers must *not* operate the hoist at a speed in excess of:

(i) Two hundred and fifty (250) feet (76.9 m) per minute when a personnel cage is being used to transport employees;

(ii) One hundred (100) feet (30.5 m) per minute when a personnel platform or boatswains' chair is being used to transport employees; or

(iii) A line speed that is consistent with the design limitations of the system when only material is being hoisted.

(c) *Communication.* The employers must:

(i) Use a voice-mediated intercommunication system to maintain communication between the hoist operator and the employees located in or on a moving personnel cage, personnel platform, or boatswains' chair;

(ii) Stop hoisting if, for any reason, the communication system fails to operate effectively; and

(iii) Resume hoisting only when the site superintendent determines that it is safe to do so.

6. Hoist Rope

(a) *Grade.* The employers must use a wire rope for the hoist system (*i.e.*, ''hoist rope'') that consists of extra-improved plow steel, an equivalent grade of non-rotating rope, or a regular lay rope with a suitable swivel mechanism.

(b) *Safety factor.* The employers must maintain a safety factor of at least eight (8) times the safe workload throughout the entire length of hoist rope.

(c) *Size.* The employers must use a hoist rope that is at least one-half (1/2) inch (1.3 cm) in diameter.

(d) *Inspection, removal, and replacement.* The employers must:

(i) Thoroughly inspect the hoist rope before the start of each job and on completing a new setup;

(ii) Maintain the proper diameter-to-diameter ratios between the hoist rope and the footblock and the sheave by inspecting the wire rope regularly (*see* Conditions 7(c) and 8(d) below); and

(iii) Remove and replace the wire rope with new wire rope when any of the conditions specified by §1926.552(a)(3) occurs.

(e) *Attachments.* The employers must attach the rope to a personnel cage, personnel platform, or boatswains' chair with a keyed-screwpin shackle or positive-locking link.

(f) *Wire-rope fastenings.* When the employers use clip fastenings (*e.g.*, U-bolt wire-rope clips) with wire ropes, they must:

(i) Use Table H–20 of §1926.251 to determine the number and spacing of clips;

(ii) Use at least three (3) drop-forged clips at each fastening;

(iii) Install the clips with the ''U'' of the clips on the dead end of the rope; and

(iv) Space the clips so that the distance between them is six (6) times the diameter of the rope.

7. Footblock

(a) *Type of block.* The employers must use a footblock:

(i) Consisting of construction-type blocks of solid single-piece bail with a safety factor that is at least four (4) times the safe workload, or an equivalent block with roller bearings;

(ii) Designed for the applied loading, size, and type of wire rope used for hoisting;

(iii) Designed with a guard that contains the wire rope within the sheave groove;

(iv) Bolted rigidly to the base; and

(v) Designed and installed so that it turns the moving wire rope to and from the horizontal or vertical as required by the direction of rope travel.

(b) *Directional change.* The employers must ensure that the angle of change in the hoist rope from the horizontal to the vertical direction at the footblock is approximately 90°.

(c) *Diameter.* The employers must ensure that the line diameter of the footblock is at least 24 times the diameter of the hoist rope.

8. Cathead and Sheave

(a) *Support.* The employers must use a cathead (*i.e.*, ''overhead support'') that consists of a wide-flange beam or two (2) steel-channel sections securely bolted back-to-back to prevent spreading.

[1] This variance adopts the definition of, fleet angle from *Cranes and Derricks,* H.I. Shapiro, *et al.* (eds.); New York: McGraw-Hill. Accordingly, the fleet angle is ''[t]he angle the rope leading onto a [winding] drum makes with the line perpendicular to the drum rotating axis when the lead rope is making a wrap against the flange.''

(b) *Installation.* The employers must ensure that:

(i) All sheaves revolve on shafts that rotate on bearings; and

(ii) The bearings are mounted securely to maintain the proper bearing position at all times.

(c) *Rope guides.* The employers must provide each sheave with appropriate rope guides to prevent the hoist rope from leaving the sheave grooves when the rope vibrates or swings abnormally.

(d) *Diameter.* The employers must use a sheave with a diameter that is at least 24 times the diameter of the hoist rope.

9. Guide Ropes

(a) *Number and construction.* The employers must affix two (2) guide ropes by swivels to the cathead. The guide ropes must:

(i) Consist of steel safety cables not less than one-half (½) inch (1.3 cm) in diameter; and

(ii) Be free of damage or defect at all times.

(b) *Guide rope fastening and alignment tension.* The employers must fasten one end of each guide rope securely to the overhead support, with appropriate tension applied at the foundation.

(c) *Height.* The employers must rig the guide ropes along the entire height of the hoist-machine structure.

10. Personnel Cage

(a) *Construction.* A personnel cage must be of steel-frame construction and capable of supporting a load that is four (4) times its maximum rated load capacity. The employers also must ensure that the personnel cage has:

(i) A top and sides that are permanently enclosed (except for the entrance and exit);

(ii) A floor securely fastened in place;

(iii) Walls that consist of 14-gauge, one-half (½) inch (1.3 cm) expanded metal mesh, or an equivalent material;

(iv) Walls that cover the full height of the personnel cage between the floor and the overhead covering;

(v) A sloped roof constructed of one-eighth (⅛) inch (0.3 cm) aluminum, or an equivalent material; and

(vi) Safe handholds (*e.g.*, rope grips—but not rails or hard protrusions [2]) that accommodate each occupant.

(b) *Overhead weight.* A personnel cage must have an overhead weight (*e.g.*, a headache ball of appropriate weight) to compensate for the weight of the hoist rope between the cathead and footblock. In addition, the employers must:

(i) Ensure that the overhead weight is capable of preventing line run; and

(ii) Use a means to restrain the movement of the overhead weight so that the weight does *not* interfere with safe personnel hoisting.

(c) *Gate.* The personnel cage must have a gate that:

(i) Guards the full height of the entrance opening; and

(ii) Has a functioning mechanical lock that prevents accidental opening.

(d) *Operating procedures.* The employers must post the procedures for operating the personnel cage conspicuously at the hoist operator's station.

(e) *Capacity.* The employers must:

(i) Hoist no more than four (4) occupants in the cage at any one time; and

(ii) Ensure that the rated load capacity of the cage is at least 250 pounds (113.4 kg) for each occupant so hoisted.

(f) *Employee notification.* The employers must post a sign in each personnel cage notifying employees of the following conditions:

(i) The standard rated load, as determined by the initial static drop test specified by Condition 10(g) (''Static drop tests'') below; and

(ii) The reduced rated load for the specific job.

(g) *Static drop tests.* The employers must:

(i) Conduct static drop tests of each personnel cage, and these tests must comply with the definition of ''static drop test'' specified by section 3 (''Definitions'') and the static drop-test procedures provided in section 13 (''Inspections and Tests'') of American National Standards Institute (ANSI) standard A10.22–1990 (R1998) (''American National Standard for Rope-Guided and Nonguided Worker's Hoists—Safety Requirements'');

(ii) Perform the initial static drop test at 125 percent of the maximum rated load of the personnel cage, and subsequent drop tests at no less than 100 percent of its maximum rated load; and

(iii) Use a personnel cage for raising or lowering employees only when no damage occurred to the components of the cage as a result of the static drop tests.

11. Safety Clamps

(a) *Fit to the guide ropes.* The employers must:

(i) Fit appropriately designed and constructed safety clamps to the guide ropes; and

(ii) Ensure that the safety clamps do not damage the guide ropes when in use.

(b) *Attach to the personnel cage.* The employers must attach safety clamps to each personnel cage for gripping the guide ropes.

(c) *Operation.* The safety clamps attached to the personnel cage must:

(i) Operate on the ''broken rope principle'' defined in section 3 (''Definitions'') of ANSI standard A10.22–1990 (R1998);

(ii) Be capable of stopping and holding a personnel cage that is carrying 100 percent of its maximum rated load and traveling at its maximum allowable speed if the hoist rope breaks at the footblock; and

(iii) Use a pre-determined and pre-set clamping force (*i.e.*, the ''spring compression force'') for each hoist system.

(d) *Maintenance.* The employers must keep the safety-clamp assemblies clean and functional at all times.

12. Overhead Protection

(a) The employers must install a canopy or shield over the top of the personnel cage that is made of steel plate at least three-sixteenth (3/16) of an inch (4.763 mm) thick, or material of equivalent strength and impact resistance, to protect employees (*i.e.*, both inside and outside the chimney) from material and debris that may fall from above.

(b) The employers must ensure that the canopy or shield slopes to the outside of the personnel cage.[3]

13. Emergency-Escape Device

(a) *Location.* The employers must provide an emergency-escape device in at least one of the following locations:

(i) In the personnel cage, provided that the device is long enough to reach the bottom landing from the highest possible escape point; or

(ii) At the bottom landing, provided that a means is available in the personnel cage for the occupants to raise the device to the highest possible escape point.

(b) *Operating instructions.* The employers must ensure that written instructions for operating the emergency-escape device are attached to the device.

(c) *Training.* The employers must instruct each employee who uses a personnel cage for transportation on how to operate the emergency-escape device:

(i) Before the employee uses a personnel cage for transportation; and

(ii) Periodically, and as necessary, thereafter.

[2] To reduce impact hazards should employees lose their balance because of cage movement.

[3] Paragraphs (a) and (b) were adapted from OSHA's Underground Construction Standard (§ 1926.800(t)(4)(iv)).

14. Personnel Platforms and Boatswains' Chairs

(a) *Personnel platforms.* When the employers elect to replace the personnel cage with a personnel platform in accordance with Condition 2(a) of this variance, they must:

(i) Ensure that an enclosure surrounds the platform, and that this enclosure is at least 42 inches (106.7 cm) above the platform's floor;

(ii) Provide overhead protection when an overhead hazard is, or could be, present; and

(iii) Comply with the applicable scaffolding strength requirements specified by § 1926.451(a)(1).

(b) *Boatswains' chairs.* When the employers elect to replace the personnel platform with a boatswains' chair in accordance with Condition 2(b) (''Boatswains'' chair'') of this variance, they may attach the boatswains' chair directly to the hoisting cable only when they demonstrate that the spatial arrangement makes it infeasible to safely use the block and tackle required by § 1926.452(o)(3).

(c) *Fall-protection equipment.* Before employees use work platforms or boatswains' chairs, the employers must equip the employees with, and ensure that they use, body harnesses and lifelines as specified by § 1926.104 and the applicable requirements of § 1926.502(d).

15. Inspections, Tests, and Accident Prevention

(a) The employers must:

(i) Conduct inspections of the hoist system as required by § 1926.20(b)(2);

(ii) Ensure that a competent person conducts daily visual inspections of the hoist system; and

(iii) Inspect and test the hoist system as specified by § 1926.552(c)(15).

(b) The employers must comply with the accident-prevention requirements of § 1926.20(b)(3).

16. Welding

(a) The employers must use only qualified welders to weld components of the hoisting system.

(b) The employers must ensure that the qualified welders:

(i) Are familiar with the weld grades, types, and materials specified in the design of the system; and

(ii) Perform the welding tasks in accordance with 29 CFR part 1926, subpart J (''Welding and Cutting'').

VII. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC directed the preparation of this notice. This notice is issued under the authority specified by Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR part 1905.

Signed at Washington, DC on August 26, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–22741 Filed 9–5–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection Under OMB Review

[Notice 03–099]

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Title IX Recipient Request.

OMB Number: 2700– .

Type of review: New collection.

Need and Uses: The information collected will be analyzed and used by NASA to determine NASA grant recipients' compliance with Title IX of the Education Amendments of 1972.

Affected Public: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 917.

Responses Per Respondent: 1.

Annual Responses: 917.

Hours Per Request: Approx. ½ hour.

Annual Burden Hours: 459.

Frequency of Report: Annually; Other (one time).

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–22691 Filed 9–5–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (03–100)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before October 8, 2003.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of review: Revision.

Need and Uses: This collection provides a means by which NASA employees and contractors can voluntarily and confidentially report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

Affected Public: Federal Government; Business or other for-profit

Number of Respondents: 75.

Responses Per Respondent: 1.

Annual Responses: 75.

Hours Per Request: 15 min.

Annual Burden Hours: 19.

Frequency of Report: As needed.

Patricia Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–22692 Filed 9–5–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of closed meetings.

SUMMARY: A meeting of the President's National Security Telecommunications Advisory Committee (NSTAC) will be held via conference call on Wednesday, September 17, 2003, from 1 p.m. to 2 p.m. The NSTAC is subject to the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended (5 U.S.C. App. II.) The conference call will be closed to the public to allow for oral discussion of:

- Interdependencies of Critical Infrastructures
- Issues regarding security matters due to diversity of ownership, control, and access to U.S. critical telecommunication and information technology infrastructures

Since revealing details of infrastructure interdependencies could reveal predominantly internal agency records that would significantly risk circumvention of agency regulations or statutes intended to protect critical infrastructures, closing this portion of the meeting is consistent with 5 U.S.C. 552b(c)(2). In order to assess security matters raised by diversity of ownership within the telecommunications and information technology infrastructures, it is necessary to close this portion of the meeting to protect proprietary information NSTAC members may need to present on this topic, consistent with 5 U.S.C. 552b(c)(4). Based on the sensitivity of these topics, this conference call will be closed.

FOR FURTHER INFORMATION CONTACT: Call Ms. Kiesha Gebreyes, (703) 607–6134, or write the Manager, National Communications System, 701 South Court House Road, Arlington, Virginia 22204–2198.

Peter M. Fonash,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 03–22700 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 22, 2003.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Landmarks of American History: Workshops for School Teachers, submitted to the Division of Education Programs at the August 15, 2003 deadline.

2. *Date:* September 23, 2003.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Landmarks of American History: Workshops for School Teachers, submitted to the Division of Education Programs at the August 15, 2003 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 03–22699 Filed 9–5–03; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03754]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 31–02892–06, VA Medical Center in Brooklyn, NY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: John R. Wray, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Telephone (610) 337–5268; Fax (610) 337–5269; and/or by e-mail: *JRW3@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to the VA Medical Center in Brooklyn for Materials License No. 31–02892–06, to authorize release of its facility at the St. Albans Extended Care Center in Queens, New York, for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's St. Albans Extended Care Center facility for unrestricted use. The VA Medical Center in Brooklyn was authorized by NRC on August 20, 1998, to possess radioactive materials for decommissioning purposes at the site. On May 15, 2003, the VA Medical Center in Brooklyn requested that NRC release the facility for unrestricted use. The VA Medical Center in Brooklyn has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated the request from the VA Medical Center in Brooklyn and the results of the surveys and has concluded that the completed action complies with 10 CFR part 20. The staff has prepared the EA

(summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession No. ML032380112).

Dated at King of Prussia, Pennsylvania, this 26th day of August, 2003.

For The Nuclear Regulatory Commission.

Ronald R. Bellamy,

Chief, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–22717 Filed 9–5–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 145th meeting on September 16–18, 2003, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, September 16, 2003

10:30 a.m.–10:40 a.m.: Opening Statement (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

10:40 a.m.–12 Noon.: Commission Presentations (Open)—The Committee will discuss its presentation for the October 23, 2003 public meeting with the NRC Commissioners. Topics proposed for discussion:

- Chairman's Report
- High-Level Waste Risk Insights
- TSPA/TPA Working Group
- Performance Confirmation Working Group
- Status and Pathway to Closure on KTIs

1 p.m.–6 p.m.: Committee Retreat (Open)—The focus of the September 2003 retreat is to identify the suite of topics that the Committee intends to examine over the next 12 to 18 months. The topics to be proposed would be consistent with the priorities defined in Action Plan as well as earlier Committee discussions with the Commission and NMSS management.

Wednesday, September 17, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–2 p.m.: Committee Retreat (Continued) (Open)—The Committee will identify specific topics and its plans for review of the relevant High-Level Were issues from the present to the submission by DOE of a license application for the Yucca Mountain repository.

2 p.m.–6 p.m.: Proposed ACRS Report (Open)—The Committee will discuss a proposed ACNW report on matters considered during this meeting, as well as proposed ACNW reports on the Performance Confirmation Working Group.

Thursday, September 18, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:30 a.m.: Planning for 147th ACNW Meeting Las Vegas, Nevada (Open)—The Committee will review proposed activities for its November 18, 2003 trip to Yucca Mountain and the Amargosa Valley and its subsequent technical discussion in Las Vegas, NV with DOE representatives and others (including stakeholders and the public) during the 147th ACNW Meeting, November 19–20, 2003.

9:45 a.m.–11:45 p.m.: Preparation of ACNW Report (Open)—The Committee will discuss a proposed ACNW report.

12:45 p.m.–2:45 p.m.: Preparation for Meeting with the NRC Commissioner (Open)—The Committee will finalize its viewgraphs for the proposed October 23, 2003, meeting with the NRC Commissioners.

2:45 p.m.–3 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: September 2, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–22718 Filed 9–5–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 38–115

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 38–115, Representative Payee Survey, is used to collect information about how the benefits paid to a representative payee have been used or conserved for the incompetent annuitant.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 4,067 RI 38–115 forms will be completed annually. The form takes approximately 20 minutes to complete. The annual burden is 1,356 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before November 7, 2003.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operation Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–22737 Filed 9–5–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 30–2

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 30–2, Annuitant's Report of Earned Income, is used annually to determine if disability retirees under age 60 have earned income which will result in the termination of their annuity benefits.

We estimate 21,000 RI 30–2 forms are completed annually. The RI 30–2 takes approximately 35 minutes to complete for an estimated annual burden of 12,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before November 7, 2003.

ADDRESSES: Send or deliver comments to—William C. Jackson, Chief, Retirement Eligibility & Services Group, Retirement Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2336, Washington, DC 20415, and Allison Eydt, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Group, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–22738 Filed 9–5–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: RI 92–19

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an expiring information collection. RI 92–19, Application for Deferred or Postponed Retirement: Federal Employees Retirement System (FERS), is used by separated employees to apply for either a deferred or a postponed FERS annuity benefit.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 1,272 forms are completed annually. The form takes approximately 60 minutes to complete. The annual estimated burden is 1,272 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before November 7, 2003.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Retirement Services Program, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:

Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–22740 Filed 9–5–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program: Medically Underserved Areas for 2004

AGENCY: Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 2004.

SUMMARY: The Office of Personnel Management (OPM) has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 2004. This is necessary to comply with a provision of the FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 2004, OPM's calculations show that the following states are Medically Underserved Areas under the FEHB Program: Alabama, Idaho, Kentucky, Louisiana, Maine, Mississippi, Missouri, Montana, New Mexico, North Dakota, South Carolina, South Dakota, Texas, Utah, West Virginia and Wyoming. There is no change from the last year's list.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ingrid Burford, 202–606–0004.

SUPPLEMENTARY INFORMATION: FEHB law (5 U.S.C. 8902(m)(2)) mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. The FEHB law also requires that a State be designated as a Medically Underserved Area if 25 percent or more of the population lives in an area designated by the Department of Health and Human Services (HHS) as a primary medical care manpower shortage area. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires non-HMO FEHB plans to reimburse beneficiaries, subject to their contract terms, for covered services obtained from any licensed provider in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest HHS State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident populations.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–22739 Filed 9–5–03; 8:45 am]

BILLING CODE 6325–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 16076]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SV NAMASTE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16076 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD 2003–16076. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SV NAMASTE is:

Intended Use: ''Chartering''.

Geographic Region: ''East Coast U.S., West Coast U.S. (excluding Southeastern Alaska), Caribbean to Panama''.

Dated: September 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–22746 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–81–P

Corrections

Federal Register

Vol. 68, No. 173

Monday, September 8, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-NE-32-AD; Amendment 39-13285; AD 2003-17-10]

RIN 2120-AA64

Airworthiness Directives; McCauley Propeller Systems, Inc. Propeller Hub Models B5JFR36C1101, C5JFR36C1102, B5JFR36C1103, and C5JFR36C1104

Correction

In rule document 03–21519 beginning on page 50462 in the issue of Thursday, August 21, 2003, make the following correction:

§39.13 [Corrected]

On page 50464, in §39.13(o), in the table the heading should read TABLE 3—INCORPORATION BY REFERENCE.

[FR Doc. C3–21519 Filed 9–5–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9085]

RIN 1545–AY12

Arbitrage and Private Activity Restrictions Applicable to Tax-exempt Bonds Issued by State and Local Governments; Investment-type Property (prepayment); Private Loan (prepayment)

Correction

In rule document 03–19644 beginning on page 45772 in the issue of Monday, August 4, 2003, make the following correction:

§ 1.141–15 [Corrected]

On page 45775, in the second column, in § 1.141–15, add the following directly below the section heading:

* * * * *

[FR Doc. C3–19644 Filed 9–5–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
September 8, 2003

Part II

Environmental Protection Agency

40 CFR Part 355

Emergency Planning and Community Right-to-Know Act; Extremely Hazardous Substances List; Modification of Threshold Planning Quantity for Isophorone Diisocyanate; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[FRL–7554–9]

RIN 2050–AE43

Emergency Planning and Community Right-to-Know Act; Extremely Hazardous Substances List; Modification of Threshold Planning Quantity for Isophorone Diisocyanate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the list of extremely hazardous substances (EHS) issued under the Emergency Planning and Community Right-to-Know Act (EPCRA) by changing the threshold planning quantity (TPQ) for isophorone diisocyanate (IPDI) from 100 pounds to 500 pounds.

DATES: This rule is effective October 8, 2003.

ADDRESSES: Copies of the documents relevant to this action (Docket No. SFUND–2002–0009) are available for public inspection during normal business hours from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays, at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*. For questions on the applicability of provisions contained in 40 CFR part 355 or on the contents of this document, contact: Sicy Jacob, Chemical Emergency Preparedness and Prevention Office (5104A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, Telephone: 202–564–8019; Fax: 202–564–8233; email: *jacob.sicy@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

A. Affected Entities

Entities that may be affected by this action are those facilities subject to 40 CFR part 355, Emergency Planning and Release Notification.

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

1. Docket. EPA has established an official public docket for this action under Docket ID No. SFUND–2002–0009. You may also refer to Docket ID No. 300–PQ–R2 for any technical documents referenced in the preamble to this document. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The public docket does not include Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Superfund 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 Superfund Docket is (202) 566–0276.

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.

Outline

I. Introduction and Background
  A. Statutory Authority
  B. Background
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III. Explanation of the Error in the October 1994 Proposed Rule
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V. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
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  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
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  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
  J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act

I. Introduction and Background

A. Statutory Authority

This final rule is issued under sections 302 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).

B. Background

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 (''SARA''). Public Law 99–499 (1986). Title III of SARA established a program designed to require state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001–11050.

EPCRA required EPA to publish a list of Extremely Hazardous Substances (EHS) and to establish threshold planning quantities for each of these EHSs. Under EPCRA section 302, a facility which has present an EHS in excess of its threshold planning quantity (TPQ) must notify the State emergency response commission and local emergency planning committee as well as participate in local emergency planning activities.

The EHS list was established by EPA to identify chemical substances which could cause serious irreversible health effects from accidental releases (51 FR 13378). The EHS list and its TPQs are intended to help communities focus on the substances and facilities of the most immediate concern for emergency planning and response.

The TPQs are not absolute levels above which the EHS are dangerous and below which they pose no threat at all. The TPQs provide a starting point for identification of facilities to community response planners so that they can determine whether or not these facilities pose a potential problem in the event of an accidental release. EPA encourages communities to go beyond the EHS list when evaluating the hazards of facilities

in their community, in that facilities handling chemicals not on the EHS list could be as hazardous as those handling EHSs.

1. Regulatory Background

The EHS list and their TPQs are codified in 40 CFR part 355, appendices A & B. EPA's explanation for the methodologies used to determine whether to list a substance as an EHS and for deriving the TPQs is found in preambles to the **Federal Register** notices which promulgated these rules and in technical support documents in the rulemaking records. The relevant notices were published in the **Federal Register** on November 17, 1986 (51 FR 41570) and April 22, 1987 (52 FR 13378).

EPA first published the EHS list and TPQs along with the methodology for determining TPQ in the November 17, 1986 interim final rule. In the April 22, 1987 final rule, EPA made a number of revisions. Among other things, the April 1987 rule republished the EHS list, with the addition of four new chemicals and revised the methodology for determining some TPQs. EPA has since received several petitions to amend the EHS list.

2. Summary of October 1994 Proposed Rulemaking

In the October 12, 1994 (59 FR 51816) proposed rulemaking, EPA responded to seven petitions requesting action on substances listed as EHSs. Among these petitions, Hüls America Inc. petitioned EPA to delist isophorone diisocyanate (IPDI) (CAS No. 4098–71–9). EPA denied the petition to delist IPDI because it meets the criteria for an EHSs. However, in considering this petition, EPA noted that the TPQ had been determined based on a mistaken assumption that IPDI is a reactive solid at standard temperature, when in fact it is a liquid and not highly reactive. Accordingly, using the methodology for calculating TPQs for liquids, EPA proposed in 1994 to raise the TPQ for IPDI from 100 to 1,000 pounds, even though Hüls America did not request this change in their petition.

As a result of EPA's action, Hüls America filed a lawsuit in federal court challenging EPA's denial of the delisting petition for IPDI. The Agency's decision not to delist IPDI was upheld by the United States Court of Appeals for the District of Columbia Circuit (DC Cir.) in *Hüls America* v. *Browner*, 83 F.3d 445 (1996). Accordingly, today's rulemaking does not address any issues regarding whether IPDI should be removed from the EHS list under EPCRA, but is limited solely to the appropriateness of the TPQ for IPDI.

II. EPA's Methodology for Establishing TPQs for Liquids

The TPQs developed for EHSs are based on a ranking of the EHSs according to their potential to become airborne and disperse and their toxicological properties, with adjustments based on chemical reactivity and other factors. The Immediately Dangerous to Life and Health (IDLH) level developed by the National Institute of Occupational Safety and Health (NIOSH), or an approximation of the IDLH based on animal toxicity data, is used as an index of toxicity while the physical state and volatility of the substance are used to derive an index of the chemical's potential to become airborne and disperse. These two indices are combined to produce an overall risk score or ''ranking factor'' defined as IDLH/V, where V is the index of potential to become airborne and disperse. TPQs are then assigned to groups of EHSs according to their relative ranking. The lowest rank (highest concern) is assigned low quantities and the highest rank (lowest concern) is assigned high quantities.

The index of potential to become airborne and disperse (V) is derived using the physical state of the substance and a measure of its volatility. For EHSs that are gases at ambient conditions and powdered solids with a particle size less than 100 micron, V is assumed to have a value of 1, indicating that in an accidental release, the chemical could easily become airborne and disperse. Solids in non-powdered form are assigned the highest TPQ meaning that chemicals in this physical state are not likely to become airborne and disperse.

For liquid EHSs, V is derived from the rate of volatilization expected from a spill of the liquid at its boiling point. The rate of volatilization is driven by the molecular weight of the substance and its boiling point temperature as in the following equation:

$$V = 1.6M^{0.67}/(T + 273)$$

where M is the molecular weight of the substance and T is the boiling temperature (°C). Note that for liquids with low boiling points (volatile liquids), V will approach 1 (more like a gas), while high boiling liquids have a V much less than 1.

The Agency could have evaluated the rate of volatilization from a spill of the liquid at ambient conditions rather than at the liquid's boiling point. Typically, to calculate the rate of volatilization of a liquid at ambient conditions, an ambient temperature must be chosen and the liquid's vapor pressure at that ambient temperature must be known. Chemical reference books often publish the vapor pressure for many common substances at 20 or 25 °C. However, some of the liquids on the EHS list either have a vapor pressure at a different temperature or they have no published vapor pressure. The Agency could have estimated or calculated vapor pressures for these substances but the accuracy of such estimates or calculations could be questioned. A more critical question is the choice of an appropriate ambient temperature. Ambient temperatures vary widely across the United States and an accidental release scenario could involve heat from, for example, a loss of reactor cooling or from a fire. The choice of an appropriate ambient temperature would be influenced by site-specific or release scenario specific factors. Since the Agency needed to apply a methodology uniformly to all liquid EHSs rather than chemical-by-chemical or site-by-site, the Agency therefore chose to evaluate the rate of volatilization using the substance's boiling point. All of the liquids on the EHS list have a published boiling point.

As noted above, once V is determined, the ''ranking factor'' is calculated from IDLH/V. If an IDLH value is not available, as is the case for most of the EHSs, EPA uses an IDLH equivalent value estimated from acute animal toxicity data. Data such as the lowest lethal airborne concentration (LC_{LO}), lethal airborne concentration for 50% of the test animals (LC_{50}), lowest lethal dose (LD_{LO}), or lethal dose for 50% of the test animals (LD_{50}) are used. NIOSH has indicated that the IDLH is most similar to the LC_{LO}; the other toxicity data needs to be adjusted and converted to an airborne dose comparable to an IDLH as follows: (1) Estimated IDLH = $LC_{50} \times 0.1$; (2) estimated IDLH = $LD_{50} \times 0.01$; and (3) estimated IDLH = $LD_{LO} \times 0.1$.

So, for each liquid, gas, and solid on the EHS list, EPA calculates the ranking factor as described above. Once all the chemicals are ranked, they are grouped by orders of magnitude of ranking factor and threshold quantities are assigned to these groups. The table below shows the ranking factor and the threshold quantities assigned to them. (Source: Threshold Planning Quantities Technical Support Document, April 7, 1987).

Ranking factor	Threshold quantity (lb)
$< 1 \times 10^{-3}$	1
$\geq 10^{-3}$ to $< 10^{-2}$	10
$\geq 10^{-2}$ to $< 10^{-1}$	100
$\geq 10^{-1}$ to < 1	500
≥ 1 to < 10	1,000 a
≥ 10	10,000

Since there was no IDLH value available for IPDI at the time the EHS list was developed (and there still is not one), EPA estimates the IDLH equivalent for IPDI by multiplying its LC_{50} of 0.12 mg/l over a 4-hour exposure period by 0.1. This results in an IDLH value of 0.012 mg/l. To calculate V, EPA uses the boiling point for IPDI of 350 degrees Centigrade and a molecular weight of 222 g/mole in the above equation to obtain 0.096. Then the index value is derived by dividing the level of concern (0.012) by the V factor (0.096) to obtain 0.13. Using the ranking factor value for IPDI, of 0.13, and the table above, the TPQ value should be 500 pounds.

III. Explanation of the Error in the October 1994 Proposed Rule

As part of the Agency's review of the petition to delist IPDI from the EHS list, EPA discovered that IPDI was mistakenly listed as a reactive solid, as opposed to a liquid. As a result, EPA recalculated IPDI's ranking factor using the equation listed in the previous section of this preamble and proposed in October 1994, to raise the TPQ from 100 to 1,000 pounds.

During the process of finalizing the rule, EPA reviewed all documents and memos related to the October 1994 proposed rule. During the review, EPA discovered that an error was made in reading the table of ranking factors and the corresponding threshold quantities. To be certain, EPA again reviewed IPDI's physical/chemical properties and re-calculated the ranking factor. The IDLH, V factor, and ranking factor were calculated correctly in the 1994 proposed rule, however, the Agency incorrectly identified the TPQ for IPDI; the proposal should have stated 500 pounds instead of 1,000 pounds. EPA is now finalizing the TPQ for IPDI to the correct value of 500 pounds.

On February 27, 2002, EPA sent a letter to Degussa Corporation (successor to ''Hüls America, Inc.'') informing them of the error and provided them an additional opportunity to submit comments. The letter explained the error made in the 1994 proposal and discussed the correct TPQ value. Degussa stated that they do not have any additional comments other than those submitted in response to the 1994 proposal. Accordingly, below, EPA responds to those comments filed by Hüls America in 1994.

IV. Response to Comments on the October 12, 1994 Proposed Rule

EPA received comments only from Hüls America. While Hüls America disagreed with EPA's decision to deny the petition to delete IPDI from the EHS list, the company acknowledged that the issue would be addressed in the litigation. Since the listing of the IPDI has been upheld by the court, this notice will not deal with that issue.

With respect to the TPQ for IPDI, Hüls America argues that the highest TPQ category of 10,000 pounds should be assigned. This is because IPDI is non-volatile and is toxic only at levels well above its saturated vapor concentration. Because EPA has not considered relative vapor pressure in calculating TPQs for such non-volatile compounds, the TPQs bear no relationship to the very low potential for compounds to disperse beyond a facility boundary. Therefore, IPDI, which has a very low vapor pressure is unlikely to present any risk at the fenceline in the event of a release. The commenter also disagreed with EPA's TPQ methodology, particularly with respect to EPA's assumption that dispersion is relatively similar from chemical to chemical. The commenter stated that the aerosol acute toxicity data do not support the need to set the TPQ for IPDI below 10,000 pounds. In fact, Hüls argues that because IPDI's toxicity was determined using an aerosol form of the chemical, the dispersability of IPDI for calculating the TPQ should be based on the aerosol form rather than on liquid volatility. The commenter also stated that IPDI is manufactured and processed in closed vessels which are not under pressure. So, there is less likelihood that accidents may occur.

EPA disagrees with Hüls' assertion that it did not consider relative vapor pressure and that the TPQs for non-volatile compounds such as IPDI bear no relationship to the very low potential for these compounds to disperse beyond a facility boundary as a result of a spill or release. In general, non-volatile liquid chemicals have relatively low vapor pressure and relatively high boiling points. These substances are not as likely as volatile liquids to disperse beyond a facility boundary. As described above, EPA uses the liquid boiling point to calculate a V factor which is used as a relative measure of the ability of the substance to become airborne and disperse downwind. Non-volatile substances with high boiling points will give a small V factor which generates a larger ranking factor than volatile substances with a large V factor. The V factor is likely to be the same using either the substance's boiling point or ambient vapor pressure. The larger the ranking factor, the greater the TPQ. Therefore, a large TPQ would reflect a relative inability of a substance to travel off-site.

EPA believes that boiling point is a reflection of relative vapor pressure since non-volatile liquids have a low vapor pressure and a correspondingly high boiling point while volatile liquids have a high vapor pressure and a correspondingly low boiling point. Of the 183 liquid chemicals on the EHS list, only 18 chemicals have less than or the same vapor pressure as IPDI, and only 17 chemicals have higher or the same boiling point as IPDI. Therefore, when compared to the other chemicals on the EHS list, the ability of IPDI to disperse is relatively the same when considering either vapor pressure (as the petitioner requests) or boiling point (as the methodology now considers). For this reason, changing the methodology from boiling point to vapor pressure will not likely have a significant impact on IPDI's rank in comparison to other chemicals and consequently, its TPQ. While both of these factors demonstrate that IPDI under standard temperatures and pressures is less likely to disperse (relative to the other liquids on the EHS list), its TPQ is based on its boiling point and its acute toxicity (not by boiling point or toxicity alone) like other listed liquids.

EPA also disagrees that its TPQ methodology is improper, particularly with respect to the assumption that dispersion is relatively similar from chemical to chemical. EPA recognizes that once airborne, fine powders, aerosols, mists, or dense or lighter than air vapor clouds or gases may disperse differently from one another, depending on the density and concentration of the substance in the air, the air temperature, humidity, and other chemical- and dispersion-specific factors. A rigorous analysis of the unique dispersion characteristics could be conducted for each listed EHS substance. However, such an analysis is highly influenced by site-specific factors such as meteorology, terrain, and the accidental release scenario. Since the Agency does not have site-specific data for all sites potentially handling the EHS substances and a methodology for determination of the TPQ needs to be uniformly applied, the Agency assumed, that for purposes of a relative ranking, that the airborne dispersion of particles and vapors will likely be similar across the range of

listed gases, liquids and solids that become airborne.

EPA also notes that it does not use only dispersion potential or only toxicity to determine the TPQ. Instead, the method that EPA chose to establish TPQs for substances on the EHS list uses a combination of the toxicity of the chemical and the potential for these compounds to disperse beyond the facility boundary. Further, EPA did not assign TPQs based on any particular accident scenario or any specific handling situation. Instead, EPA chose to rank the chemicals against each other to get a relative idea of the potential accidental release significance or hazard associated with that chemical; a chemical with a ''low'' rank is more hazardous than one with a ''high'' rank (''hazard'' being a combination of toxicity and dispersion potential). EPA chose not to rank only by toxicity because a highly toxic chemical such as IPDI (a non-volatile substance) would be assigned a very low TPQ while a slightly less toxic but volatile substance would be assigned a greater TPQ.

Hüls also argues that because IPDI's toxicity was determined using an aerosol form of the chemical, the dispersion factor portion of the TPQ should consider the aerosol form rather than liquid volatilization based on boiling point. The Agency disagrees with this comment. Substances were added to the EHS list if dermal, oral, or inhalation toxicity test results meet certain toxicity criteria. While it is likely that toxic gases are listed because of inhalation toxicity, liquids and solids could be listed not only because of inhalation toxicity but also dermal or oral toxicity. In an accidental release scenario, hazardous chemicals could be dispersed in many ways generating human exposure, potentially via all three pathways (*e.g.* via inhalation, oral or dermal exposure). Consequently, for purposes of determining the TPQ, the Agency chose to focus on the substance's physical state to determine the likely route of exposure that might result from an accidental release rather than the state of the substance used for toxicity testing. In other words, gases and liquids would become airborne due to volatilization while solids become airborne due to the force of an event such as an explosion. Certainly, liquids could become airborne as a result of an explosion generating an exposure not only to vapor but to aerosols that would be generated by the force of that explosion. If the Agency had used this approach to determine dispersability, all liquid substances would essentially have the same dispersion potential and would be ranked by their toxicity. In this case, the TPQ for IPDI would end up being very low due to its high acute toxicity level in comparison to other liquids. EPA notes that Hüls' comment does not suggest a way to determine a relative ranking using an aerosol form, but simply argues that there is no basis for a TPQ of anything less than the maximum of 10,000 pounds. In fact, there is no basis for a TPQ of 10,000 pounds while there is ample toxicity data to suggest a much lower TPQ.

EPA acknowledges that releases of IPDI, and any other chemical on the EHS list, will not always result in an off-site consequence. However, since the requirement under EPCRA section 302 is for facilities to be included in the local preparedness efforts, the level of effort necessary for the facility to comply with section 302 is up to local planners. It is not possible for EPA to determine how all of the chemicals on the EHS list will behave during all potential processing and accidental release scenarios (including the chemical being involved in a building fire or explosion). EPA agrees that test data may be obtained by exposing the chemical to extreme conditions, however, these results would demonstrate that IPDI can be toxic under certain circumstances at relatively low concentration levels. TPQs including that for IPDI, are set based on toxicity and ability to disperse, relative to the other chemicals on the EHS list. While EPA takes toxicity and the chemical's ability to be dispersed into account in determining the TPQ, EPA believes the actual threat of off-site consequences posed by the actual processing conditions at the facility is best determined at the local level. If it is extremely unlikely that chemicals at a specific facility could cause off-site impacts, the local community may request little effort from the facility. Site specific factors (including whether the chemical is processed under high pressures and temperatures) can be discussed at this level.

The petitioner has also argued that since IPDI is manufactured and processed in closed vessels which are not under pressure, there is virtually no likelihood that it would disperse beyond the site of release. EPA disagrees. Even if Hüls' America does manufacture or process in closed vessels which are not under pressure, there may be some end users of this chemical that may use it for other manufacturing processes which may be at high pressure or temperature or the closed vessels could be exposed to fire. EPA is not saying that the TPQ that is now being set for IPDI (500 pounds) or any quantity for that matter, will definitely travel off-site and cause major consequences. As EPA stated in the April 1987 final rule and the technical support documents supporting that rule, TPQs are for reporting purposes only, in other words, to provide information to local planning committees to focus their emergency planning and response efforts.

It is important to note that the Agency considered other methods for the development of the threshold planning quantities. After considerable analysis and review of public comments on the proposed rule, the Agency chose to develop the TPQs using a relative ranking method that considers the toxicity and the chemical's ability to become airborne. The other methods had more limitations than this approach. The first method considered involved predicting a specific quantity for each chemical that, if accidentally released, would result in significant acute health effects at a fixed distance from the release site. However, this approach is affected greatly by site-specific factors, such as the potential release scenario, weather and dispersion conditions, and processing conditions. Therefore, the Agency decided not to adopt this approach. Another method that the Agency considered was to assign categories of threshold planning quantities to groups of chemicals ranked by their toxicity. As noted above, those chemicals that are highly toxic (such as IPDI) and relatively non-volatile could be assigned a very low TPQ while a slightly less toxic but volatile substance would be assigned a greater TPQ. Since this does not seem appropriate from an emergency planning and preparedness perspective, the Agency rejected this approach. One last method considered was to assign a default quantity of 2 pounds for each EHS. If the Agency did not take any action to assign a TPQ for an EHS, the statutory threshold of 2 pounds would have been effective. Of these four methods, the Agency believes that the relative ranking method using the toxicity of the chemical, its molecular weight and boiling point to rank and assign a threshold planning quantity, was the most appropriate. For a more detailed explanation of each of these methods, see the November 17, 1986 interim final rule, the April 22, 1987 final rule, and the technical support documents.

V. 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 the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (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 entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. This action affects only one chemical and in fact, reduces the burden on those facilities that handle IPDI in small quantities.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final rule will relieve burden for some facilities that handle IPDI in small quantities. Currently, the threshold planning quantity for IPDI is 100 pounds. It is now being raised to 500 pounds. Therefore, we conclude that this action does not impose any new information collection burden, rather, it will relieve some burden.

This rule will not provide a significant amount of burden reduction, however, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR Part 355 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0092, (EPA ICR No. 1395.05). Copies of the ICR document(s) may be obtained from Susan Auby, by mail at U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, by email at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. Include the ICR and /or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will relieve some small entities handling IDPI in small quantities.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The revised threshold for IDPI, which will raise it from 100 pounds to 500 pounds, may relieve many small entities that handle this chemical in small amounts from the reporting requirement. We have therefore concluded that this rule will relieve regulatory burden for affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must

provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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 will provide burden relief, and doesn't impose additional costs to State, local, or tribal governments, or to the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule will provide burden relief to regulated entities.

E. Executive Order 13132: Federalism

Executive Order 13132, ''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. This rule does not impose a substantial economic burden on state and local governments, nor would it restrict state and local governments from establishing other more stringent, regulations. Thus, Executive Order 13132 does not apply to this rule.

The purpose of this rule is to correct the TPQ for IPDI based on EPA's existing methodology. This rule relieves some burden on the local governments in preparing emergency response plans since fewer facilities may be now subject to reporting this chemical. This action does not prevent any state governments from enforcing more stringent standards for this chemical.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

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

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

The purpose of this rule is to correct the TPQ for IPDI based on EPA's existing methodology. This rule relieves some burden on tribal governments in preparing emergency response plans since fewer facilities may be now subject to reporting this chemical. This action does not prevent tribal governments from enforcing more stringent standards for this chemical.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because (a) it is not an economically significant regulatory action as defined by Executive Order 12866 and (b) the environmental health or safety risks addressed by this action do not have a disproportionate effect on children.

EPA is not modifying its methodology for establishing threshold planning quantities. The Agency is correcting the TPQ for IPDI based on its existing methodology. Therefore, this action does not have a disproportionate effect on children. As previously described, the TPQ drives a reporting requirement; such reporting provides chemical hazard information for emergency preparedness and planning. Raising the TPQ for IPDI may result in less overall reporting information for IPDI. However, in the context of all information collected, IPDI information will be properly scaled to other hazards that may be present in a community allowing a community to properly focus its emergency preparedness and planning efforts as needed. Therefore, this action does not have a disproportionate effect on children.

H. Executive Order 13211 (Energy Effects)

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

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. EPA is establishing the correct TPQ for IPDI using existing methodologies. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. In today's action, the Agency is correcting the TPQ for IPDI based on its existing methodology, thereby providing burden relief to those facilities that handle IPDI in small quantities. EPA is not changing its methodology for establishing threshold planning quantities. Any local effects must be considered on a case-by-case basis at local communities. State and local officials will continue to get information on this chemical from facilities, but can better focus on chemicals that are more hazardous. Therefore, this particular action will not have any impact on any minority or low-income populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 8, 2003.

List of Subjects in 40 CFR Part 355

Environmental Protection, Air pollution control, Chemicals, Hazardous substances, Reporting and recordkeeping requirements, Superfund.

Dated: September 2, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons set out in the preamble, part 355 of title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

■ 1. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

Appendix A—[Amended]

■ 2. In Appendix A the table is amended by revising the entry for CAS No. ''4098–71–9'' (chemical name—Isophorone Diisocyanate) to read as follows:

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
* *	* * *		*	*
4098–71–9	Isophorone Diisocyanate.	.....	100	500
* *	* * *		*	*

■ 3. In Appendix B the table is amended by revising the entry for CAS No. ''4098—71–9'' (chemical name—isophorone diisocyanate) to read as follows:

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS No. Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
* *	* * *		*	*
4098–71–9	Isophorone Diisocyanate.	.....	100	500
* *	* * *		*	*

[FR Doc. 03–22770 Filed 9–5–03; 8:45 am]

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Federal Register

Monday,
September 8, 2003

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Special Depreciation Allowance; Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9091]

RIN 1545–BC19

Special Depreciation Allowance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property) and the depreciation of computer software subject to section 167. Specifically, these regulations provide guidance regarding the additional first year depreciation allowance provided by sections 168(k) and 1400L(b) for certain MACRS property and computer software. The regulations reflect changes to the law made by the Job Creation and Worker Assistance Act of 2002 and the Jobs and Growth Tax Relief Reconciliation Act of 2003. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Dates:* These regulations are effective September 8, 2003.

Applicability Dates: For dates of applicability, *see* §§ 1.167(a)–14T(e), 1.168(d)–1T(d), 1.168(k)–1T(g), 1.169–3T(g), and 1.1400L(b)–1T(g).

FOR FURTHER INFORMATION CONTACT: Douglas Kim, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 to provide regulations under sections 168(k) and 1400L(b) of the Internal Revenue Code (Code). Sections 168(k) and 1400L(b) were added to the Code by, respectively, sections 101 and 301(a) of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21), and were modified by section 201 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Public Law 108–27 (117 Stat. 752).

Explanation of Provisions

Background

Section 167 allows as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear of property used in a trade or business or held for the production of income. The depreciation allowable for tangible, depreciable property placed in service after 1986 generally is determined under section 168 (MACRS property). The depreciation allowable for computer software that is placed in service after August 10, 1993, and is not an amortizable section 197 intangible is determined under section 167(f)(1).

Section 168(k)(1) allows a 30-percent additional first year depreciation deduction for qualified property acquired after September 10, 2001, and, in most cases, placed in service before January 1, 2005. Section 168(k)(4) allows a 50-percent additional first year depreciation deduction for 50-percent bonus depreciation property acquired after May 5, 2003, and, in most cases, placed in service before January 1, 2005. Section 1400L(b) allows a 30-percent additional first year depreciation deduction for qualified New York Liberty Zone property (Liberty Zone property) acquired after September 10, 2001, and placed in service before January 1, 2007 (January 1, 2010, in the case of qualifying nonresidential real property and residential rental property).

Scope

The regulations provide the requirements that must be met for depreciable property to qualify for the additional first year depreciation deduction provided by sections 168(k) and 1400L(b). Further, the regulations instruct taxpayers how to determine the additional first year depreciation deduction and the amount of depreciation otherwise allowable for this property.

Property Eligible for the Additional First Year Depreciation Deduction

The regulations provide that depreciable property must meet four requirements to be qualified property under section 168(k)(2) (property for which the 30-percent additional first year depreciation deduction is allowable) or 50-percent bonus depreciation property under section 168(k)(4) (property for which the 50-percent additional first year depreciation deduction is allowable). These requirements are: (1) The depreciable property must be of a specified type; (2) the original use of the depreciable property must commence with the taxpayer after September 10, 2001, for qualified property or after May 5, 2003, for 50-percent bonus depreciation property; (3) the depreciable property must be acquired by the taxpayer within a specified time period; and (4) the depreciable property must be placed in service by a specified date. These requirements are more fully discussed below.

Property of a Specified Type

The regulations provide that qualified property or 50-percent bonus depreciation property must be one of the following: (1) MACRS property that has a recovery period of 20 years of less; (2) computer software as defined in, and depreciated under, section 167(f)(1); (3) water utility property as defined in section 168(e)(5) and depreciated under section 168; or (4) qualified leasehold improvement property depreciated under section 168. Because the additional first year depreciation deduction applies to MACRS property that is depreciated under the general depreciation system (GDS) or would be depreciated under the GDS but for an alternative depreciation system (ADS) election made by the taxpayer, the regulations provide that for purposes of determining the eligibility of MACRS property as qualified property or 50-percent bonus depreciation property, the recovery period applicable for the MACRS property under section 168(c) of the GDS is used regardless of any election made by the taxpayer to depreciate the class of property under the ADS of section 168(g). Further, with respect to qualified leasehold improvement property, the regulations define those improvements specified in section 168(k)(3)(B) that are not considered as qualified leasehold improvement property.

The regulations also provide that qualified property or 50-percent bonus depreciation property does not include: (1) property excluded from the application of section 168 as a result of section 168(f); (2) property that is required to be depreciated under the ADS; (3) any class of property for which the taxpayer elects not to deduct the 30-percent or 50-percent additional first year depreciation; or (4) qualified New York Liberty Zone leasehold improvement property as defined in section 1400L(c).

Property is required to be depreciated under the ADS if the property is described under section 168(g)(1)(A) through (D) or if other provisions of the Code require depreciation for the property to be determined under the ADS (for example, section 263A(e)(2)(A) or section 280F(b)(1)). Thus, MACRS property for which the taxpayer makes an election under section 168(g)(7) to depreciate the property under the ADS is eligible for the additional first year

depreciation deduction (assuming all other requirements are met).

With respect to the election out of the additional first year depreciation deduction, a taxpayer may elect out of the 30-percent additional first year depreciation deduction for any class of qualified property. For any class of 50-percent bonus depreciation property, a taxpayer may elect either to deduct the 30-percent, instead of the 50-percent, additional first year depreciation deduction or to deduct no additional first year depreciation deduction. The regulations provide the rules for making these elections and also define what is a class of property for purposes of the elections.

Original Use

Pursuant to section 168(k)(2)(A)(ii), the regulations provide that qualified property is property the original use of which commences with the taxpayer after September 10, 2001. Further, pursuant to section 168(k)(4)(B)(i), the regulations provide that 50-percent bonus depreciation property is property the original use of which commences with the taxpayer after May 5, 2003. The regulations provide that the original use generally means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, new property initially used by a taxpayer for personal use and then subsequently converted by the taxpayer for use in its trade or business satisfies the original use requirement. However, new property acquired by a taxpayer for personal use and then subsequently acquired by a different taxpayer for use in its trade or business does not satisfy the original use requirement.

Likewise, additional capital expenditures incurred by a taxpayer to recondition or rebuild property acquired or owned by the taxpayer satisfies the original use requirement. However, the cost of reconditioned or rebuilt property acquired by the taxpayer does not satisfy the original use requirement. The question of whether property is reconditioned or rebuilt property is a question of fact. The regulations provide a safe harbor that property containing used parts will not be treated as reconditioned or rebuilt if the cost of the used parts is not more than 20 percent of the total cost of the property. *See* Rev. Rul. 68–111 (1968–1 C.B. 29).

The regulations also provide special rules for certain sale-leaseback transactions and syndication transactions. If qualified property is originally placed in service after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service after May 5, 2003, by a person and the property is involved in a sale-leaseback transaction described in section 168(k)(2)(D)(ii), the taxpayer-lessor is considered the original user of the property. Likewise, if qualified property is originally placed in service by a lessor after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service by a lessor after May 5, 2003, and is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor, and the user of the property does not change during this three-month period, the purchaser of the property in the last sale is considered the original user of the property.

The regulations also provide that if in the ordinary course of its business a taxpayer sells fractional interests in qualified property or 50-percent bonus depreciation property to unrelated third parties, each first fractional owner of the property is considered as the original user of its proportionate share of the property. Furthermore, if a taxpayer uses the qualified property or the 50-percent bonus depreciation property before all of the fractional interests are sold and the property continues to be held primarily for sale by the taxpayer, the original use of any fractional interest sold to an unrelated third party subsequent to the taxpayer's use begins with the first purchaser of that interest.

Acquisition of Property

Pursuant to section 168(k)(2)(A)(iii), the regulations provide that qualified property is property: (1) Acquired by the taxpayer after September 10, 2001, and before January 1, 2005, but only if no written binding contract for the acquisition of the property was in effect before September 11, 2001; or (2) acquired by the taxpayer pursuant to a written binding contract that was entered into after September 10, 2001, and before January 1, 2005. Further, pursuant to section 168(k)(4)(B)(ii), the regulations provide that 50-percent bonus depreciation property is property acquired by the taxpayer after May 5, 2003, and before January 1, 2005, but only if no written binding contract for the acquisition of the property was in effect before May 6, 2003.

The regulations define a binding contract as any contract that is enforceable under State law against the taxpayer or a predecessor, and does not limit damages to a specified amount. However, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. Further, the fact that there will be little or no damages because the contract price does not significantly differ from the fair market value will not be taken into account in determining whether a contract limits damages.

The regulations also provide that a contract is binding even if the contract is subject to a condition, as long as the condition is not within the control of either one of the parties or a predecessor. Further, an option to either acquire or sell property is not treated as a binding contract.

The regulations also provide that a binding contract does not include a supply agreement or similar agreement, if the amount and design specifications of the property to be purchased have not been specified. In this case, the contract is not treated as a binding contract until both the amount and design specifications are specified.

With respect to self-constructed property, the regulations provide that the property acquisition requirement is met if a taxpayer manufactures, constructs, or produces qualified property or 50-percent bonus depreciation property for its own use and such manufacturing, construction, or production began after, respectively, September 10, 2001, or May 5, 2003, and before January 1, 2005. Further, property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into before the manufacture, construction, or production of the property begins is considered to be manufactured, constructed, or produced by the taxpayer.

The regulations also define when construction begins. Construction of qualified property or 50-percent bonus depreciation property begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature has begun depends on the facts and circumstances. The regulations, however, provide a safe harbor that physical work of a significant nature has begun when the taxpayer incurs or pays more than 10 percent of the total cost of the property (excluding the cost of any land and preliminary activities).

The regulations also provide rules for a contract to acquire, or for the manufacture, construction, or production of, a component of the larger self-constructed property. If a binding contract to acquire a component was in

effect, or the manufacture, construction, or production of a component began, before September 11, 2001, for qualified property or before May 6, 2003, for 50-percent bonus depreciation property, the component does not qualify for the additional first year depreciation deduction. Similarly, if a binding contract to acquire a component was in effect, or the manufacture, construction, or production of a component began, before September 11, 2001, for qualified property or before May 6, 2003, for 50-percent bonus depreciation property, but the manufacture, construction, or production of the larger self-constructed property began after September 10, 2001, for qualified property, or after May 5, 2003, for 50-percent bonus depreciation property, and before January 1, 2005, the larger self-constructed property qualifies for the additional first year depreciation deduction (assuming all other requirements are met) but the component does not. Additionally, if the manufacture, construction, or production of the larger self-constructed property began before September 11, 2001, for qualified property or before May 6, 2003, for 50-percent bonus depreciation property, the larger self-constructed property and any acquired or self-constructed component related to the larger self-constructed property do not qualify for the 30-percent or 50-percent additional first year depreciation deduction. However, if the binding contract to acquire the component was entered into, or the manufacture, construction, or production of the component began, after September 10, 2001, for qualified property, or after May 5, 2003, for 50-percent bonus depreciation property, and before January 1, 2005, but the manufacture, construction, or production of the larger self-constructed property begins after December 31, 2004, the component qualifies for the additional first year depreciation deduction (assuming all other requirements are met) but the larger self-constructed property does not.

The regulations provide rules for when certain acquired or self-constructed property will not meet the acquisition date requirement (disqualified transactions). When the user of property as of the date on which the property was originally placed in service, or a related party to the user, acquired, or had a written binding contract in effect for the acquisition of, the property at any time before September 11, 2001, or before May 6, 2003, as applicable, the property does not qualify for the 30-percent or 50-percent additional first year depreciation deduction. Similarly, property manufactured, constructed, or produced for the taxpayer or a related party does not qualify for the 30-percent or 50-percent additional first year depreciation deduction if the manufacture, construction, or production began at any time before September 11, 2001, or before May 6, 2003, as applicable. For this purpose, persons are related if they have a relationship specified in section 267(b) or 707(b).

Placed-in-Service Date

Pursuant to section 168(k)(2)(A)(iv) and 168(k)(4)(B)(iii), the regulations provide that qualified property or 50-percent bonus depreciation property is property that is placed in service by the taxpayer before January 1, 2005. However, the placed in service date of January 1, 2005, is extended for one year to January 1, 2006, for property described in section 168(k)(2)(B).

The regulations also provide special rules for sale-leaseback transactions and syndication transactions. If qualified property is originally placed in service after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service after May 5, 2003, by a person and is involved in a sale-leaseback transaction described in section 168(k)(2)(D)(ii), the property is treated as originally placed in service by the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the sale-leaseback. Likewise, if qualified property is originally placed in service by a lessor after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service by a lessor after May 5, 2003, and is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor, and the user of the property does not change during this three-month period, the property is treated as originally placed in service not earlier than the date of the last sale by the purchaser of the property in the last sale.

Special rules also are provided for certain nonrecognition transactions. In the case of a technical termination of a partnership under section 708(b)(1)(B), qualified property or 50-percent bonus depreciation property placed in service by the terminated partnership during the taxable year of termination is treated as originally placed in service by the new partnership on the date the qualified property or the 50-percent bonus depreciation property is contributed by the terminated partnership to the new partnership. Additionally, qualified property or 50-percent bonus depreciation property transferred in a ''step-in-the-shoes'' transaction described in section 168(i)(7) in the taxable year the qualified property or the 50-percent bonus depreciation property is placed in service by the transferor is treated as originally placed in service on the date the transferor placed the qualified property or the 50-percent bonus depreciation property in service.

Liberty Zone Property

Generally, the requirements for determining the eligibility of property for the additional first year depreciation deduction for Liberty Zone property provided by section 1400L(b) are similar to the requirements for the 30-percent additional first year depreciation deduction for qualified property provided by section 168(k)(1). There are, however, some differences that are discussed below.

The regulations provide that Liberty Zone property includes the same property that is described as qualified property or 50-percent bonus depreciation property for purposes of section 168(k). In addition, Liberty Zone property includes nonresidential real property or residential rental property to the extent such property rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the terrorist attacks of September 11, 2001. Property is treated as replacing destroyed or condemned property if, as part of an integrated plan, the property replaces real property that is included in a continuous area that includes real property destroyed or condemned. Real property is considered to have been destroyed or condemned only if an entire building or structure was destroyed or condemned as a result of the terrorist attacks of September 11, 2001.

While Liberty Zone property includes the same property that is described as qualified property or 50-percent bonus depreciation property for purposes of section 168(k), only one additional first year depreciation deduction is allowable for the property. Thus, pursuant to section 1400L(b)(2)(C)(i), the regulations provide that if the 30-percent or 50-percent additional first year depreciation deduction under section 168(k) applies to the property, it is not Liberty Zone property.

Pursuant to section 1400L(b)(2)(A)(ii), property is Liberty Zone property if substantially all of the use of the property is in the Liberty Zone and the property is used in the active conduct of a taxpayer's trade or business in the

Liberty Zone. The regulations provide that the term *substantially all* means 80 percent or more.

In addition to the application of the original use rules for qualified property, the regulations provide that used property will satisfy the original use requirement for Liberty Zone property if the used property has not been previously used within the Liberty Zone.

Pursuant to section 1400L(b)(2)(A)(iv), the regulations provide that Liberty Zone property is property that is acquired by the taxpayer by purchase after September 10, 2001, but only if no written binding contract for the acquisition of the property was in effect before September 10, 2001. The term *by purchase* is defined in section 179(d) and § 1.179–4(c). The regulations also provide that the binding contract rules and the disqualified transactions rules for qualified property apply to Liberty Zone property. The self-construction rules for qualified property also apply to self-constructed Liberty Zone property except that the requirement to begin the manufacture, construction, or production of the qualified property before January 1, 2005, does not apply to Liberty Zone property.

Finally, the regulations provide that Liberty Zone property generally must be acquired by a taxpayer after September 10, 2001, and placed in service by the taxpayer before January 1, 2007. However, qualifying nonresidential real property and residential rental property must be acquired by a taxpayer after September 10, 2001, and placed in service by the taxpayer before January 1, 2010.

Computation of Additional First Year Depreciation Deduction and Otherwise Allowable Depreciation

The allowable additional first year depreciation deduction for qualified property or Liberty Zone property is equal to 30 percent of the unadjusted depreciable basis (as defined in § 1.168(k)-1T(a)(2)(iii)) of the property. The allowable additional first year depreciation deduction for 50-percent bonus depreciation property is equal to 50 percent of the unadjusted depreciable basis (as defined in § 1.168(k)-1T(a)(2)(iii)) of the property. For qualified property or 50-percent bonus depreciation property described in section 168(k)(2)(B) (property having a longer production period), the unadjusted depreciable basis (as defined in § 1.168(k)-1T(a)(2)(iii)) of the property is limited to the property's basis attributable to manufacture, construction, or production of the property before January 1, 2005.

The additional first year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes. However, for alternative minimum tax purposes, the amount of the additional first year depreciation deduction is based on the unadjusted depreciable basis of the property for alternative minimum tax purposes. The amount of the additional first year depreciation deduction is not affected by a taxable year of less than 12 months for either regular or alternative minimum tax purposes.

Before determining the amount of depreciation otherwise allowable for qualified property, 50-percent bonus depreciation property, or Liberty Zone property, the taxpayer must first reduce the unadjusted depreciable basis (as defined in § 1.168(k)-1T(a)(2)(iii)) of the property by the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater (the remaining adjusted depreciable basis). Then, the remaining adjusted depreciable basis is depreciated using the applicable depreciation provisions of the Code for the property (that is, section 168 for MACRS property and section 167(f)(1) for computer software). This amount of depreciation is allowed for both regular tax and alternative minimum tax purposes, and is affected by a taxable year of less than 12 months. However, for alternative minimum tax purposes, the amount of depreciation allowed is determined by calculating the remaining adjusted depreciable basis of the property for alternative minimum tax purposes and using the same depreciation method, recovery period, and convention that applies to the property for regular tax purposes. If a taxpayer uses the optional depreciation tables in Rev. Proc. 87–57 (1987–2 C.B. 687) to compute depreciation for qualified property, 50-percent bonus depreciation property, or Liberty Zone property that is MACRS property, the regulations also provide that the remaining adjusted depreciable basis of the property is the basis to which the annual depreciation rates in those tables apply.

Special Rules

The regulations also provide rules for the following situations: (1) Qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service and disposed of in the same taxable year; (2) redetermination of basis of qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (3) recapture of additional first year depreciation for purposes of section 1245 and section 1250; (4) a certified pollution control facility that is qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (5) like-kind exchanges and involuntary conversions of qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (6) a change in use of qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (7) the computation of earnings and profits; (8) the increase in the limitation of the amount of depreciation for passenger automobiles; and (9) the step-up in basis due to a section 754 election.

With respect to qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service and disposed of in the same taxable year, the regulations provide that the additional first year depreciation deduction is not allowed. This rule is consistent with the general rule in § 1.168(d)-1(b)(3)(ii) for MACRS property placed in service and disposed of in the same taxable year. However, as previously discussed, the additional first year depreciation deduction is allowable for qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service by a terminated partnership in the same taxable year in which a technical termination of the partnership occurs. In this case, the new partnership, and not the terminated partnership, claims the additional first year depreciation deduction. Similarly, the additional first year depreciation deduction is allowable for qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service by a transferor in the same taxable year in which the property is transferred in a step-in-the-shoes transaction described in section 168(i)(7). In this case, the additional first year depreciation deduction for the transferor's taxable year in which the property is placed in service is allocated between the transferor and the transferee on a monthly basis. The allocation shall be made in accordance with the rules in § 1.168(d)-1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee.

The regulations also provide rules for a redetermination of basis of qualified property, 50-percent bonus depreciation property, or Liberty Zone property (for example, due to a contingent purchase price or a discharge of indebtedness). If the unadjusted depreciable basis of the property is redetermined by the date on which the property must be last placed in service to meet the placed-in-service date requirement in section 168(k)(2)(A)(iv), 168(k)(4)(B)(iii), or

1400L(b)(2)(A)(v), the additional first year depreciation deduction allowable for the property is redetermined. If the redetermination of basis occurs after that date, the additional first year depreciation deduction is not redetermined. The regulations instruct taxpayers how to determine the depreciation adjustment for an increase or decrease in basis. If there is an increase in basis, the taxpayer claims the additional first year depreciation deduction attributable to the increase in the taxable year in which the increase occurs. If there is a decrease in basis, the taxpayer includes in its income the excess additional first year depreciation deduction attributable to the decrease in the taxable year in which the decrease occurs.

Because the additional first year depreciation deduction is not a ratable method of computing depreciation, the regulations provide that the additional first year depreciation deduction is not a straight line method for purposes of section 1250. Thus, the additional first year depreciation deduction is an accelerated depreciation method for purposes of determining recapture under section 1250. For purposes of section 1245, all depreciation deductions are subject to recapture.

With respect to a certified pollution control facility that is qualified property, 50-percent bonus depreciation property, or Liberty Zone property, the regulations provide that the additional first year depreciation deduction is allowable in the facility's placed in service year even if the taxpayer elects to amortize the basis of the facility under section 169 in the placed-in-service year. The regulations also amend the regulations under section 169 to provide that the amortizable basis under section 169 must be reduced by the additional first year depreciation deduction allowed or allowable, whichever is greater, applicable to the facility.

With respect to MACRS property or computer software acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033, the regulations provide that the carryover basis and the excess basis, if any, of the acquired MACRS property or acquired computer software are eligible for the additional first year depreciation deduction if the acquired MACRS property or acquired computer software is qualified property, 50-percent bonus depreciation property, or Liberty Zone property. However, if qualified property, 50-percent bonus depreciation property, or Liberty Zone property is placed in service and then disposed of in an exchange or involuntary conversion in the same taxable year, the unadjusted depreciable basis of the exchanged or involuntarily converted property is not eligible for the additional first year depreciation deduction.

The regulations also provide rules when the use of qualified property, 50-percent bonus depreciation property, or Liberty Zone property changes in the hands of the same taxpayer during the placed-in-service year or a subsequent taxable year. The regulations provide that no additional first year depreciation deduction is allowed for qualified property, 50-percent bonus depreciation property, or Liberty Zone property converted to personal use in the placed-in-service year. However, property converted to business or income-producing use is eligible for the additional first year depreciation deduction in the taxable year the property is converted to business or income-producing use (assuming all the requirements are met). With respect to a change in the use of depreciable property subsequent to the placed-in-service year, the regulations provide that the change in the use will not affect the determination of whether the property was eligible for the additional first year depreciation deduction in the taxable year the property was originally placed-in-service. Thus, if property is not qualified property in its placed-in-service year and a change in the use in a subsequent taxable year would result in the property being qualified property, no additional first year depreciation deduction is allowed for the property. Likewise, if property is qualified property in its placed-in-service year and a change in the use in a subsequent taxable year would result in the property no longer being qualified property, the additional first year depreciation deduction allowable for the property in its placed-in-service year is not redetermined.

Furthermore, the regulations provide that the additional first year depreciation deduction is not allowable for purposes of computing earnings and profits. Pursuant to section 168(k)(2)(E) and (4)(D), the regulations also provide the increase in the limitation under section 280F(a)(1) of the amount of depreciation for certain passenger automobiles that are qualified property or 50-percent bonus depreciation property. Finally, the regulations provide that any increase in basis of qualified property, 50-percent bonus depreciation property, or Liberty Zone property due to a section 754 election generally is not eligible for the additional first year depreciation deduction because any such increase in basis of property does not satisfy the original use requirement.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Douglas H. Kim, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.167(a)–14 is amended by:

■ 1. Revising paragraphs (b)(1) and (e)(2).

■ 2. Revising paragraph heading (e).

■ 3. Adding paragraph (e)(3).

The additions and revisions read as follows:

§ 1.167(a)–14 Treatment of certain intangible property excluded from section 197.

* * * * *

(b) * * *

(1) *In general.* [Reserved]. For further guidance, see § 1.167(a)–14T(b)(1).

* * * * *

(e) *Effective dates* * * *

(2) *Change in method of accounting.* [Reserved]. For further guidance, see § 1.167(a)–14T(e)(2).

(3) *Qualified property, 50-percent bonus depreciation property, qualified New York Liberty Zone property, or section 179 property.* [Reserved]. For further guidance, see § 1.167(a)–14T(e)(3).

■ **Par. 3.** Section 1.167(a)–14T is added to read as follows:

§ 1.167(a)–14T Treatment of certain intangible property excluded from section 197 (temporary).

(a) For further guidance, see § 1.167(a)–14(a).

(b) *Computer software*—(1) *In general.* The amount of the deduction for computer software described in section 167(f)(1) and § 1.197–2(c)(4) is determined by amortizing the cost or other basis of the computer software using the straight line method described in § 1.167(b)–1 (except that its salvage value is treated as zero) and an amortization period of 36 months beginning on the first day of the month that the computer software is placed in service. Before determining the amortization deduction allowable under this paragraph (b), the cost or other basis of computer software that is section 179 property, as defined in section 179(d)(1)(A)(ii), must be reduced for any portion of the basis the taxpayer properly elects to treat as an expense under section 179. In addition, the cost or other basis of computer software that is qualified property under section 168(k)(2) or § 1.168(k)–1T, 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)–1T, or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)–1T, must be reduced by the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater, under section 168(k) or section 1400L(b) for the computer software. If costs for developing computer software that the taxpayer properly elects to defer under section 174(b) result in the development of property subject to the allowance for depreciation under section 167, the rules of this paragraph (b) will apply to the unrecovered costs. In addition, this paragraph (b) applies to the cost of separately acquired computer software if the cost to acquire the software is separately stated and the cost is required to be capitalized under section 263(a).

(b)(2) through (e)(1) For further guidance, *see* § 1.167(a)–14(b)(2) through (e)(1).

(e)(2) *Change in method of accounting. See* § 1.197–2(l)(4) for rules relating to changes in method of accounting for property to which § 1.167(a)–14T applies. However, see § 1.168(k)–1T(g)(4) or 1.1400L(b)–1T(g)(4) for rules relating to changes in method of accounting for computer software to which the third sentence in § 1.167(a)–14T(b)(1) applies.

(3) *Qualified property, 50-percent bonus depreciation property, qualified New York Liberty Zone property, or section 179 property.* This section also applies to computer software that is qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to computer software that is 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003. This section also applies to computer software that is section 179 property placed in service by a taxpayer in a taxable year beginning after 2002 and before 2006. This section expires on September 8, 2006.

■ **Par. 4.** Section 1.168(d)–1 is amended by:

■ 1. Revising paragraph (b)(3)(ii).

■ 2. Paragraph heading (d) is revised and the text of paragraph (d) is redesignated as paragraph (d)(1).

■ 3. Adding paragraph (d)(2).

The additions and revisions read as follows:

§ 1.168(d)–1 Applicable conventions—half-year and mid-quarter conventions.

* * * * *

(b) * * *

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.168(d)–1T(b)(3)(ii).

* * * * *

(d) *Effective dates*—(1) *In general.* * * *

(2) *Qualified property, 50-percent bonus depreciation property, or qualified New York Liberty Zone property.* [Reserved]. For further guidance, *see* § 1.168(d)–1T(d).

■ **Par. 5.** Section 1.168(d)–1T is added to read as follows:

§ 1.168(d)–1T Applicable conventions—half-year and mid-quarter conventions (temporary).

(a) through (b)(3)(i) For further guidance, *see* § 1.168(d)–1(a) through (b)(3)(i).

(b)(3)(ii) The applicable convention, as determined under this section, applies to all depreciable property (except nonresidential real property, residential rental property, and any railroad grading or tunnel bore) placed in service during the taxable year, excluding property placed in service and disposed of in the same taxable year. No depreciation deduction is allowed for property placed in service and disposed of during the same taxable year. However, *see* § 1.168(k)–1T(f)(1) for qualified property or 50-percent bonus depreciation property, and § 1.1400L(b)–1T(f)(1) for qualified New York Liberty Zone property, that is placed in service in the same taxable year in which either a partnership is terminated as a result of a technical termination under section 708(b)(1)(B) or the property is transferred in a transaction described in section 168(i)(7).

(b)(3)(iii) through (d)(1) For further guidance, *see* § 1.168(d)–1(b)(3)(iii) through (d)(1).

(d)(2) *Qualified property, 50-percent bonus depreciation property, or qualified New York Liberty Zone property.* This section also applies to qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003. This section expires on September 8, 2006.

■ **Par. 6.** Section 1.168(k)–0T is added to read as follows:

§ 1.168(k)–0T Table of contents (temporary).

This section lists the headings that appear in § 1.168(k)–1T.

§ 1.168(k)–1T Additional first year depreciation deduction (temporary).

(a) Scope and definitions.
(1) Scope.
(2) Definitions.
(b) Qualified property or 50-percent bonus depreciation property.
(1) In general.
(2) Description of qualified property or 50-percent bonus depreciation property.
(i) In general.
(ii) Property not eligible for additional first year depreciation deduction.
(A) Property that is not qualified property.
(B) Property that is not 50-percent bonus depreciation property.
(3) Original use.
(i) In general.
(ii) Conversion to business or income-producing use.
(iii) Sale-leaseback and syndication transactions.
(A) Sale-leaseback transaction.
(B) Syndication transaction.
(C) Sale-leaseback transaction followed by a syndication transaction.
(iv) Fractional interests in property.
(v) Examples.
(4) Acquisition of property.
(i) In general.
(A) Qualified property.
(B) 50-percent bonus depreciation property.
(ii) Definition of binding contract.
(A) In general.
(B) Conditions.

(C) Options.
(D) Supply agreements.
(E) Components.
(iii) Self-constructed property.
(A) In general.
(B) When does construction begin.
(C) Components of self-constructed property.
(*1*) Acquired components.
(*2*) Self-constructed components.
(iv) Disqualified transactions.
(A) In general.
(B) Related party defined.
(v) Examples.
(5) Placed-in-service date.
(i) In general.
(ii) Sale-leaseback and syndication transactions.
(A) Sale-leaseback transaction.
(B) Syndication transaction.
(C) Sale-leaseback transaction followed by a syndication transaction.
(iii) Technical termination of a partnership.
(iv) Section 168(i)(7) transactions.
(c) Qualified leasehold improvement property.
(1) In general.
(2) Certain improvements not included.
(3) Definitions.
(d) Computation of depreciation deduction for qualified property or 50-percent bonus depreciation property.
(1) Additional first year depreciation deduction.
(i) In general.
(ii) Property having a longer production period.
(iii) Alternative minimum tax.
(2) Otherwise allowable depreciation deduction.
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(ii) Alternative minimum tax.
(3) Examples.
(e) Election not to deduct additional first year depreciation.
(1) In general.
(i) Qualified property.
(ii) 50-percent bonus depreciation property.
(2) Definition of class of property.
(3) Time and manner for making election.
(i) Time for making election.
(ii) Manner of making election.
(4) Special rules for 2000 or 2001 returns.
(5) Failure to make election.
(f) Special rules.
(1) Property placed in service and disposed of in the same taxable year.
(i) In general.
(ii) Technical termination of a partnership.
(iii) Section 168(i)(7) transactions.
(iv) Examples.
(2) Redetermination of basis.
(i) Increase in basis.
(ii) Decrease in basis.
(iii) Definition.
(iv) Examples.
(3) Section 1245 and 1250 depreciation recapture.
(4) Coordination with section 169.
(5) Like-kind exchanges and involuntary conversions.
(i) Scope.
(ii) Definitions.
(iii) Computation.
(A) In general.
(B) Year of disposition and year of replacement.
(iv) Sale-leasebacks.
(v) Examples.
(6) Change in use.
(i) Change in use of depreciable property.
(ii) Conversion to personal use.
(iii) Conversion to business or income-producing use.
(A) During the same taxable year.
(B) Subsequent to the acquisition year.
(iv) Depreciable property changes use subsequent to the placed-in-service year.
(v) Examples.
(7) Earnings and profits.
(8) Limitation of amount of depreciation for certain passenger automobiles.
(9) Section 754 election.
(g) Effective date.
(1) In general.
(2) Technical termination of a partnership or section 168(i)(7) transactions.
(3) Like-kind exchanges and involuntary conversions.
(4) Change in method of accounting.
(i) Special rules for 2000 or 2001 returns.
(ii) Like-kind exchanges and involuntary conversions.

■ **Par. 7.** Section 1.168(k)–1T is added to read as follows:

§ 1.168(k)–1T Additional first year depreciation deduction (temporary).

(a) *Scope and definitions*—(1) *Scope.* This section provides the rules for determining the 30-percent additional first year depreciation deduction allowable under section 168(k)(1) for qualified property and the 50-percent additional first year depreciation deduction allowable under section 168(k)(4) for 50-percent bonus depreciation property.

(2) *Definitions.* For purposes of section 168(k) and this section, the following definitions apply:

(i) *Depreciable property* is property that is of a character subject to the allowance for depreciation as determined under section 167 and the regulations thereunder.

(ii) *MACRS property* is tangible, depreciable property that is placed in service after December 31, 1986 (or after July 31, 1986, if the taxpayer made an election under section 203(a)(1)(B) of the Tax Reform Act of 1986; 100 Stat. 2143) and subject to section 168, except for property excluded from the application of section 168 as a result of section 168(f) or as a result of a transitional rule.

(iii) *Unadjusted depreciable basis* is the basis of property for purposes of section 1011 without regard to any adjustments described in section 1016(a)(2) and (3). This basis reflects the reduction in basis for the percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income), for any portion of the basis the taxpayer properly elects to treat as an expense under section 179, and for any adjustments to basis provided by other provisions of the Internal Revenue Code and the regulations thereunder (other than section 1016(a)(2) and (3)) (for example, a reduction in basis by the amount of the disabled access credit pursuant to section 44(d)(7)). For property subject to a lease, see section 167(c)(2).

(iv) *Adjusted depreciable basis* is the unadjusted depreciable basis of the property, as defined in § 1.168(k)–1T(a)(2)(iii), less the adjustments described in section 1016(a)(2) and (3).

(b) *Qualified property or 50-percent bonus depreciation property*—(1) *In general.* Qualified property or 50-percent bonus depreciation property is depreciable property that—

(i) Meets the requirements in § 1.168(k)–1T(b)(2) (description of property);

(ii) Meets the requirements in § 1.168(k)–1T(b)(3) (original use);

(iii) Meets the requirements in § 1.168(k)–1T(b)(4) (acquisition of property); and

(iv) Meets the requirements in § 1.168(k)–1T(b)(5) (placed-in-service date).

(2) *Description of qualified property or 50-percent bonus depreciation property*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (b)(2) if the property is—

(A) MACRS property (as defined in § 1.168(k)–1T(a)(2)(ii)) that has a recovery period of 20 years or less. For purposes of this paragraph (b)(2)(i)(A) and section 168(k)(2)(B)(i)(II) and 168(k)(4)(C), the recovery period is determined in accordance with section 168(c) regardless of any election made by the taxpayer under section 168(g)(7);

(B) Computer software as defined in, and depreciated under, section 167(f)(1) and the regulations thereunder;

(C) Water utility property as defined in section 168(e)(5) and depreciated under section 168; or

(D) Qualified leasehold improvement property as defined in paragraph (c) of this section and depreciated under section 168.

(ii) *Property not eligible for additional first year depreciation deduction*—(A) *Property that is not qualified property.* For purposes of the 30-percent additional first year depreciation deduction, depreciable property will not meet the requirements of this paragraph (b)(2) if the property is—

(*1*) Described in section 168(f);

(*2*) Required to be depreciated under the alternative depreciation system of section 168(g) pursuant to section

168(g)(1)(A) through (D) or other provisions of the Internal Revenue Code (for example, property described in section 263A(e)(2)(A) or section 280F(b)(1));

(*3*) Included in any class of property for which the taxpayer elects not to deduct the 30-percent additional first year depreciation (for further guidance, see paragraph (e) of this section); or

(*4*) Qualified New York Liberty Zone leasehold improvement property as defined in section 1400L(c)(2).

(B) *Property that is not 50-percent bonus depreciation property.* For purposes of the 50-percent additional first year depreciation deduction, depreciable property will not meet the requirements of this paragraph (b)(2) if the property is—

(*1*) Described in paragraph (b)(2)(ii)(A)(*1*), (*2*), or (*4*) of this section; or

(*2*) Included in any class of property for which the taxpayer elects the 30-percent, instead of the 50-percent, additional first year depreciation deduction or elects not to deduct any additional first year depreciation (for further guidance, see paragraph (e) of this section).

(*3*) *Original use*—(i) *In general.* For purposes of the 30-percent additional first year depreciation deduction, depreciable property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer after September 10, 2001. For purposes of the 50-percent additional first year depreciation deduction, depreciable property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer after May 5, 2003. Except as provided in paragraph (b)(3)(iii) and (iv) of this section, original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, additional capital expenditures incurred by a taxpayer to recondition or rebuild property acquired or owned by the taxpayer satisfies the original use requirement. However, the cost of reconditioned or rebuilt property acquired by the taxpayer does not satisfy the original use requirement. The question of whether property is reconditioned or rebuilt property is a question of fact. For purposes of this paragraph (b)(3)(i), property that contains used parts will not be treated as reconditioned or rebuilt if the cost of the used parts is not more than 20 percent of the total cost of the property.

(ii) *Conversion to business or income-producing use.* If a taxpayer initially acquires new property for personal use and subsequently uses the property in the taxpayer's trade or business or for the taxpayer's production of income, the taxpayer is considered as the original user of the property. If a person initially acquires new property for personal use and a taxpayer subsequently acquires the property from the person for use in the taxpayer's trade or business or for the taxpayer's production of income, the taxpayer is not considered the original user of the property.

(iii) *Sale-leaseback and syndication transactions*—(A) *Sale-leaseback transaction.* If new property is originally placed in service by a person after September 10, 2001 (for qualified property), or after May 5, 2003 (for 50-percent bonus depreciation property), and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the taxpayer-lessor is considered the original user of the property.

(B) *Syndication transaction.* If new property is originally placed in service by a lessor (including by operation of paragraph (b)(5)(ii)(A) of this section) after September 10, 2001 (for qualified property), or after May 5, 2003 (for 50-percent bonus depreciation property), and is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor, and the user of the property after the last sale during the three-month period remains the same as when the property was originally placed in service by the lessor, the purchaser of the property in the last sale during the three-month period is considered the original user of the property.

(C) *Sale-leaseback transaction followed by a syndication transaction.* If a sale-leaseback transaction that satisfies the requirements in paragraph (b)(3)(iii)(A) of this section is followed by a syndication transaction that satisfies the requirements in paragraph (b)(3)(iii)(B) of this section, the original user of the property is determined in accordance with paragraph (b)(3)(iii)(B) of this section.

(iv) *Fractional interests in property.* If, in the ordinary course of its business, a taxpayer sells fractional interests in property to unrelated third parties, each first fractional owner of the property is considered as the original user of its proportionate share of the property. Furthermore, if the taxpayer uses the property before all of the fractional interests of the property are sold but the property continues to be held primarily for sale by the taxpayer, the original use of any fractional interest sold to an unrelated third party subsequent to the taxpayer's use of the property begins with the first purchaser of that fractional interest. For purposes of this paragraph (b)(3)(iv), persons are not related if they do not have a relationship described in section 267(b) or 707(b) and the regulations thereunder.

(v) *Examples.* The application of this paragraph (b)(3) is illustrated by the following examples:

Example 1. On August 1, 2002, *A* buys from *B* for $20,000 a machine that has been previously used by *B* in *B*'s trade or business. On March 1, 2003, *A* makes a $5,000 capital expenditure to recondition the machine. The $20,000 purchase price does not qualify for the additional first year depreciation deduction because the original use requirement of this paragraph (b)(3) is not met. However, the $5,000 expenditure satisfies the original use requirement of this paragraph (b)(3) and, assuming all other requirements are met, qualifies for the 30-percent additional first year depreciation deduction, regardless of whether the $5,000 is added to the basis of the machine or is capitalized as a separate asset.

Example 2. C, an automobile dealer, uses some of its automobiles as demonstrators in order to show them to prospective customers. The automobiles that are used as demonstrators by *C* are held by *C* primarily for sale to customers in the ordinary course of its business. On September 1, 2002, *D* buys from *C* an automobile that was previously used as a demonstrator by *C. D* will use the automobile solely for business purposes. The use of the automobile by *C* as a demonstrator does not constitute a ''use'' for purposes of the original use requirement and, therefore, *D* will be considered the original user of the automobile for purposes of this paragraph (b)(3). Assuming all other requirements are met, *D*'s purchase price of the automobile qualifies for the 30-percent additional first year depreciation deduction for *D*, subject to any limitation under section 280F.

Example 3. On April 1, 2000, *E* acquires a horse to be used in *E*'s thoroughbred racing business. On October 1, 2003, *F* buys the horse from *E* and will use the horse in *F*'s horse breeding business. The use of the horse by *E* in its racing business prevents the original use of the horse from commencing with *F.* Thus, *F*'s purchase price of the horse does not qualify for the additional first year depreciation deduction.

Example 4. In the ordinary course of its business, *G* sells fractional interests in its aircraft to unrelated parties. *G* holds out for sale eight equal fractional interests in an aircraft. On January 1, 2003, *G* sells five of the eight fractional interests in the aircraft to *H*, an unrelated party, and *H* begins to use its proportionate share of the aircraft immediately upon purchase. On June 1, 2003, *G* sells to *I*, an unrelated party to *G* and *H*, the remaining unsold 3/8 fractional interests in the aircraft. *H* is considered the original user as to its 5/8 fractional interest in the aircraft and *I* is considered the original user as to its 3/8 fractional interest in the aircraft. Thus, assuming all other requirements are met, *H*'s purchase price for

its 5/8 fractional interest in the aircraft qualifies for the 30-percent additional first year depreciation deduction and I's purchase price for its 3/8 fractional interest in the aircraft qualifies for the 50-percent additional first year depreciation deduction.

(4) *Acquisition of property*—(i) *In general*—(A) *Qualified property.* For purposes of the 30-percent additional first year depreciation deduction, depreciable property will meet the requirements of this paragraph (b)(4) if the property is—

(*1*) Acquired by the taxpayer after September 10, 2001, and before January 1, 2005, but only if no written binding contract for the acquisition of the property was in effect before September 11, 2001; or

(*2*) Acquired by the taxpayer pursuant to a written binding contract that was entered into after September 10, 2001, and before January 1, 2005.

(B) *50-percent bonus depreciation property.* For purposes of the 50-percent additional first year depreciation deduction, depreciable property will meet the requirements of this paragraph (b)(4) if the property is acquired by the taxpayer after May 5, 2003, and before January 1, 2005, but only if no written binding contract for the acquisition of the property was in effect before May 6, 2003.

(ii) *Definition of binding contract*—(A) *In general.* A contract is binding only if it is enforceable under State law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account. For example, if a taxpayer entered into an irrevocable written contract to purchase an asset for $100 and the contract contained no provision for liquidated damages, the contract is considered binding notwithstanding the fact that the asset had a fair market value of $99 and under local law the seller would only recover the difference in the event the purchaser failed to perform. If the contract provided for a full refund of the purchase price in lieu of any damages allowable by law in the event of breach or cancellation by the seller, the contract is not considered binding.

(B) *Conditions.* A contract is binding even if subject to a condition, as long as the condition is not within the control of either party or a predecessor. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions or because any term is to be determined by a standard beyond the control of either party. A contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding notwithstanding the fact that insubstantial terms remain to be negotiated by the parties to the contract.

(C) *Options.* An option to either acquire or sell property is not a binding contract.

(D) *Supply agreements.* A binding contract does not include a supply or similar agreement if the amount and design specifications of the property to be purchased have not been specified. The contract will not be a binding contract for the property to be purchased until both the amount and the design specifications are specified. For example, if the provisions of a supply or similar agreement state the design specifications of, and the pricing for, the property to be purchased, a purchase order under the agreement for a specific number of assets is treated as a binding contract.

(E) *Components.* A binding contract to acquire one or more components of a larger property will not be treated as a binding contract to acquire the larger property. If a binding contract to acquire the component does not satisfy the requirements of this paragraph (b)(4), the component does not qualify for the 30-percent or 50-percent additional first year depreciation deduction, as applicable.

(iii) *Self-constructed property*—(A) *In general.* If a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business (or for its production of income), the acquisition rules in paragraph (b)(4)(i) of this section are treated as met for qualified property if the taxpayer begins manufacturing, constructing, or producing the property after September 10, 2001, and before January 1, 2005, and for 50-percent bonus depreciation property if the taxpayer begins manufacturing, constructing, or producing the property after May 5, 2003, and before January 1, 2005. Property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract (as defined in paragraph (b)(4)(ii) of this section) that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business (or for its production of income) is considered to be manufactured, constructed, or produced by the taxpayer.

(B) *When does construction begin.* For purposes of paragraph (b)(4)(iii) of this section, construction of property begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. For purposes of this paragraph (b)(4)(iii)(B), physical work of a significant nature will not be considered to begin before the taxpayer incurs (in the case of an accrual basis taxpayer) or pays (in the case of a cash basis taxpayer) more than 10 percent of the total cost of the property (excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching). For example, if a retail motor fuels outlet is to be constructed on-site, construction begins when physical work of a significant nature commences at the site; that is, when work begins on the excavation for footings, pouring the pads for the outlet, or the driving of foundation pilings into the ground. Preliminary work, such as clearing a site, test drilling to determine soil condition, or excation to change the contour of the land (as distinguished from excavation for footings) does not constitute the beginning of construction. However, if a retail motor fuels outlet is to be assembled on-site from modular units constructed off-site and delivered to the site where the outlet will be used, construction begings when physical work of a significant nature commences at the off-site location.

(C) *Components of self-constructed property*—(1) *Acquired components.* If a binding contract (as defined in paragraph (b)(4)(ii) of this section) to acquire a component does not satisfy the requirements of paragraph (b)(4)(i) of this section, the component does not qualify for the 30-percent or 50-percent additional first year depreciation deduction, as applicable. A binding contract (as defined in paragraph (b)(4)(ii) of this section) to acquire one or more components of a larger self-constructed property will not preclude the larger self-constructed property from satisfying the acquisition rules in paragraph (b)(4)(iii)(A) of this section. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the 30-percent or 50-percent additional first year depreciation deduction, as applicable (assuming all other requirements are met), must not include

the unadjusted depreciable basis of any component that does not satisfy the requirements of paragraph (b)(4)(i) of this section. If the manufacture, construction, or production of the larger self-constructed property begins before September 11, 2001, for qualified property, or before May 6, 2003, for 50-percent bonus depreciation property, the larger self-constructed property and any acquired components related to the larger self-constructed property do not qualify for the 30-percent or 50-percent additional first year depreciation deduction, as applicable. If a binding contract to acquire the component is entered into after September 10, 2001, for qualified property, or after May 5, 2003, for 50-percent bonus depreciation property, and before January 1, 2005, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2005, the component qualifies for the additional first year depreciation deduction (assuming all other requirements are met) but the larger self-constructed property does not.

(2) *Self-constructed components.* If the manufacture, construction, or production of a component does not satisfy the requirements of paragraph (b)(4)(iii)(A) of this section, the component does not qualify for the 30-percent or 50-percent additional first year depreciation deduction, as applicable. However, if the manufacture, construction, or production of a component does not satisfy the requirements of paragraph (b)(4)(iii)(A) of this section, but the manufacture, construction, or production of the larger self-constructed property satisfies the requirements of paragraph (b)(4)(iii)(A) of this section, the larger self-constructed property qualifies for the 30-percent or 50-percent additional first year depreciation deduction, as applicable (assuming all other requirements are met) even though the component does not qualify for the 30-percent or 50-percent additional first year depreciation deduction. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the 30-percent or 50-percent additional first year depreciation deduction, as applicable (assuming all other requirements are met), must not include the unadjusted depreciable basis of any component that does not qualify for the 30-percent or 50-percent additional first year depreciation deduction. If the manufacture, construction, or production of the larger self-constructed property began before September 11, 2001, for qualified property, or before May 6, 2003, for 50-percent bonus depreciation property, the larger self-constructed property and any self-constructed components related to the larger self-constructed property do not qualify for the 30-percent or 50-percent additional first year depreciation deduction, as applicable. If the manufacture, construction, or production of a component begins after September 10, 2001, for qualified property, or after May 5, 2003, for 50-percent bonus depreciation property, and before January 1, 2005, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2005, the component qualifies for the additional first year depreciation deduction (assuming all other requirements are met) but the larger self-constructed property does not.

(iv) *Disqualified transactions*—(A) *In general.* Property does not satisfy the requirements of this paragraph (b)(4) if the user of the property as of the date on which the property was originally placed in service (including by operation of paragraph (b)(5)(ii), (iii), and (iv) of this section), or a related party to the user, acquired, or had a written binding contract (as defined in paragraph (b)(4)(ii) of this section) in effect for the acquisition of, the property at any time before September 11, 2001 (for qualified property), or before May 6, 2003 (for 50-percent bonus depreciation property). In addition, property manufactured, constructed, or produced for the taxpayer or a related party does not satisfy the requirements of this paragraph (b)(4) if the manufacture, construction, or production of the property for the taxpayer or a related party began at any time before September 11, 2001 (for qualified property), or before May 6, 2003 (for 50-percent bonus depreciation property).

(B) *Related party defined.* For purposes of this paragraph (b)(4)(iv), persons are related if they have a relationship specified in section 267(b) or 707(b) and the regulations thereunder.

(v) *Examples.* The application of this paragraph (b)(4) is illustrated by the following examples:

Example 1. On September 1, 2001, *J*, a corporation, entered into a written agreement with *K*, a manufacturer, to purchase 20 new lamps for $100 each within the next two years. Although the agreement specifies the number of lamps to be purchased, the agreement does not specify the design of the lamps to be purchased. Accordingly, the agreement is not a binding contract pursuant to paragraph (b)(4)(ii)(D) of this section.

Example 2. Same facts as *Example 1*. On December 1, 2001, *J* placed a purchase order with *K* to purchase 20 new model XPC5 lamps for $100 each for a total amount of $2,000. Because the agreement specifies the number of lamps to be purchased and the purchase order specifies the design of the lamps to be purchased, the purchase order placed by *J* with *K* on December 1, 2001, is a binding contract pursuant to paragraph (b)(4)(ii)(D) of this section. Accordingly, the cost of the 20 lamps qualifies for the 30-percent additional first year depreciation deduction.

Example 3. Same facts as *Example 1* except that the written agreement between *J* and *K* is to purchase 100 model XPC5 lamps for $100 each within the next two years. Because this agreement specifies the amount and design of the lamps to be purchased, the agreement is a binding contract pursuant to paragraph (b)(4)(ii)(D) of this section. Accordingly, because the agreement was entered into before September 11, 2001, any lamp acquired by *J* under this contract does not qualify for the additional first year depreciation deduction.

Example 4. On September 1, 2001, *L* began constructing an electric generation power plant for its own use. On November 1, 2002, *L* ceases construction of the power plant prior to its completion. Between September 1, 2001, and November 1, 2002, *L* incurred $3,000,000 for the construction of the power plant. On May 6, 2003, *L* resumed construction of the power plant and completed its construction on August 31, 2003. Between May 6, 2003, and August 31, 2003, *L* incurred another $1,600,000 to complete the construction of the power plant and, on September 1, 2003, *L* placed the power plant in service. None of *L*'s total expenditures of $4,600,000 qualify for the additional first year depreciation deduction because, pursuant to paragraph (b)(4)(iii)(A) of this section, *L* began constructing the power plant before September 11, 2001.

Example 5. Same facts as *Example 4* except that *L* began constructing the electric generation power plant for its own use on October 1, 2001. *L*'s total expenditures of $4,600,000 qualify for the additional first year depreciation deduction because, pursuant to paragraph (b)(4)(iii)(A) of this section, *L* began constructing the power plant after September 10, 2001, and placed the power plant in service before January 1, 2005. Accordingly, the additional first year depreciation deduction for the power plant will be $1,380,000, computed as $4,600,000 multiplied by 30 percent.

Example 6. On August 1, 2001, *M* entered into a written binding contract to acquire a new turbine. The new turbine is a component part of a new electric generation power plant that is being constructed on *M*'s behalf. The construction of the new electric generation power plant commenced in November 2001, and the new electric generation power plant was completed in November 2002. Because *M* entered into a written binding contract to acquire a component part (the new turbine) prior to September 11, 2001, pursuant to paragraph (b)(4)(iii)(C) of this section, the component part does not qualify for the additional first year depreciation deduction. However, pursuant to paragraphs (b)(4)(iii)(A) and (C) of this section, the new

plant constructed for *M* will qualify for the 30-percent additional first year depreciation deduction because construction of the new plant began after September 10, 2001, and before May 6, 2003. Accordingly, the unadjusted depreciable basis of the new plant that is eligible for the 30-percent additional first year depreciation deduction must not include the unadjusted depreciable basis of the new turbine.

Example 7. Same facts as *Example 6* except that *M* entered into the written binding contract to acquire the new turbine on September 30, 2002, and construction of the new plant commenced on August 1, 2001. Because *M* began construction of the new plant prior to September 11, 2001, pursuant to paragraphs (b)(4)(iii)(A) and (C) of this section, neither the new plant constructed for *M* nor the turbine will qualify for the additional first year depreciation deduction because self-construction of the new plant began prior to September 11, 2001.

Example 8. On September 1, 2001, *N* began constructing property for its own use. On October 1, 2001, *N* sold its rights to the property to *O*, a related party under section 267(b). Pursuant to paragraph (b)(4)(iv) of this section, the property is not eligible for the additional first year depreciation deduction because *N* and *O* are related parties and construction of the property by *N* began prior to September 11, 2001.

Example 9. On September 1, 2001, *P* entered into a written binding contract to acquire property. On October 1, 2001, *P* sold its rights to the property to *Q*, a related party under section 267(b). Pursuant to paragraph (b)(4)(iv) of this section, the property is not eligible for the additional first year depreciation deduction because *P* and *Q* are related parties and a written binding contract for the acquisition of the property was in effect prior to September 11, 2001.

Example 10. Prior to September 11, 2001, *R* began constructing an electric generation power plant for its own use. On May 1, 2003, prior to the completion of the power plant, *R* transferred the rights to own and use this power plant to *S*, an unrelated party, for $6,000,000. Between May 6, 2003, and June 30, 2003, *S*, a calendar-year taxpayer, incurred another $1,200,000 to complete the construction of the power plant and, on August 1, 2003, *S* placed the power plant in service. Because *R* and *S* are not related parties, the transaction between *R* and *S* will not be a disqualified transaction pursuant to paragraph (b)(4)(iv) of this section. Accordingly, *S*'s total expenditures of $7,200,000 for the power plant qualify for the additional first year depreciation deduction. *S*'s additional first year depreciation deduction for the power plant will be $2,400,000, computed as $6,000,000 multiplied by 30 percent, plus $1,200,000 multiplied by 50 percent. The $6,000,000 portion of the total $7,200,000 unadjusted depreciable basis qualifies for the 30-percent additional first year depreciation deduction because that portion of the total unadjusted depreciable basis was acquired by *S* after September 10, 2001, and before May 6, 2003. However, because *S* began construction to complete the power plant after May 5, 2003, the $1,200,000 portion of the total $7,200,000 unadjusted depreciable basis qualifies for the 50-percent additional first year depreciation deduction.

Example 11. On September 1, 2001, *T* acquired and placed in service equipment. On October 15, 2001, *T* sells the equipment to *U*, an unrelated party, and leases the property back from *U* in a sale-leaseback transaction. Pursuant to paragraph (b)(4)(iv) of this section, the equipment does not qualify for the additional first year depreciation deduction because *T*, the user of the equipment, acquired the equipment prior to September 11, 2001.

(5) *Placed-in-service date*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (b)(5) if the property is placed in service by the taxpayer before January 1, 2005, or, in the case of property described in section 168(k)(2)(B), is placed in service by the taxpayer before January 1, 2006.

(ii) *Sale-leaseback and syndication transactions*—(A) *Sale-leaseback transaction.* If qualified property is originally placed in service after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service after May 5, 2003, by a person and sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the property is treated as originally placed in service by the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the leaseback.

(B) *Syndication transaction.* If qualified property is originally placed in service after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service after May 5, 2003, by a lessor (including by operation of paragraph (b)(5)(ii)(A) of this section) and is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor, and the user of the property after the last sale during this three-month period remains the same as when the property was originally placed in service by the lessor, the property is treated as originally placed in service by the purchaser of the property in the last sale during the three-month period but not earlier than the date of the last sale.

(C) *Sale-leaseback transaction followed by a syndication transaction.* If a sale-leaseback transaction that satisfies the requirements in paragraph (b)(5)(ii)(A) of this section is followed by a syndication transaction that satisfies the requirements in paragraph (b)(5)(ii)(B) of this section, the placed-in-service date of the property is determined in accordance with paragraph (b)(5)(ii)(B) of this section.

(iii) *Technical termination of a partnership.* For purposes of this paragraph (b)(5), in the case of a technical termination of a partnership under section 708(b)(1)(B), qualified property or 50-percent bonus depreciation property placed in service by the terminated partnership during the taxable year of termination is treated as originally placed in service by the new partnership on the date the qualified property or the 50-percent bonus depreciation property is contributed by the terminated partnership to the new partnership.

(iv) *Section 168(i)(7) transactions.* For purposes of this paragraph (b)(5), if qualified property or 50-percent bonus depreciation property is transferred in a transaction described in section 168(i)(7) in the same taxable year that the qualified property or the 50-percent bonus depreciation property is placed in service by the transferor, the transferred property is treated as originally placed in service on the date the transferor placed in service the qualified property or the 50-percent bonus depreciation property, as applicable. In the case of multiple transfers of qualified property or 50-percent bonus depreciation property in multiple transactions described in section 168(i)(7) in the same taxable year, the placed in service date of the transferred property is deemed to be the date on which the first transferor placed in service the qualified property or the 50-percent bonus depreciation property, as applicable.

(c) *Qualified leasehold improvement property*—(1) *In general.* For purposes of section 168(k), qualified leasehold improvement property means any improvement, which is section 1250 property, to an interior portion of a building that is nonresidential real property if—

(i) The improvement is made under or pursuant to a lease by the lessee (or any sublessee) of the interior portion, or by the lessor of that interior portion;

(ii) The interior portion of the building is to be occupied exclusively by the lessee (or any sublessee) of that interior portion; and

(iii) The improvement is placed in service more than 3 years after the date the building was first placed in service by any person.

(2) *Certain improvements not included.* Qualified leasehold improvement property does not include any improvement for which the expenditure is attributable to:

(i) The enlargement of the building;

(ii) Any elevator or escalator;

(iii) Any structural component benefiting a common area; or

(iv) The internal structural framework of the building.

(3) *Definitions.* For purposes of this paragraph (c), the following definitions apply:

(i) *Building* has the same meaning as that term is defined in § 1.48–1(e)(1).

(ii) *Common area* means any portion of a building that is equally available to all users of the building on the same basis for uses that are incidental to the primary use of the building. For example, stairways, hallways, lobbies, common seating areas, interior and exterior pedestrian walkways and pedestrian bridges, loading docks and areas, and rest rooms generally are treated as common areas if they are used by different lessees of a building.

(iii) *Elevator* and *escalator* have the same meanings as those terms are defined in § 1.48–1(m)(2).

(iv) *Enlargement* has the same meaning as that term is defined in § 1.48–12(c)(10).

(v) *Internal structural framework* has the same meaning as that term is defined in § 1.48–12(b)(3)(i)(D)(iii).

(vi) *Lease* has the same meaning as that term is defined in section 168(h)(7). In addition, a commitment to enter into a lease is treated as a lease, and the parties to the commitment are treated as lessor and lessee. However, a lease between related persons is not considered a lease. For purposes of the preceding sentence, related persons are—

(A) Members of an affiliated group (as defined in section 1504 and the regulations thereunder); and

(B) Persons having a relationship described in section 267(b) and the regulations thereunder. For purposes of applying section 267(b), the language ''80 percent or more'' is used instead of ''more than 50 percent.''

(vii) *Nonresidential real property* has the same meaning as that term is defined in section 168(e)(2)(B).

(viii) *Structural component* has the same meaning as that term is defined in § 1.48–1(e)(2).

(d) *Computation of depreciation deduction for qualified property or 50-percent bonus depreciation property*—(1) *Additional first year depreciation deduction*—(i) *In general.* Except as provided in paragraph (f)(5) of this section, the allowable additional first year depreciation deduction for qualified property is determined by multiplying the unadjusted depreciable basis (as defined in § 1.168(k)–1T(a)(2)(iii)) of the qualified property by 30 percent. Except as provided in paragraph (f)(5) of this section, the allowable additional first year depreciation deduction for 50-percent bonus depreciation property is determined by multiplying the unadjusted depreciable basis (as defined in § 1.168(k)–1T(a)(2)(iii)) of the 50-percent bonus depreciation property by 50 percent. Except as provided in paragraph (f)(1) of this section, the 30-percent or 50-percent additional first year depreciation deduction is not affected by a taxable year of less than 12 months. See paragraph (f)(1) of this section for qualified property or 50-percent bonus depreciation property placed in service and disposed of in the same taxable year. See paragraph (f)(5) of this section for qualified property or 50-percent bonus depreciation property acquired in a like-kind exchange or as a result of an involuntary conversion.

(ii) *Property having a longer production period.* For purposes of paragraph (d)(1)(i) of this section, the unadjusted depreciable basis (as defined in § 1.168(k)–1T(a)(2)(iii)) of qualified property or 50-percent bonus depreciation property described in section 168(k)(2)(B) is limited to the property's unadjusted depreciable basis attributable to the property's manufacture, construction, or production after September 10, 2001 (for qualified property), or May 5, 2003 (for 50-percent bonus depreciation property), and before January 1, 2005.

(iii) *Alternative minimum tax.* The 30-percent or 50-percent additional first year depreciation deduction is allowed for alternative minimum tax purposes for the taxable year in which the qualified property or the 50-percent bonus depreciation property is placed in service by the taxpayer. The 30-percent or 50-percent additional first year depreciation deduction for alternative minimum tax purposes is based on the unadjusted depreciable basis of the property for alternative minimum tax purposes.

(2) *Otherwise allowable depreciation deduction.* (i) *In general.* Before determining the amount otherwise allowable as a depreciation deduction for the qualified property or the 50-percent bonus depreciation property for the placed-in-service year and any subsequent taxable year, the taxpayer must determine the remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property. This remaining adjusted depreciable basis is equal to the unadjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property reduced by the amount of the additional first year depreciation allowed or allowable, whichever is greater. The remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property is then depreciated using the applicable depreciation provisions under the Internal Revenue Code for the qualified property or the 50-percent bonus depreciation property. The remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property that is MACRS property is also the basis to which the annual depreciation rates in the optional depreciation tables apply (for further guidance, see section 8 of Rev. Proc. 87–57 (1987–2 C.B. 687) and § 601.601(d)(2)(ii)(*b*) of this chapter). The depreciation deduction allowable for the remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property is affected by a taxable year of less than 12 months.

(ii) *Alternative minimum tax.* For alternative minimum tax purposes, the depreciation deduction allowable for the remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property is based on the remaining adjusted depreciable basis for alternative minimum tax purposes. The remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciable property for alternative minimum tax purposes is depreciated using the same depreciation method, recovery period (or useful life in the case of computer software), and convention that apply to the qualified property or the 50-percent bonus depreciation property for regular tax purposes.

(3) *Examples.* This paragraph (d) is illustrated by the following examples:

Example 1. On March 1, 2003, *V*, a calendar-year taxpayer, purchased and placed in service qualified property that costs $1 million and is 5-year property under section 168(e). *V* depreciates its 5-year property placed in service in 2003 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. For 2003, *V* is allowed a 30-percent additional first year depreciation deduction of $300,000 (the unadjusted depreciable basis of $1 million multiplied by .30). Next, *V* must reduce the unadjusted depreciable basis of $1 million by the additional first year depreciation deduction of $300,000 to determine the remaining adjusted depreciable basis of $700,000. Then, *V*'s depreciation deduction allowable in 2003 for the remaining adjusted depreciable basis of $700,000 is $140,000 (the remaining adjusted depreciable basis of $700,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

Example 2. On June 1, 2003, *W*, a calendar-year taxpayer, purchased and placed in service 50-percent bonus depreciation property that costs $126,000. The property qualifies for the expensing election under section 179 and is 5-year property under section 168(e). *W* did not purchase any other section 179 property in 2003. *W* makes the election under section 179 for the property and depreciates its 5-year property placed in service in 2003 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. For 2003, *W* is first allowed a $100,000 deduction under section 179. Next, *W* must reduce the cost of $126,000 by the section 179 deduction of $100,000 to determine the unadjusted depreciable basis of $26,000. Then, for 2003, *W* is allowed a 50-percent additional first year depreciation deduction of $13,000 (the unadjusted depreciable basis of $26,000 multiplied by .50). Next, *W* must reduce the unadjusted depreciable basis of $26,000 by the additional first year depreciation deduction of $13,000 to determine the remaining adjusted depreciable basis of $13,000. Then, *W*'s depreciation deduction allowable in 2003 for the remaining adjusted depreciable basis of $13,000 is $2,600 (the remaining adjusted depreciable basis of $13,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(e) *Election not to deduct additional first year depreciation*—(1) *In general.* If a taxpayer makes an election under this paragraph (e), the election applies to all qualified property or 50-percent bonus depreciation property, as applicable, that is in the same class of property and placed in service in the same taxable year. The rules of this paragraph (e) apply to the following elections provided under section 168(k):

(i) *Qualified property.* A taxpayer may make an election not to deduct the 30-percent additional first year depreciation for any class of property that is qualified property placed in service during the taxable year. If this election is made, no additional first year depreciation deduction is allowable for the property placed in service during the taxable year in the class of property.

(ii) *50-percent bonus depreciation property.* For any class of property that is 50-percent bonus depreciation property placed in service during the taxable year, a taxpayer may make an election—

(A) To deduct the 30-percent, instead of the 50-percent, additional first year depreciation. If this election is made, the allowable additional first year depreciation deduction is determined as though the class of property is qualified property under section 168(k)(2); or

(B) Not to deduct any additional first year depreciation. If this election is made, no additional first year depreciation deduction is allowable for the class of property.

(2) *Definition of class of property.* For purposes of this paragraph (e), the term class of property means:

(i) Except for the property described in paragraphs (e)(2)(ii) and (iv) of this section, each class of property described in section 168(e) (for example, 5-year property);

(ii) Water utility property as defined in section 168(e)(5) and depreciated under section 168;

(iii) Computer software as defined in, and depreciated under, section 167(f)(1) and the regulations thereunder; or

(iv) Qualified leasehold improvement property as defined in paragraph (c) of this section and depreciated under section 168.

(3) *Time and manner for making election*—(i) *Time for making election.* Except as provided in paragraph (e)(4) of this section, any election specified in paragraph (e)(1) of this section must be made by the due date (including extensions) of the Federal tax return for the taxable year in which the qualified property or the 50-percent bonus depreciation property, as applicable, is placed in service by the taxpayer.

(ii) *Manner of making election.* Except as provided in paragraph (e)(4) of this section, any election specified in paragraph (e)(1) of this section must be made in the manner prescribed on Form 4562, ''Depreciation and Amortization,'' and its instructions. The election is made separately by each person owning qualified property or 50-percent bonus depreciation property (for example, for each member of a consolidated group by the common parent of the group, by the partnership, or by the S corporation). If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(4) *Special rules for 2000 or 2001 returns.* For the election specified in paragraph (e)(1)(i) of this section for qualified property placed in service by the taxpayer during the taxable year that included September 11, 2001, the taxpayer should refer to the guidance provided by the Internal Revenue Service for the time and manner of making this election on the 2000 or 2001 Federal tax return for the taxable year that included September 11, 2001 (for further guidance, *see* sections 3.03(3) and 4 of Rev. Proc. 2002–33 (2002–1 C.B. 963), Rev. Proc. 2003–50 (2003–29 I.R.B. 119), and § 601.601(d)(2)(ii)(*b*) of this chapter).

(5) *Failure to make election.* If a taxpayer does not make the applicable election specified in paragraph (e)(1) of this section within the time and in the manner prescribed in paragraph (e)(3) or (4) of this section, the amount of depreciation allowable for that property under section 167(f)(1) or under section 168, as applicable, must be determined for the placed-in-service year and for all subsequent taxable years by taking into account the additional first year depreciation deduction. Thus, any election specified in paragraph (e)(1) of this section shall not be made by the taxpayer in any other manner (for example, the election cannot be made through a request under section 446(e) to change the taxpayer's method of accounting).

(f) *Special rules*—(1) *Property placed in service and disposed of in the same taxable year*—(i) *In general.* Except as provided in paragraphs (f)(1)(ii) and (iii) of this section, the additional first year depreciation deduction is not allowed for qualified property or 50-percent bonus depreciation property placed in service and disposed of during the same taxable year.

(ii) *Technical termination of a partnership.* In the case of a technical termination of a partnership under section 708(b)(1)(B), the additional first year depreciation deduction is allowable for any qualified property or 50-percent bonus depreciation property placed in service by the terminated partnership during the taxable year of termination and contributed by the terminated partnership to the new partnership. The allowable additional first year depreciation deduction for the qualified property or the 50-percent bonus depreciation property shall not be claimed by the terminated partnership but instead shall be claimed by the new partnership for the new partnership's taxable year in which the qualified property or the 50-percent bonus depreciation property was contributed by the terminated partnership to the new partnership. However, if qualified property or 50-percent bonus depreciation property is both placed in service and contributed to a new partnership in a transaction described in section 708(b)(1)(B) by the terminated partnership during the taxable year of termination, and if such property is disposed of by the new partnership in the same taxable year the new partnership received such property from the terminated partnership, then no additional first year depreciation deduction is allowable to either partnership.

(iii) *Section 168(i)(7) transactions.* If any qualified property or 50-percent bonus depreciation property is transferred in a transaction described in section 168(i)(7) in the same taxable year that the qualified property or the

50-percent bonus depreciation property is placed in service by the transferor, the additional first year depreciation deduction is allowable for the qualified property or the 50-percent bonus depreciation property. The allowable additional first year depreciation deduction for the qualified property or the 50-percent bonus depreciation property for the transferor's taxable year in which the property is placed in service is allocated between the transferor and the transferee on a monthly basis. This allocation shall be made in accordance with the rules in § 1.168(d)–1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee. However, if qualified property or 50-percent bonus depreciation property is both placed in service and transferred in a transaction described in section 168(i)(7) by the transferor during the same taxable year, and if such property is disposed of by the transferee (other than by a transaction described in section 168(i)(7)) during the same taxable year the transferee received such property from the transferor, then no additional first year depreciation deduction is allowable to either party.

(iv) *Examples.* The application of this paragraph (f)(1) is illustrated by the following examples:

Example 1. X and *Y* are equal partners in *Partnership XY*, a general partnership. On February 1, 2002, *Partnership XY* purchased and placed in service new equipment at a cost of $30,000. On March 1, 2002, *X* sells its entire 50 percent interest to *Z* in a transfer that terminates the partnership under section 708(b)(1)(B). As a result, terminated *Partnership XY* is deemed to have contributed the equipment to new *Partnership XY.* Pursuant to paragraph (f)(1)(ii) of this section, new *Partnership XY*, not terminated *Partnership XY*, is eligible to claim the 30-percent additional first year depreciation deduction allowable for the equipment for the taxable year 2002 (assuming all other requirements are met).

Example 2. On January 5, 2002, *BB* purchased and placed in service new office desks for a total amount of $8,000. On August 20, 2002, *BB* transferred the office desks to *Partnership BC* in a transaction described in section 721. *BB* and *Partnership BC* are calendar-year taxpayers. Because the transaction between *BB* and *Partnership BC* is a transaction described in section 168(i)(7), pursuant to paragraph (f)(1)(iii) of this section the 30-percent additional first year depreciation deduction allowable for the desks is allocated between *BB* and *Partnership BC* in accordance with the rules in § 1.168(d)–1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee. Accordingly, the 30-percent additional first year depreciation deduction allowable for the desks for 2002 of $2,400 (the unadjusted depreciable basis of $8,000 multiplied by .30) is allocated between *BB* and *Partnership BC* based on the number of months that *BB* and *Partnership BC* held the desks in service. Thus, because the desks were held in service by *BB* for 7 of 12 months, which includes the month in which *BB* placed the desks in service but does not include the month in which the desks were transferred, *BB* is allocated $1,400 (7/12× $2,400 additional first year depreciation deduction). *Partnership BC* is allocated $1,000, the remaining 5/12 of the $2,400 additional first year depreciation deduction allowable for the desks.

(2) *Redetermination of basis.* If the unadjusted depreciable basis (as defined in § 1.168(k)–1T(a)(2)(iii)) of qualified property or 50-percent bonus depreciation property is redetermined (for example, due to contingent purchase price or discharge of indebtedness) by January 1, 2005 (or January 1, 2006, for property described in section 168(k)(2)(B)), the additional first year depreciation deduction allowable for the qualified property or the 50-percent bonus depreciation property is redetermined as follows:

(i) *Increase in basis.* For the taxable year in which an increase in basis of qualified property or 50-percent bonus depreciation property occurs, the taxpayer shall claim an additional first year depreciation deduction for qualified property by multiplying the amount of the increase in basis for this property by 30 percent or, for 50-percent bonus depreciation property, by multiplying the amount of the increase in basis for this property by 50 percent. For purposes of this paragraph (f)(2)(i), the 30-percent additional first year depreciation deduction applies to the increase in basis if the underlying property is qualified property and the 50-percent additional first year depreciation deduction applies to the increase in basis if the underlying property is 50-percent bonus depreciation property. To determine the amount otherwise allowable as a depreciation deduction for the increase in basis of qualified property or 50-percent bonus depreciation property, the amount of the increase in basis of the qualified property or the 50-percent bonus depreciation property must be reduced by the additional first year depreciation deduction allowed or allowable, whichever is greater, for the increase in basis and the remaining increase in basis of—

(A) Qualified property or 50-percent bonus depreciation property (except for computer software described in paragraph (b)(2)(i)(B) of this section) is depreciated over the recovery period of the qualified property or the 50-percent bonus depreciation property, as applicable, remaining as of the beginning of the taxable year in which the increase in basis occurs, and using the same depreciation method and convention applicable to the qualified property or 50-percent bonus depreciation property, as applicable, that applies for the taxable year in which the increase in basis occurs; and

(B) Computer software (as defined in paragraph (b)(2)(i)(B) of this section) that is qualified property or 50-percent bonus depreciation property is depreciated ratably over the remainder of the 36-month period (the useful life under section 167(f)(1)) as of the beginning of the first day of the month in which the increase in basis occurs.

(ii) *Decrease in basis.* For the taxable year in which a decrease in basis of qualified property or 50-percent bonus depreciation property occurs, the taxpayer shall include in the taxpayer's income the excess additional first year depreciation deduction previously claimed for the qualified property or the 50-percent bonus depreciation property. This excess additional first year depreciation deduction for qualified property is determined by multiplying the amount of the decrease in basis for this property by 30 percent. The excess additional first year depreciation deduction for 50-percent bonus depreciation property is determined by multiplying the amount of the decrease in basis for this property by 50 percent. For purposes of this paragraph (f)(2)(ii), the 30-percent additional first year depreciation deduction applies to the decrease in basis if the underlying property is qualified property and the 50-percent additional first year depreciation deduction applies to the decrease in basis if the underlying property is 50-percent bonus depreciation property. Also, if the taxpayer establishes by adequate records or other sufficient evidence that the taxpayer claimed less than the additional first year depreciation deduction allowable for the qualified property or the 50-percent bonus depreciation property before the decrease in basis or if the taxpayer claimed more than the additional first year depreciation deduction allowable for the qualified property or the 50-percent bonus depreciation property before the decrease in basis, the excess additional first year depreciation deduction is determined by multiplying the amount of the decrease in basis by the additional first year depreciation deduction percentage actually claimed by the taxpayer for the qualified property or the 50-percent bonus depreciation property, as applicable, before the decrease in basis. To determine the amount includible in the taxpayer's income for the excess

depreciation previously claimed (other than the additional first year depreciation deduction) resulting from the decrease in basis of the qualified property or the 50-percent bonus depreciation property, the amount of the decrease in basis of the qualified property or the 50-percent bonus depreciation property must be adjusted by the excess additional first year depreciation deduction includible in the taxpayer's income (as determined under this paragraph) and the remaining decrease in basis of—

(A) Qualified property or 50-percent bonus depreciation property (except for computer software described in paragraph (b)(2)(i)(B) of this section) is included in the taxpayer's income over the recovery period of the qualified property or the 50-percent bonus depreciation property, as applicable, remaining as of the beginning of the taxable year in which the decrease in basis occurs, and using the same depreciation method and convention of the qualified property or 50-percent bonus depreciation property, as applicable, that applies in the taxable year in which the decrease in basis occurs; and

(B) Computer software (as defined in paragraph (b)(2)(i)(B) of this section) that is qualified property or 50-percent bonus depreciation property is included in the taxpayer's income ratably over the remainder of the 36-month period (the useful life under section 167(f)(1)) as of the beginning of the first day of the month in which the decrease in basis occurs.

(iii) *Definition.* For purposes of this paragraph (f)(2)—

(A) An increase in basis occurs in the taxable year an amount is taken into account under section 461; and

(B) A decrease in basis occurs in the taxable year an amount would be taken into account under section 451.

(iv) *Examples.* The application of this paragraph (f)(2) is illustrated by the following examples:

Example 1. (i) On May 15, 2002, *CC*, a cash-basis taxpayer, purchased and placed in service qualified property that is 5-year property at a cost of $200,000. In addition to the $200,000, *CC* agrees to pay the seller 25 percent of the gross profits from the operation of the property in 2002. On May 15, 2003, *CC* paid to the seller an additional $10,000. *CC* depreciates the 5-year property placed in service in 2002 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention.

(ii) For 2002, *CC* is allowed a 30-percent additional first year depreciation deduction of $60,000 (the unadjusted depreciable basis of $200,000 multiplied by .30). In addition, *CC*'s depreciation deduction for 2002 for the remaining adjusted depreciable basis of $140,000 (the unadjusted depreciable basis of $200,000 reduced by the additional first year depreciation deduction of $60,000) is $28,000 (the remaining adjusted depreciable basis of $140,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) For 2003, *CC*'s depreciation deduction for the remaining adjusted depreciable basis of $140,000 is $44,800 (the remaining adjusted depreciable basis of $140,000 multiplied by the annual depreciation rate of .32 for recovery year 2). In addition, pursuant to paragraph (f)(2)(i) of this section, *CC* is allowed an additional first year depreciation deduction for 2003 for the $10,000 increase in basis of the qualified property. Consequently, *CC* is allowed an additional first year depreciation deduction of $3,000 (the increase in basis of $10,000 multiplied by .30). Also, *CC* is allowed a depreciation deduction for 2003 attributable to the remaining increase in basis of $7,000 (the increase in basis of $10,000 reduced by the additional first year depreciation deduction of $3,000). The depreciation deduction allowable for 2003 attributable to the remaining increase in basis of $7,000 is $3,111 (the remaining increase in basis of $7,000 multiplied by .4444, which is equal to 1/remaining recovery period of 4.5 years at January 1, 2003, multiplied by 2). Accordingly, for 2003, *CC*'s total depreciation deduction allowable for the qualified property is $50,911.

Example 2. (i) On May 15, 2002, *CC* purchased and placed in service qualified property that is 5-year property at a cost of $400,000. To purchase the property, *DD* borrowed $250,000 from Bank2. On May 15, 2003, Bank2 forgives $50,000 of the indebtedness. *DD* makes the election provided in section 108(b)(5) to apply any portion of the reduction under section 1017 to the basis of the depreciable property of the taxpayer. *DD* depreciates the 5-year property placed in service in 2002 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention.

(ii) For 2002, *DD* is allowed a 30-percent additional first year depreciation deduction of $120,000 (the unadjusted depreciable basis of $400,000 multiplied by .30). In addition, *DD*'s depreciation deduction allowable for 2002 for the remaining adjusted depreciable basis of $280,000 (the unadjusted depreciable basis of $400,000 reduced by the additional first year depreciation deduction of $120,000) is $56,000 (the remaining adjusted depreciable basis of $280,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) For 2003, *DD*'s deduction for the remaining adjusted depreciable basis of $280,000 is $89,600 (the remaining adjusted depreciable basis of $280,000 multiplied by the annual depreciation rate of .32 for recovery year 2). However, pursuant to paragraph (f)(2)(ii) of this section, *DD* must include in its taxable income for 2003 the excess depreciation previously claimed for the $50,000 decrease in basis of the qualified property. Consequently, *DD* must include in its taxable income for 2003 the excess additional first year depreciation of $4,500 (the decrease in basis of $50,000 multiplied by .30). Also, *DD* must include in its taxable income for 2003 the excess depreciation attributable to the remaining decrease in basis of $45,500 (the decrease in basis of $50,000 reduced by the excess additional first year depreciation of $4,500). The amount includible in taxable income for 2003 for the remaining decrease in basis of $45,500 is $20,222 (the remaining decrease in basis of $45,500 multiplied by .4444, which is equal to 1/remaining recovery period of 4.5 years at January 1, 2003, multiplied by 2). Accordingly, for 2003, *DD*'s total depreciation deduction allowable for the qualified property is $64,878 ($89,600 minus $4,500 minus $20,222).

(3) *Section 1245 and 1250 depreciation recapture.* For purposes of section 1245 and the regulations thereunder, the additional first year depreciation deduction is an amount allowed or allowable for depreciation. Further, for purposes of section 1250(b) and the regulations thereunder, the additional first year depreciation deduction is not a straight line method.

(4) *Coordination with section 169.* The additional first year depreciation deduction is allowable in the placed-in-service year of a certified pollution control facility (as defined in § 1.169–2(a)) that is qualified property or 50-percent bonus depreciation property, even if the taxpayer makes the election to amortize the certified pollution control facility under section 169 and the regulations thereunder in the certified pollution control facility's placed-in-service year.

(5) *Like-kind exchanges and involuntary conversions*—(i) *Scope.* The rules of this paragraph (f)(5) apply to acquired MACRS property or acquired computer software that is eligible for the additional first year depreciation deduction under section 168(k) at the time of replacement provided the time of replacement is after September 10, 2001, and before January 1, 2005, or, in the case of acquired MACRS property or acquired computer software that is qualified property, or 50-percent bonus depreciation property, described in section 168(k)(2)(B), the time of replacement is after September 10, 2001, and before January 1, 2006.

(ii) *Definitions.* For purposes of this paragraph (f)(5), the following definitions apply:

(A) *Acquired MACRS property* is MACRS property in the hands of the acquiring taxpayer that is acquired in a transaction described in section 1031(a), (b), or (c) for other MACRS property or that is acquired in connection with an involuntary conversion of other MACRS

property in a transaction to which section 1033 applies.

(B) *Exchanged or involuntarily converted MACRS property* is MACRS property that is transferred by the taxpayer in a transaction described in section 1031(a), (b), or (c), or that is converted as a result of an involuntary conversion to which section 1033 applies.

(C) *Acquired computer software* is computer software (as defined in paragraph (b)(2)(i)(B) of this section) in the hands of the acquiring taxpayer that is acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033.

(D) *Exchanged or involuntarily converted computer software* is computer software (as defined in paragraph (b)(2)(i)(B) of this section) that is transferred by the taxpayer in a like-kind exchange under section 1031 or that is converted as a result of an involuntary conversion under section 1033.

(E) *Time of disposition* is when the disposition of the exchanged or involuntarily converted MACRS property or the exchanged or involuntarily converted computer software, as applicable, takes place.

(F) *Time of replacement* is the later of:

(*1*) When the property received in the exchange or involuntary conversion is placed in service; or

(*2*) The time of disposition of involuntarily converted property.

(G) *Carryover basis* is the lesser of:

(*1*) The basis in the acquired MACRS property or acquired computer software, as applicable and as determined under section 1031(d) or 1033(b) and the regulations thereunder; or

(*2*) The adjusted depreciable basis of the exchanged or involuntarily converted MACRS property or the exchanged or involuntarily converted computer software, as applicable.

(H) *Excess basis* is any excess of the basis in the acquired MACRS property or acquired computer software, as applicable and as determined under section 1031(d) or 1033(b) and the regulations thereunder, over the carryover basis as determined under paragraph (f)(5)(ii)(G) of this section.

(I) *Remaining carryover basis* is the carryover basis as determined under paragraph (f)(5)(ii)(G) of this section reduced by—

(*1*) The percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income); and

(*2*) Any adjustments to basis provided by other provisions of the Code and the regulations thereunder (including section 1016(a)(2) and (3)) for periods prior to the disposition of the exchanged or involuntarily converted property.

(J) *Remaining excess basis* is the excess basis as determined under paragraph (f)(5)(ii)(H) of this section reduced by—

(*1*) The percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income);

(*2*) Any portion of the basis the taxpayer properly elects to treat as an expense under section 179; and

(*3*) Any adjustments to basis provided by other provisions of the Code and the regulations thereunder.

(iii) *Computation*—(A) *In general.* Assuming all other requirements are met, the remaining carryover basis for the year of replacement and the remaining excess basis, if any, for the year of replacement for the acquired MACRS property or the acquired computer software, as applicable, are eligible for the additional first year depreciation deduction. The 30-percent additional first year depreciation deduction applies to the remaining carryover basis and the remaining excess basis, if any, of the acquired MACRS property or the acquired computer software if the time of replacement is after September 10, 2001, and before May 6, 2003, or if the taxpayer made the election provided in paragraph (e)(1)(ii)(A) of this section. The 50-percent additional first year depreciation deduction applies to the remaining carryover basis and the remaining excess basis, if any, of the acquired MACRS property or the acquired computer software if the time of replacement is after May 5, 2003, and before January 1, 2005, or before January 1, 2006, for 50-percent bonus depreciation property described in section 168(k)(2)(B). The additional first year depreciation deduction is computed separately for the remaining carryover basis and the remaining excess basis. Rules similar to the rules provided in paragraph (d) of this section apply to property described in section 168(k)(2)(B) and for alternative minimum tax purposes.

(B) *Year of disposition and year of replacement.* The additional first year depreciation deduction is allowable for the acquired MACRS property or acquired computer software in the year of replacement. However, the additional first year depreciation deduction is not allowable for the exchanged or involuntarily converted MACRS property or the exchanged or involuntarily converted computer software if the MACRS property or computer software, as applicable, is placed in service and disposed of in an exchange or involuntary conversion in the same taxable year.

(iv) *Sale-leaseback transaction.* For purposes of this paragraph (f)(5), if MACRS property or computer software is sold to a taxpayer and leased back to a person by the taxpayer within three months after the time of disposition of the MACRS property or computer software, as applicable, the time of replacement for this MACRS property or computer software, as applicable, shall not be earlier than the date on which the MACRS property or computer software, as applicable, is used by the lessee under the leaseback.

(v) *Examples.* The application of this paragraph (f)(5) is illustrated by the following examples:

Example 1. (i) In December 2002, *EE,* a calendar-year corporation, acquired for $200,000 and placed in service Canopy V1, a gas station canopy. Canopy V1 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). *EE* depreciated Canopy V1 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. *EE* elected to use the optional depreciation tables to compute the depreciation allowance for Canopy V1. On January 1, 2003, Canopy V1 was destroyed in a fire and was no longer usable in *EE*'s business. On June 1, 2003, in a transaction described in section 1033(a)(2), *EE* acquired and placed in service Canopy W1 with all of the $160,000 of insurance proceeds *EE* received due to the loss of Canopy V1. Canopy W1 is 50-percent bonus depreciation property under section 168(k)(4) and is 5-year property under section 168(e).

(ii) For 2002, *EE* is allowed a 30-percent additional first year depreciation deduction of $60,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by .30), and a regular MACRS depreciation deduction of $28,000 for Canopy V1 (the remaining adjusted depreciable basis of $140,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) Pursuant to paragraph (f)(5)(iii)(A) of this section, the additional first year depreciation deduction allowable for Canopy W1 equals $56,000 (.50 of Canopy W1's remaining carryover basis of $112,000 (Canopy V1's remaining adjusted depreciable basis of $140,000 minus 2002 regular MACRS depreciation deduction of $28,000).

Example 2. (i) Same facts as in Example 1, except EE elected not to deduct the additional first year depreciation for 5-year property placed in service in 2002. EE deducted the additional first year depreciation for 5-year property placed in service in 2003.

(ii) For 2002, *EE* is allowed a regular MACRS depreciation deduction of $40,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) Pursuant to paragraph (f)(5)(iii)(A) of this section, the additional first year

depreciation deduction allowable for Canopy W1 equals $80,000 (.50 of Canopy W1's remaining carryover basis of $160,000 (Canopy V1's unadjusted depreciable basis of $200,000 minus 2002 regular MACRS depreciation deduction of $40,000).

Example 3. (i) In December 2001, FF, a calendar year corporation, acquired for $10,000 and placed in service Computer X2. Computer X2 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). FF depreciated Computer X2 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. FF elected to use the optional depreciation tables to compute the depreciation allowance for Computer X2. On January 1, 2002, FF acquired Computer Y2 by exchanging Computer X2 and $1,000 cash in a transaction described in section 1031(a). Computer Y2 is qualified property under section 168(k)(1) and is 5-year property under section 168(e).

(ii) For 2001, FF is allowed a 30-percent additional first year depreciation deduction of $3,000 for Computer X2 (unadjusted basis of $10,000 multiplied by .30), and a regular MACRS depreciation deduction of $1,400 for Computer X2 (the remaining adjusted depreciable basis of $7,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) Pursuant to paragraph (f)(5)(iii)(A) of this section, the 30-percent additional first year depreciation deduction for Computer Y2 is allowable for the remaining carryover basis of $5,600 (Computer X2's unadjusted depreciable basis of $10,000 minus additional first year depreciation deduction allowable of $3,000 minus 2001 regular MACRS depreciation deduction of $1,400) and for the remaining excess basis of $1,000 (cash paid for Computer Y2). Thus, the 30-percent additional first year depreciation deduction for the remaining carryover basis equals $1,680 ($5,600 multiplied by .30) and for the remaining excess basis equals $300 ($1,000 multiplied by .30), which totals $1,980.

Example 4. (i) In September 2002, GG, a June 30 year-end corporation, acquired for $20,000 and placed in service Equipment X3. Equipment X3 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). GG depreciated Equipment X3 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. GG elected to use the optional depreciation tables to compute the depreciation allowance for Equipment X3. In December 2002, GG acquired Equipment Y3 by exchanging Equipment X3 and $5,000 cash in a transaction described in section 1031(a). Equipment Y3 is qualified property under section 168(k)(1) and is 5-year property under section 168(e).

(ii) Pursuant to paragraph (f)(5)(iii)(B) of this section, no additional first year depreciation deduction is allowable for Equipment X3 and, pursuant to § 1.168(d)–1T(b)(3)(ii), no regular depreciation deduction is allowable for Equipment X3.

(iii) Pursuant to paragraph (f)(5)(iii)(A) of this section, the 30-percent additional first year depreciation deduction for Equipment Y3 is allowable for the remaining carryover basis of $20,000 (Equipment X3's unadjusted depreciable basis of $20,000) and for the remaining excess basis of $5,000 (cash paid for Equipment Y3). Thus, the 30-percent additional first year depreciation deduction for the remaining carryover basis equals $6,000 ($20,000 multiplied by .30) and for the remaining excess basis equals $1,500 ($5,000 multiplied by .30), which totals $7,500.

Example 5. (i) Same facts as in Example 4. GG depreciated Equipment Y3 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. GG elected to use the optional depreciation tables to compute the depreciation allowance for Equipment Y3. On July 1, 2003, GG acquired Equipment Z1 by exchanging Equipment Y3 in a transaction described in section 1031(a). Equipment Z1 is 50-percent bonus depreciation property under section 168(k)(4) and is 5-year property under section 168(e).

(ii) For the taxable year ending June 30, 2003, the regular MACRS depreciation deduction allowable for the remaining carryover basis of Equipment Y3 is $2,800 (the remaining carryover basis of $14,000 multiplied by the annual depreciation rate of .20 for recovery year 1) and for the remaining excess basis of Equipment Y3 is $700 (the remaining excess basis of $3,500 multiplied by the annual depreciation rate of .20 for recovery year 1), which totals $3,500.

(iii) For the taxable year ending June 30, 2004, pursuant to paragraph (f)(5)(iii)(A) of this section, the 50-percent additional first year depreciation deduction allowable for Equipment Z1 is $7,000 (.50 of Equipment Z1's remaining carryover basis of $14,000 (Equipment Y3's total unadjusted depreciable basis of $25,000 minus the total additional first year depreciation deduction of $7,500 minus the total regular MACRS depreciation deduction of $3,500).

(6) *Change in use*—(i) *Change in use of depreciable property.* The determination of whether the use of depreciable property changes is made in accordance with section 168(i)(5) and regulations thereunder.

(ii) *Conversion to personal use.* If qualified property or 50-percent bonus depreciation property is converted from business or income-producing use to personal use in the same taxable year in which the property is placed in service by a taxpayer, the additional first year depreciation deduction is not allowable for the property.

(iii) *Conversion to business or income-producing use*—(A) *During the same taxable year.* If, during the same taxable year, property is acquired by a taxpayer for personal use and is converted by the taxpayer from personal use to business or income-producing use, the additional first year depreciation deduction is allowable for the property in the taxable year the property is converted to business or income-producing use (assuming all of the requirements in paragraph (b) of this section are met). See paragraph (b)(3)(ii) of this section relating to the original use rules for a conversion of property to business or income-producing use.

(B) *Subsequent to the acquisition year.* If property is acquired by a taxpayer for personal use and, during a subsequent taxable year, is converted by the taxpayer from personal use to business or income-producing use, the additional first year depreciation deduction is allowable for the property in the taxable year the property is converted to business or income-producing use (assuming all of the requirements in paragraph (b) of this section are met). For purposes of paragraphs (b)(4) and (5) of this section, the property must be acquired by the taxpayer for personal use after September 10, 2001 (for qualified property), or after May 5, 2003 (for 50-percent bonus depreciation property), and converted by the taxpayer from personal use to business or income-producing use by January 1, 2005. See paragraph (b)(3)(ii) of this section relating to the original use rules for a conversion of property to business or income-producing use.

(iv) *Depreciable property changes use subsequent to the placed-in-service year*—(A) If the use of qualified property or 50-percent bonus depreciation property changes in the hands of the same taxpayer subsequent to the taxable year the qualified property or the 50-percent bonus depreciation property, as applicable, is placed in service and, as a result of the change in use, the property is no longer qualified property or 50-percent bonus depreciation property, as applicable, the additional first year depreciation deduction allowable for the qualified property or the 50-percent bonus depreciation property, as applicable, is not redetermined.

(B) If depreciable property is not qualified property or 50-percent bonus depreciation property in the taxable year the property is placed in service by the taxpayer, the additional first year depreciation deduction is not allowable for the property even if a change in the use of the property subsequent to the taxable year the property is placed in service results in the property being qualified property or 50-percent bonus depreciation property in the taxable year of the change in use.

(v) *Examples.* The application of this paragraph (f)(6) is illustrated by the following examples:

Example 1. (i) On January 1, 2002, HH, a calendar year corporation, purchased and placed in service several new computers at a total cost of $100,000. HH used these computers within the United States for 3 months in 2002 and then moved and used the computers outside the United States for the remainder of 2002. On January 1, 2003, HH permanently returns the computers to the United States for use in its business.

(ii) For 2002, the computers are considered as used predominantly outside the United States in 2002 pursuant to § 1.48–1(g)(1)(i). As a result, the computers are required to be depreciated under the alternative depreciation system of section 168(g). Pursuant to paragraph (b)(2)(ii)(A)*2*) of this section, the computers are not qualified property in 2002, the placed-in-service year. Thus, pursuant to (f)(6)(iv)(B) of this section, no additional first year depreciation deduction is allowed for these computers, regardless of the fact that the computers are permanently returned to the United States in 2003.

Example 2. (i) On February 8, 2002, *II,* a calendar year corporation, purchased and placed in service new equipment at a cost of $1,000,000 for use in its California plant. The equipment is 5-year property under section 168(e) and is qualified property under section 168(k). *II* depreciates its 5-year property placed in service in 2002 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. On June 4, 2003, due to changes in *II*'s business circumstances, *II* permanently moves the equipment to its plant in Mexico.

(ii) For 2002, *II* is allowed a 30-percent additional first year depreciation deduction of $300,000 (the adjusted depreciable basis of $1,000,000 multiplied by .30). In addition, *II*'s depreciation deduction allowable in 2002 for the remaining adjusted depreciable basis of $700,000 (the unadjusted depreciable basis of $1,000,000 reduced by the additional first year depreciation deduction of $300,000) is $140,000 (the remaining adjusted depreciable basis of $700,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) For 2003, the equipment is considered as used predominantly outside the United States pursuant to § 1.48–1(g)(1)(i). As a result of this change in use, the adjusted depreciable basis of $560,000 for the equipment is required to be depreciated under the alternative depreciation system of section 168(g) beginning in 2003. However, the additional first year depreciation deduction of $300,000 allowed for the equipment in 2002 is not redetermined.

(7) *Earnings and profits.* The additional first year depreciation deduction is not allowable for purposes of computing earnings and profits.

(8) *Limitation of amount of depreciation for certain passenger automobiles.* For a passenger automobile as defined in section 280F(d)(5), the limitation under section 280F(a)(1)(A)(i) is increased by—

(i) $4,600 for qualified property acquired by a taxpayer after September 10, 2001, and before May 6, 2003; and

(ii) $7,650 for qualified property or 50-percent bonus depreciation property acquired by a taxpayer after May 5, 2003.

(9) *Section 754 election.* In general, for purposes of section 168(k) any increase in basis of qualified property or 50-percent bonus depreciation property due to a section 754 election is not eligible for the additional first year depreciation deduction. However, if qualified property or 50-percent bonus depreciation property is placed in service by a partnership in the taxable year the partnership terminates under section 708(b)(1)(B), any increase in basis of the qualified property or the 50-percent bonus depreciation property due to a section 754 election is eligible for the additional first year depreciation deduction.

(g) *Effective date*—(1) *In general.* Except as provided in paragraphs (g)(2) and (3) of this section, this section applies to qualified property under section 168(k)(2) acquired by a taxpayer after September 10, 2001, and to 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003. This section expires on September 8, 2006.

(2) *Technical termination of a partnership or section 168(i)(7) transactions.* If qualified property or 50 percent bonus depreciation property is transferred in a technical termination of a partnership under section 708(b)(1)(B) or in a transaction described in section 168(i)(7) for a taxable year ending on or before September 8, 2003, and the additional first year depreciation deduction allowable for the property was not determined in accordance with paragraph (f)(1)(ii) or (iii) of this section, as applicable, the Internal Revenue Service will allow any reasonable method of determining the additional first year depreciation deduction allowable for the property in the year of the transaction that is consistently applied to the property by all parties to the transaction.

(3) *Like-kind exchanges and involuntary conversions.* If a taxpayer did not claim on a federal tax return for a taxable year ending on or before September 8, 2003, the additional first year depreciation deduction for the remaining carryover basis of qualified property or 50-percent bonus depreciation property acquired in a transaction described in section 1031(a), (b), or (c), or in a transaction to which section 1033 applies and the taxpayer did not make an election not to deduct the additional first year depreciation deduction for the class of property applicable to the remaining carryover basis, the Internal Revenue Service will treat the taxpayer's method of not claiming the additional first year depreciation deduction for the remaining carryover basis as a permissible method of accounting and will treat the amount of the additional first year depreciation deduction allowable for the remaining carryover basis as being equal to zero, provided the taxpayer does not claim the additional first year depreciation deduction for the remaining carryover basis in accordance with paragraph (g)(4)(ii) of this section.

(4) *Change in method of accounting*—(i) *Special rules for 2000 or 2001 returns.* If a taxpayer did not claim on the Federal tax return for the taxable year that included September 11, 2001, any additional first year depreciation deduction for a class of property that is qualified property and did not make an election not to deduct the additional first year depreciation deduction for that class of property, the taxpayer should refer to the guidance provided by the Internal Revenue Service for the time and manner of claiming the additional first year depreciation deduction for the class of property (for further guidance, *see* section 4 of Rev. Proc. 2002–33 (2002–1 C.B. 963), Rev. Proc. 2003–50 (2003–29 I.R.B. 119), and § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Like-kind exchanges and involuntary conversions.* If a taxpayer did not claim on a federal tax return for any taxable year ending on or before September 8, 2003, the additional first year depreciation deduction allowable for the remaining carryover basis of qualified property or 50-percent bonus depreciation property acquired in a transaction described in section 1031(a), (b), or (c), or in a transaction to which section 1033 applies and the taxpayer did not make an election not to deduct the additional first year depreciation deduction for the class of property applicable to the remaining carryover basis, the taxpayer may claim the additional first year depreciation deduction allowable for the remaining carryover basis in accordance with paragraph (f)(5) of this section either:

(A) By filing an amended return (or a qualified amended return, if applicable (for further guidance, *see* Rev. Proc. 94–69 (1994–2 C.B. 804) and § 601.601(d)(2)(ii)(*b*) of this chapter)) on or before December 31, 2003, for the year of replacement and any affected subsequent taxable year; or,

(B) By following the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, *see* Rev. Proc. 2002–9 (2002–1 C.B. 327) and § 601.601(d)(2)(ii)(*b*) of this chapter).

■ **Par. 8.** Section 1.169–3 is amended by:

■ 1. Revising paragraphs (a) and (b)(2).

■ 2. Adding paragraph (g).

The additions and revisions read as follows:

§ 1.169–3 Amortizable basis.

(a) [Reserved]. For further guidance, *see* § 1.169–3T(a).

* * * * *

(b) * * *

(2) [Reserved]. For further guidance, *see* § 1.169–3T(b)(2).

* * * * *

(g) *Effective date for qualified property, 50-percent bonus depreciation property, and qualified New York Liberty Zone property.* [Reserved]. For further guidance, *see* § 1.169–3T(g).

■ **Par. 9.** Section 1.169–3T is added to read as follows:

§ 1.169–3T Amortizable basis (temporary).

(a) *In general.* The amortizable basis of a certified pollution control facility for the purpose of computing the amortization deduction under section 169 is the adjusted basis of the facility for purposes of determining gain (*see* part II (section 1011 and following), subchapter O, chapter 1 of the Internal Revenue Code), in conjuction with paragraphs (b), (c), and (d) of this section. The adjusted basis for purposes of determining gain (computed without regard to paragraphs (b), (c), and (d) of this section) of a facility that performs a function in addition to pollution control, or that is used in connection with more than one plant or other property, or both, is determined under § 1.169–2(a)(3). For rules as to additions and improvements to such a facility, see paragraph (f) of this section. Before computing the amortization deduction allowable under section 169, the adjusted basis for purposes of determining gain for a facility that is placed in service by a taxpayer after September 10, 2001, and that is qualified property under section 168(k)(2) or § 1.168(k)-1T, 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1T, or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1T must be reduced by the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater, under section 168(k) or section 1400L(b), as applicable, for the facility.

(b) *Limitation on post-1968 construction, reconstruction, or erection.* (1) For further guidance, *see* § 1.169–3(b)(1).

(2) If the taxpayer elects to begin the 60-month amortization period with the first month of the taxable year succeeding the taxable year in which the facility is completed or acquired and a depreciation deduction is allowable under section 167 (including an additional first-year depreciation allowance under former section 179; for a facility that is acquired by the taxpayer after September 10, 2001, and that is qualified property under section 168(k)(2) or § 1.168(k)-1T or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1T, the additional first year depreciation deduction under section 168(k)(1) or 1400L(b), as applicable; and for a facility that is acquired by the taxpayer after May 5, 2003, and that is 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1T, the additional first year depreciation deduction under section 168(k)(4)) with respect to the facility for the taxable year in which it is completed or acquired, the amount determined under paragraph (b)(1) of this section shall be reduced by an amount equal to the amount of the depreciation deduction allowed or allowable, whichever is greater, multiplied by a fraction the numerator of which is the amount determined under paragraph (b)(1) of this section, and the denominator of which is the facility's total cost. The additional first-year allowance for depreciation under former section 179 will be allowable only for the taxable year in which the facility is completed or acquired and only if the taxpayer elects to begin the amortization deduction under section 169 with the taxable year succeeding the taxable year in which such facility is completed or acquired. For a facility that is acquired by a taxpayer after September 10, 2001, and that is qualified property under section 168(k)(2) or § 1.168(k)-1T or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1T, *see* § 1.168(k)-1T(f)(4) or § 1.1400L(b)-1T(f)(4), as applicable, with respect to when the additional first year depreciation deduction under section 168(k)(1) or 1400L(b) is allowable. For a facility that is acquired by a taxpayer after May 5, 2003, and that is 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1T, see § 1.168(k)-1T(f)(4) with respect to when the additional first year depreciation deduction under section 168(k)(4) is allowable.

(c) through (f) For further guidance, *see* § 1.169–3(c) through (f).

(g) *Effective date for qualified property, 50-percent bonus depreciation property, and qualified New York Liberty Zone property.* This section applies to a certified pollution control facility. This section also applies to a certified pollution control facility that is qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to a certified pollution control facility that is 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003. This section expires on September 8, 2003.

■ **Par. 10.** Section 1.1400L(b)–1T is added to read as follows:

§ 1.1400L(b)–1T Additional first year depreciation deduction for qualified New York Liberty Zone property (temporary).

(a) *Scope.* This section provides the rules for determining the 30-percent additional first year depreciation deduction allowable under section 1400L(b) for qualified New York Liberty Zone property.

(b) *Definitions.* For purposes of section 1400L(b) and this section, the definitions of the terms in § 1.168(k)–1T(a)(2) apply and the following definitions also apply:

(1) *Building* and *structural components* have the same meanings as those terms are defined in § 1.48–1(e).

(2) *New York Liberty Zone* is the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the City of New York, New York.

(3) *Nonresidential real property* and *residential rental property* have the same meanings as those terms are defined in section 168(e)(2).

(4) *Real property* is a building or its structural components, or other tangible real property except property described in section 1245(a)(3)(B) (relating to depreciable property used as an integral part of a specified activity or as a specified facility), section 1245(a)(3)(D) (relating to single purpose agricultural or horticultural structure), or section 1245(a)(3)(E) (relating to a storage facility used in connection with the distribution of petroleum or any primary product of petroleum).

(c) *Qualified New York Liberty Zone property*—(1) *In general.* Qualified New York Liberty Zone property is depreciable property that—

(i) Meets the requirements in § 1.1400L(b)–1T(c)(2) (description of property);

(ii) Meets the requirements in § 1.1400L(b)–1T(c)(3) (substantial use);

(iii) Meets the requirements in § 1.1400L(b)–1T(c)(4) (original use);

(iv) Meets the requirements in § 1.1400L(b)–1T(c)(5) (acquisition of property by purchase); and

(v) Meets the requirements in § 1.1400L(b)–1T(c)(6) (placed-in-service date).

(2) *Description of qualified New York Liberty Zone property*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (c)(2) if the property is—

(A) Described in § 1.168(k)–1T(b)(2)(i); or

(B) Nonresidential real property or residential rental property depreciated under section 168, but only to the extent it rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the terrorist attacks of September 11, 2001. Property is treated as replacing destroyed or condemned property if, as part of an integrated plan, the property replaces real property that is included in a continuous area that includes real property destroyed or condemned. For purposes of this section, real property is considered as destroyed or condemned only if an entire building or structure was destroyed or condemned as a result of the terrorist attacks of September 11, 2001. Otherwise, the real property is considered damaged real property. For example, if certain structural components (for example, walls, floors, and plumbing fixtures) of a building are damaged or destroyed as a result of the terrorist attacks of September 11, 2001, but the building is not destroyed or condemned, then only costs related to replacing the damaged or destroyed structural components qualify under this paragraph (c)(2)(i)(B).

(ii) *Property not eligible for additional first year depreciation deduction.* Depreciable property will not meet the requirements of this paragraph (c)(2) if—

(A) Section 168(k) or § 1.168(k)–1T applies to the property; or

(B) The property is described in section § 1.168(k)–1T(b)(2)(ii).

(3) *Substantial use.* Depreciable property will meet the requirements of this paragraph (c)(3) if substantially all of the use of the property is in the New York Liberty Zone and is in the active conduct of a trade or business by the taxpayer in New York Liberty Zone. For purposes of this paragraph (c)(3), ''substantially all'' means 80 percent or more.

(4) *Original use.* Depreciable property will meet the requirements of this paragraph (c)(4) if the original use of the property commences with the taxpayer in the New York Liberty Zone after September 10, 2001. The original use rules in § 1.168(k)–1T(b)(3) apply for purposes of this paragraph (c)(4). In addition, used property will satisfy the original use requirement in this paragraph (c)(4) so long as the property has not been previously used within the New York Liberty Zone.

(5) *Acquisition of property by purchase*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (c)(5) if the property is acquired by the taxpayer by purchase (as defined in section 179(d) and § 1.179–4(c)) after September 10, 2001, but only if no written binding contract for the acquisition of the property was in effect before September 11, 2001. For purposes of this paragraph (c)(5), the rules in § 1.168(k)–1T(b)(4)(ii) (binding contract), the rules in § 1.168(k)–1T(b)(4)(iii) (self-constructed property), and the rules in § 1.168(k)–1T(b)(4)(iv) (disqualified transactions) apply. For purposes of the preceding sentence, the rules in § 1.168(k)–1T(b)(4)(iii) shall be applied without regard to 'and before January 1, 2005.'

(ii) *Exception for certain transactions.* For purposes of this section, the new partnership of a transaction described in § 1.168(k)–1T(f)(1)(ii) (technical termination of a partnership) or the transferee of a transaction described in § 1.168(k)–1T(f)(1)(iii) (section 168(i)(7) transactions) is deemed to acquire the depreciable property by purchase.

(6) *Placed-in-service date.* Depreciable property will meet the requirements of this paragraph (c)(6) if the property is placed in service by the taxpayer on or before December 31, 2006. However, nonresidential real property and residential rental property described in paragraph (c)(2)(i)(B) of this section must be placed in service by the taxpayer on or before December 31, 2009. The rules in § 1.168(k)–1T(b)(5)(ii) (relating to sale-leaseback and syndication transactions), the rules in § 1.168(k)–1T(b)(5)(iii) (relating to a technical termination of a partnership under section 708(b)(1)(B)), and the rules in § 1.168(k)–1T(b)(5)(iv) (relating to section 168(i)(7) transactions) apply for purposes of this paragraph (c)(6).

(d) *Computation of depreciation deduction for qualified New York Liberty Zone property.* The computation of the allowable additional first year depreciation deduction and the otherwise allowable depreciation deduction for qualified New York Liberty Zone property is made in accordance with the rules for qualified property in § 1.168(k)–1T(d)(1)(i) and (2).

(e) *Election not to deduct additional first year depreciation*—(1) *In general.* A taxpayer may make an election not to deduct the 30-percent additional first year depreciation for any class of property that is qualified New York Liberty Zone property placed in service during the taxable year. If a taxpayer makes an election under this paragraph (e), the election applies to all qualified New York Liberty Zone property that is in the same class of property and placed in service in the same taxable year, and no additional first year depreciation deduction is allowable for the class of property.

(2) *Definition of class of property.* For purposes of this paragraph (e), the term class of property means—

(i) Except for the property described in paragraphs (e)(2)(ii), (iv), and (v) of this section, each class of property described in section 168(e) (for example, 5-year property);

(ii) Water utility property as defined in section 168(e)(5) and depreciated under section 168;

(iii) Computer software as defined in, and depreciated under, section 167(f)(1) and the regulations thereunder;

(iv) Nonresidential real property as defined in paragraph (b)(3) of this section and as described in paragraph (c)(2)(B) of this section; or

(v) Residential rental property as defined in paragraph (b)(3) of this section and as described in paragraph (c)(2)(B) of this section

(3) *Time and manner for making election*—(i) *Time for making election.* Except as provided in paragraph (e)(4) of this section, the election specified in paragraph (e)(1) of this section must be made by the due date (including extensions) of the Federal tax return for the taxable year in which the qualified New York Liberty Zone property is placed in service by the taxpayer

(ii) *Manner of making election.* Except as provided in paragraph (e)(4) of this section, the election specified in paragraph (e)(1) of this section must be made in the manner prescribed on Form 4562, ''Depreciation and Amortization,'' and its instructions. The election is made separately by each person owning qualified New York Liberty Zone property (for example, for each member of a consolidated group by the common parent of the group, by the partnership, or by the S corporation). If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(4) *Special rules for 2000 or 2001 returns.* For the election specified in paragraph (e)(1) of this section for qualified New York Liberty Zone property placed in service by the taxpayer during the taxable year that included September 11, 2001, the taxpayer should refer to the guidance provided by the Internal Revenue Service for the time and manner of making this election on the 2000 or 2001 Federal tax return for the taxable year that included September 11, 2001 (for further guidance, *see* sections 3.03(3) and 4 of Rev. Proc. 2002–33 (2002–1 C.B. 963), Rev. Proc. 2003–50 (2003–29 I.R.B. 119), and § 601.601(d)(2)(ii)(*b*) of this chapter).

(5) *Failure to make election.* If a taxpayer does not make the election specified in paragraph (e)(1) of this section within the time and in the manner prescribed in paragraph (e)(3) or (e)(4) of this section, the amount of depreciation allowable for that property under section 167(f)(1) or under section 168, as applicable, must be determined for the placed-in-service year and for all subsequent taxable years by taking into account the additional first year depreciation deduction. Thus, the election specified in paragraph (e)(1) of this section shall not be made by the taxpayer in any other manner (for example, the election cannot be made through a request under section 446(e) to change the taxpayer's method of accounting).

(f) *Special rules*—(1) *Property placed in service and disposed of in the same taxable year.* Rules similar to those provided in § 1.168(k)–1T(f)(1) apply for purposes of this paragraph (f)(1).

(2) *Redetermination of basis.* If the unadjusted depreciable basis (as defined in § 1.168(k)–1T(a)(2)(iii)) of qualified New York Liberty Zone property is redetermined (for example, due to contingent purchase price or discharge of indebtedness) on or before December 31, 2006 (or on or before December 31, 2009, for nonresidential real property and residential rental property described in paragraph (c)(2)(i)(B) of this section), the additional first year depreciation deduction allowable for the qualified New York Liberty Zone property is redetermined in accordance with the rules provided in § 1.168(k)–1T(f)(2).

(3) *Section 1245 and 1250 depreciation recapture.* The rules provided in § 1.168(k)–1T(f)(3) apply for purposes of this paragraph (f)(3).

(4) *Coordination with section 169.* Rules similar to those provided in § 1.168(k)–1T(f)(4) apply for purposes of this paragraph (f)(4).

(5) *Like-kind exchanges and involuntary conversions.* This paragraph (f)(5) applies to acquired MACRS property (as defined in § 1.168(k)–1T(f)(5)(ii)(A)) or acquired computer software (as defined in § 1.168(k)–1T(f)(5)(ii)(C)) that is eligible for the additional first year depreciation deduction under section 1400L(b) at the time of replacement provided the time of replacement is after September 10, 2001, and on or before December 31, 2006, or in the case of acquired MACRS property or acquired computer software that is qualified New York Liberty Zone property described in paragraph (c)(2)(i)(B) of this section, the time of replacement is after September 10, 2001, and on or before December 31, 2009. The rules and definitions similar to those provided in § 1.168(k)–1T(f)(5) apply for purposes of this paragraph (f)(5).

(6) *Change in use.* Rules similar to those provided in § 1.168(k)–1T(f)(6) apply for purposes of this paragraph (f)(6).

(7) *Earnings and profits.* The rule provided in § 1.168(k)–1T(f)(7) applies for purposes of this paragraph (f)(7).

(8) *Section 754 election.* Rules similar to those provided in § 1.168(k)–1T(f)(9) apply for purposes of this paragraph (f)(8).

(g) *Effective date*—(1) *In general.* Except as provided in paragraphs (g)(2) and (3) of this section, this section applies to qualified New York Liberty Zone property acquired by a taxpayer after September 10, 2001. This section expires on September 8, 2006.

(2) *Technical termination of a partnership or section 168(i)(7) transactions.* If qualified New York Liberty Zone property is transferred in a technical termination of a partnership under section 708(b)(1)(B) or in a transaction described in section 168(i)(7) for a taxable year ending on or before September 8, 2003, and the additional first year depreciation deduction allowable for the property was not determined in accordance with paragraph (f)(1) of this section, the Internal Revenue Service will allow any reasonable method of determining the additional first year depreciation deduction allowable for the property in the year of the transaction that is consistently applied to the property by all parties to the transaction.

(3) *Like-kind exchanges and involuntary conversions.* If a taxpayer did not claim on a federal tax return for a taxable year ending on or before September 8, 2003, the additional first year depreciation deduction for the remaining carryover basis of qualified New York Liberty Zone property acquired in a transaction described in section 1031(a), (b), or (c), or in a transaction to which section 1033 applies and the taxpayer did not make an election not to deduct the additional first year depreciation deduction for the class of property applicable to the remaining carryover basis, the Internal Revenue Service will treat the taxpayer's method of not claiming the additional first year depreciation deduction for the remaining carryover basis as a permissible method of accounting and will treat the amount of the additional first year depreciation deduction allowable for the remaining carryover basis as being equal to zero, provided the taxpayer does not claim the additional first year depreciation deduction for the remaining carryover basis in accordance with paragraph (g)(4)(ii) of this section.

(4) *Change in method of accounting*—(i) *Special rules for 2000 or 2001 returns.* If a taxpayer did not claim on the federal tax return for the taxable year that included September 11, 2001, any additional first year depreciation deduction for a class of property that is qualified New York Liberty Zone property and did not make an election not to deduct the additional first year depreciation deduction for that class of property, the taxpayer should refer to the guidance provided by the Internal Revenue Service for the time and manner of claiming the additional first year depreciation deduction for the class of property (for further guidance, *see* section 4 of Rev. Proc. 2002–33 (2002–1 C.B. 963), Rev. Proc. 2003–50 (2003–29 I.R.B. 119), and § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Like-kind exchanges and involuntary conversions.* If a taxpayer did not claim on a federal tax return for any taxable year ending on or before September 8, 2003, the additional first year depreciation deduction allowable for the remaining carryover basis of qualified New York Liberty Zone property acquired in a transaction described in section 1031(a), (b), or (c), or in a transaction to which section 1033 applies and the taxpayer did not make an election not to deduct the additional first year depreciation deduction for the class of property applicable to the remaining carryover basis, the taxpayer may claim the additional first year depreciation deduction allowable for the remaining carryover basis in accordance with paragraph (f)(5) of this section either—

(A) By filing an amended return (or a qualified amended return, if applicable (for further guidance, *see* Rev. Proc. 94–69 (1994–2 C.B. 804) and § 601.601(d)(2)(ii)(*b*) of this chapter)) on

or before December 31, 2003, for the year of replacement and any affected subsequent taxable year; or,

(B) By following the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, *see* Rev. Proc. 2002–9 (2002–1 C.B. 327) and § 601.601(d)(2)(ii)(*b*) of this chapter).

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: August 29, 2003.

Gregory F. Jenner,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–22670 Filed 9–5–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157164–02]

RIN 1545–BB57

Special Depreciation Allowance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register,** the IRS is issuing temporary regulations relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property) and the depreciation of computer software subject to section 167. Specifically, the temporary regulations provide guidance regarding the additional first year depreciation allowance provided by sections 168(k) and 1400L(b) for certain MACRS property and computer software. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 8, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for December 18, 2003, at 9 am must be received by November 28, 2003.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–157164–02), room 5226, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–157164–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Douglas Kim, (202) 622–3110; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to sections 168 and 1400L of the Internal Revenue Code (Code). The temporary regulations contain rules relating to the additional first year depreciation deduction provided by sections 168(k) and 1400L(b).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 18, 2003, beginning at 10 am in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 28, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Douglas H. Kim, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 reads as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.167(a)–14 is amended as follows:

§ 1.167(a)–14 Treatment of certain intangible property excluded from section 197.

[The text of this amendment is the same as the text of § 1.167(a)–14T published elsewhere in this issue of the ***Federal Register****].*

Par. 3. Section 1.168(d)–1 is amended as follows:

§ 1.168(d)–1 Applicable conventions—Half-year and mid-quarter conventions.

[The text of this amendment is the same as the text of § 1.168(d)–1T published elsewhere in this issue of the ***Federal Register****].*

Par. 4. Section 1.168(k)–0 is added to read as follows:

§ 1.168(k)–0 Table of contents.

[The text of this proposed section is the same as the text of § 1.168(k)–0T published elsewhere in this issue of the ***Federal Register****].*

Par. 5. Section 1.168(k)–1 is added to read as follows:

§ 1.168(k)–1 Additional first year depreciation deduction.

[The text of this proposed section is the same as the text of § 1.168(k)–1T published elsewhere in this issue of the ***Federal Register****].*

Par. 6. Section 1.169–3 is amended as follows:

§ 1.169–3 Amortizable basis.

[The text of this amendment is the same as the text of § 1.169–3T published elsewhere in this issue of the ***Federal Register****].*

Par. 7. Section 1.1400L(b)–1 is added to read as follows:

§ 1.1400L(b)–1 Additional first year depreciation deduction for qualified New York Liberty Zone property.

[The text of this proposed section is the same as the text of § 1.1400L(b)–1T published elsewhere in this issue of the ***Federal Register****].*

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–22671 Filed 9–5–03; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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