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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–097–2]

Importation of Eucalyptus Logs, Lumber, and Wood Chips From South America

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that govern the importation of logs, lumber, and other unmanufactured wood articles into the United States to allow wood chips derived from temperate species of *Eucalyptus* from South America to be treated with a surface pesticide prior to importation as an alternative to the existing treatments. This final rule follows a proposed rule that proposed to amend the regulations to require that logs, lumber, and wood chips of tropical species of *Eucalyptus* from South America be subject to more restrictive entry requirements, including treatment with fumigation with methyl bromide or heat treatment, than those currently in the regulations. In that proposed rule, we also proposed to allow wood chips derived from both tropical and temperate species of *Eucalyptus* from South America to be treated with a surface pesticide prior to importation. Although the more restrictive entry requirements for logs, lumber, and wood chips of tropical species of *Eucalyptus* are still under consideration, this action to allow wood chips of temperate species of *Eucalyptus* to be treated with a surface pesticide is necessary to provide an effective alternative treatment to the domestic wood pulp industry, which is interested in importing temperate wood chips of *Eucalyptus* from South America, while continuing to protect the United States against the introduction of plant pests.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Hesham Abuelnaga, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5334.

SUPPLEMENTARY INFORMATION:

Background

Logs, lumber, and other unmanufactured wood articles imported into the United States could pose a significant hazard of introducing plant pests and pathogens detrimental to agriculture and to natural, cultivated, and urban forest resources. The Animal and Plant Health Inspection Service (APHIS) has implemented regulations to prohibit or restrict the importation of logs, lumber, and other unmanufactured wood articles into the United States from certain parts of the world. These regulations, which are found in ''Subpart-Logs, Lumber, and Other Unmanufactured Wood Articles'' (7 CFR 319.40–1 through 319.40–11, referred to below as the regulations), are designed to prevent the dissemination of plant pests that are new to or not widely distributed within the United States.

An increased interest in the importation of unmanufactured wood articles into the United States from other countries has led to an increased demand for fast-growing trees, such as those of the genus *Eucalyptus*. The fast growth rate, environmental adaptability, and high quality for pulp production of this genus make it one of the most widely propagated genera of trees in the world. South American governments, including those of Brazil, Argentina, Chile, Peru, and Uruguay, have encouraged the planting of these fast-growing trees. Brazil has the largest area of *Eucalyptus* plantations in the world, with approximately 3 million hectares planted with various species. Wood chips of tropical species of *Eucalyptus* are currently being imported, under certain conditions specified in compliance agreements, by some wood products companies into the United States from South America. Recently, wood products companies in the United States have expressed interest in importing large volumes of temperate *Eucalyptus* wood chips from South America.

Since these articles have not been widely imported into the United States, APHIS requested that the U.S. Forest Service prepare a pest risk assessment to help determine whether the current regulations would continue to provide an adequate level of protection against the introduction of plant pests potentially associated with *Eucalyptus* species if the wood products industry in the United States began importing wood chips of species of *Eucalyptus* in greater volumes. The evidence in the risk assessment, which can be viewed on the Internet at *http://www.fpl.fs.fed.us/documnts/General.htm*, suggested that additional mitigation measures might be necessary.

On September 15, 2003, we published in the **Federal Register** (68 FR 53910–53915, Docket No. 02–097–1) a proposed rule to amend the regulations to require that logs and lumber of tropical species of *Eucalyptus* from South America be fumigated with methyl bromide or heat treated prior to importation and that wood chips of tropical species of *Eucalyptus* from South America be fumigated with methyl bromide, heat treated, or heat treated with moisture reduction prior to importation. We also proposed to allow wood chips derived from both temperate and tropical species of *Eucalyptus* from South America to be treated with a surface pesticide.

We solicited comments concerning our proposal for 60 days ending on November 14, 2003, and received 11 comments by that date. The comments were submitted by State departments of agriculture, an agricultural quarantine inspector, a university professor, foreign forestry societies, domestic wood products companies, foreign national plant protection organizations, and a member of the public. Seven commenters supported the proposed rule with some changes, and four commenters opposed the proposed rule.

Although the pest risk assessment indicated that additional mitigation measures might be necessary in order to safely import logs, lumber, and wood chips of *Eucalyptus* from South America, at this time, we have only received requests that indicate interest in importing large volumes of wood chips of temperate species of *Eucalyptus* from South America. Because the

current treatments for temperate wood chips, which include fumigation with methyl bromide, heat treatment, and heat treatment with moisture reduction, can be impractical to effectively apply to large volumes of wood chips, we believe that it is necessary to provide an effective, alternative treatment option for those wishing to import larger shipments of wood chips to produce wood pulp for paper.

In the proposed rule, we proposed to allow the use of a surface pesticide treatment as an effective, alternative treatment option for wood chips of both tropical and temperate species of *Eucalyptus*. Currently, tropical wood chips from healthy, plantation-grown trees may be imported without treatment, but must be consigned to a facility operating under a compliance agreement. We are continuing to consider more restrictive entry requirements for wood chips of tropical species of *Eucalyptus*. Until we make a final determination regarding the necessity of additional treatment requirements, however, we will not require that logs, lumber, or wood chips of tropical species of *Eucalyptus* be treated with any of the treatment options discussed in the proposed rule, which included heat treatment, heat treatment with moisture reduction, fumigation with methyl bromide, and surface pesticide treatment. We are allowing the surface pesticide treatment to be used only for wood chips of temperate species of *Eucalyptus* at this time.

The more restrictive entry requirements for logs, lumber, and wood chips of tropical species of *Eucalyptus* from South America are currently still under consideration. All comments that we received regarding the necessity of more restrictive entry requirements for these articles, on the pest risk assessment, on the efficacy of treatments, and all other general comments on the proposed rule will be reviewed and evaluated before any further action is taken related to the importation of these articles.

Since this final rule relates only to the addition of the surface pesticide treatment as an alternative treatment for wood chips of temperate species of *Eucalyptus* from South America, only those comments and portions of comments that pertain specifically to the importation of temperate wood chips and to the surface pesticide treatment as it relates to temperate wood chips will be discussed below. The remaining comments will be discussed in a future rulemaking document.

Inspection

Comment: Treatment of wood chips should not preclude an additional inspection at the port of entry. Inspection at the port of entry is necessary to ensure that the wood chips are free of nematode pathogens associated with *Eucalyptus*.

Response: The regulations in § 319.40–9 require all imported regulated articles, which would include wood chips of *Eucalyptus* from South America, to be inspected either at the port of first arrival in the United States or at any other place prescribed by an inspector.

Efficacy of Treatment

Comment: The current treatment options can be impractical for large volumes of wood chips. It is difficult to take concentration readings during the fumigation of wood chips with methyl bromide, heat treatment is difficult because of the bulk nature of the commodity, and heat treatment facilities are usually built for lumber, not wood chips. An effective alternative treatment for wood chips would be fumigation with phosphine.

Response: We agree with the commenter's assessment of the current treatment options, however, phosphine treatment is no longer an approved treatment for wood products in the Plant Protection and Quarantine (PPQ) treatment manual. If the commenter wishes to provide research and evidence to demonstrate that this treatment would be an effective alternative option, we would take that research into consideration at that time.

Comment: A surface pesticide treatment would be a more desirable mitigation measure for wood chips than heat treatment or fumigation; however, the proposed surface pesticide treatment should be tested on a commercial load of *Eucalyptus* in the southern United States, since the warmer climate there would be similar to the tropical environment in which the potential pests originate. Further, the spray should be tested specifically for pests associated with *Eucalyptus*.

Response: Based on the findings of PPQ's Center for Plant Health Science and Technology (CPHST), we believe that the prescribed pesticide spray will be an effective pest mitigation measure for wood chips of temperate species of *Eucalyptus*. Although the potential pests identified in the pest risk assessment differ slightly from those identified for *Pinus radiata* wood chips for which the spray was originally tested, the potential pests associated with *Pinus radiata* are a subset of those associated with *Eucalyptus* and are of the same family and order. The surface pesticide has proven effective for *Pinus radiata* wood chips, and we believe that it will be effective on temperate *Eucalyptus* wood chips. In addition, as noted previously, all shipments of wood chips will be inspected in accordance with § 319.40–9 to ensure that the wood chips are free of any quarantine pests.

Comment: Procedures should be put in place to confirm the proper application of the surface pesticide treatment.

Response: Each shipment of wood chips that is treated with the surface pesticide must be accompanied by a certificate stating that the wood chips have been treated in accordance with the regulations in § 319.40–6. In addition to the certificate of treatment, the inspection required under the regulations in § 319.40–9 will ensure that the shipments are free of any quarantine pests. If, at any time, quarantine pests or pathogens are detected, the efficacy and proper application of the treatment will be reevaluated.

Comment: The proposed pesticide treatment is too specific and the requirement should include language that allows for alternate, equally effective chemicals or new products. The current rulemaking process can take years to implement change, even if a new treatment, chemical, or product is more effective than the one currently in use.

Response: The active ingredients of the fungicide and insecticide components of the surface pesticide treatment are composed of common chemicals combined in a particular formula that has proven highly effective in the treatment of wood chips. If the commenter can provide research and evidence that another chemical or product is equivalent to any of the active ingredients used in the surface pesticide spray, we will consider that evidence. Until further research is done and evaluated, however, we will continue to use the chemicals and the specific formula that have already proven effective. Our policy is to approve specific treatments through rulemaking in order to ensure that all treatments are effective and equivalent.

Comment: No justification is given for the use of two disinfectants, didecyl dimethyl ammonium chloride (DDAC) and 3-iodo-2-propynyl butylcarbamate. Treatment with DDAC would be enough.

Response: The commenter did not offer any scientific evidence or research to support this comment. Our research indicates that the specific formula given

in the proposed rule is effective and practical for the treatment of wood chips.

Comment: The insecticide component of the pesticide is not necessary because insects have a low probability of association with wood chips. The insecticide could have a negative effect on the efficacy of the fungicide component of the pesticide.

Response: The pest risk assessment identified all wood products of *Eucalyptus* as presenting a risk for the introduction or dissemination of plant pests. No distinction was made between logs and lumber and wood chips. We will reevaluate the available research and evidence, and any evidence the commenter could provide, to determine whether or not wood chips present a low risk for infestation by arthropod pests. Based on the research that specifically tested this pesticide spray, we agree that the insecticide might have a negative effect on the efficacy of the fungicide, but only after 30 days.[1] In order to ensure the maximum efficacy of both the insecticide and the fungicide, we require retreatment if the wood chips are not exported within 30 days of the initial treatment.

Comment: Will the very specific concentrations of active ingredients for each of the fungicides limit the product selection to a specific brand? Are products containing the exact proportions prescribed registered or commercially available at economically feasible prices in potential exporting countries where they would likely be purchased and used? The amounts of chemicals needed to treat a given volume of wood chips is unclear in the specifications in the proposed rule and it might be difficult and cost prohibitive to obtain registrations for these specific formulations of chemicals in foreign countries. The surface pesticide recommendations should be given on the basis of the amount of each of the active ingredients per a specified volume of wood chips in order to allow for some flexibility in the selection of products and to make it possible to more accurately determine the amounts of chemicals needed and the potential environmental impacts of those chemicals.

Response: The formula given for the pesticide in the proposed rule lists the ratios of the active ingredients DDAC, 3-iodo-2-propynyl butylcarbamate, and chlorpyrifos that must be present for the pesticide to qualify as an approved treatment according to the regulations in § 319.40–7(e). We list the active ingredients because the efficacy of any treatment is dependent on the active ingredients and the formula by which they are combined. Generally, it is not our policy to require specific brands in the regulations because several different brands could have the correct ratio of active ingredients and could be equally effective. We note that this particular pesticide formula has been in use for wood chips from Chile, and exporters have found the ingredients to be readily available and cost effective. The commenter's suggestion that surface pesticide recommendations be given on the basis of the amount of each of the active ingredients needed per a specified volume of wood chips is not practical. The efficacy of this treatment, unlike chemical treatments that involve dipping or fumigating, is based solely on the correct ratio and combination of the active ingredients. As long as the ratios of the chemicals are correct, the dosage can be adjusted to accommodate any volume of wood chips. According to the label instructions on the pesticide, the treatment must be applied to all sides of the wood chips in order to ensure the maximum efficacy. Since the pesticide is sprayed onto the wood chips, it would be extremely difficult, and unnecessary, to require a specific dosage per volume of wood chips.

Safety of Importation

Comment: The risks of nonnative pest infestation and the toxicity of the chemicals used in the surface pesticide treatment make the importation of wood chips unsafe. The environmental assessment does not adequately consider the potential environmental impact of the chemical treatment on either the country of origin or the United States. The chemicals recommended for use have a long history of safe use in a wide variety of applications, however, these chemicals continue to be described as having moderate to severe toxicity to some. Runoff from the chemicals at the treatment and storage sites and pesticide residue in the ship's holds needs to be addressed. There is a potential for human exposure to chemical residues at the treatment site, on conveyor systems, around storage sites, and transport vehicles, which need to be considered.

Response: The commenter did not provide any evidence or scientific studies to support the comment. Based on the evidence presented in the pest risk assessment and the environmental assessment, we believe that the importation of these articles does not present a risk for the introduction or dissemination of plant pests or a risk to the health of any individuals. The treatments currently in the regulations, and the surface pesticide treatment alternative now being offered, mitigate against nonnative pest infestation. As noted in the environmental assessment, all chemicals to be used in the pesticide treatment are registered with the Environmental Protection Agency (EPA), which evaluates all pesticides for their impact on the environment as part of the registration process. Their evaluations of the pesticides to be used in this treatment indicated that the potential for these pesticides to have a negative impact on the environment is minimal when used according to the label instructions. The environmental assessment, which can be viewed on the Internet at http://www.aphis.usda.gov/ppd/es/ppqdocs.html, has been amended to address the comments.

Comment: The environmental assessment does not include an option for a single component pesticide spray treatment. A fungicide-only treatment would decrease the introduction of chemicals into the environment.

Response: As noted previously, based on the available research (Morrell, Freitag, and Silva) and on the findings of CPHST, we believe that a formula with both the insecticide and fungicide components is effective and necessary.

Practicality of Additional Conditions

Comment: The additional condition to cover the conveyor belt when unloading the chips is not practical because wood chips are unloaded from an ocean vessel using a bucket that drops the wood chips into a hopper that sorts the chips onto a conveyor belt. The hopper cannot be covered due to the fact that the wood chips are dropped into the hopper.

Response: This additional safeguarding measure is currently in practice for the importation of *Pinus radiata* wood chips, and there have been no reported problems. The regulations state that the conveyor belt, not the hopper, must be covered to prevent the chips from being blown by the wind and from accidental spillage. We do not believe that this additional condition is impractical.

Comment: The time allotted for compliance-45 days after the wood chips arrive at the facility to process the wood chips and to dispose of any fines or unusable wood chips by burning—does not take into account the differing capabilities of different facilities. The allotted amount of time should be specified in each individual compliance agreement. This additional condition is not justified.

Response: The commenters did not offer any specific examples or evidence

[1] Morrell, Freitag, and Silva, ''Protection of Freshly Cut Radiata Pine Chips from Fungal Attack,'' Forest Products Journal, 48(2):57–59.

to support their comments. This additional safeguarding measure is currently in use for *Pinus radiata* wood chips and has proven effective, practical, and reasonable. The safeguard regarding the destruction of fines or unusable chips is in place to further protect against the possibility of the spread of any plant pests associated with the wood chips. If the commenters provide evidence that an extension of time is necessary and that such an extension would not increase the risk of the dissemination of plant pests, we would consider the evidence at that time. However, we believe that this additional safeguarding measure is necessary and justified in order to further protect against the spread of plant pests. In addition, in accordance with the regulations in § 319.40–6(c)(1)(iii), the wood chips must be consigned to a facility in the United States that operates under a compliance agreement in accordance with the regulations in § 319.40–8. The process of entering into a compliance agreement includes site visits by authorized representatives of PPQ to evaluate the capacities of the individual facilities and to determine specific requirements that will prevent the spread of plant pests from that facility. The differing capacities of different facilities are taken into account during the site visits, and authorized representatives work with the individual facilities to ensure compliance with all additional conditions in the regulations.

Comment: The wood chips should be treated within 24 hours of the logs being chipped, as required by the regulations, however the statement in the environmental assessment that the pesticide is applied to the wood chips as they are loaded for shipment is not consistent with this requirement. In addition, the requirement to reapply the treatment if more than 30 days elapse between the date of the first application and export is not necessary because the residue of the treatment continues to be effective after 30 days. This requirement may be difficult to comply with at times because of unpredictable delays in harvesting, chipping, or shipping schedules.

Response: We agree with the commenter that the statement in the environmental assessment regarding the application of the pesticide to the wood chips as they are loaded for shipment might not always be consistent with the requirement that the wood chips be treated within 24 hours of the logs being chipped, since not all wood chips would be ready for shipment within 24 hours of the logs being chipped. Although this method is used by some companies that import *Pinus radiata* wood chips from Chile, we do not require all companies to follow this same procedure. The environmental assessment has been amended to correspond with the language in the regulations. Available research indicates that the efficacy of the pesticide spray declines 4 weeks after the initial application.[2] Since the 30-day time limit is necessary to ensure that the spray remains effective, we do not believe that it would be justified to extend this time period. Importers should be aware of this requirement and plan accordingly to the best of their ability.

Comment: The designated 45-day period between the time the trees are felled and the time the wood chips are exported should be extended to allow 90 days for the trees to be felled and chipped and an additional 60 days for the chips to be exported. The shorter interval of time results in the processing and movement of the wood while it is still green; piles of green wood chips rapidly achieve high temperatures and humidity conditions, which lead to the development of fungi and bacteria. In addition, once the wood chips are stored in piles, they retain water, thus increasing the weight of the articles and the subsequent transportation costs. Since this additional condition is based on the post-harvest management practices of Chile, it does not take into account the differences in the post-harvest management practices, climate, and logging conditions in other countries or of the pests specific to *Eucalyptus.*

Response: Our requirement that no more than 45 days elapse between the time the trees are felled to the time the wood chips are exported reduces the opportunity for the wood chips to be exposed to plant pests. In addition, as noted previously, available research indicates that the efficacy of the surface pesticide treatment declines 4 weeks after application, so any extension of this time requirement would increase the likelihood that the surface pesticide treatment would have to be reapplied, which could be economically burdensome. This time requirement has proven practical and effective for the importation of other wood chips. The Wood Import Pest Risk Assessment and Mitigation Evaluation Team that conducted the pest risk assessment visited several countries in South America, including Argentina, Brazil, Chile, and Uruguay where most of the *Eucalyptus* plantations are located. These site visits provided information about the various post-harvest management practices, logging, and climate conditions that APHIS took into consideration when developing the proposed rule. We believe that the designated 45-day period between the time the trees are felled and the time the wood chips are exported is practical and effective for wood chips.

Comment: The additional condition that no other regulated articles will be permitted in the holds or sealed containers carrying the wood chips during shipment is unnecessary.

Response: The requirement that no other regulated articles be allowed in the holds or sealed containers carrying the wood chips during shipment helps control the possible movement of plant pests from other regulated articles to the wood chips. Given that, we believe this additional safeguarding measure is necessary.

Comment: The additional conditions related to the unloading, transporting, and storing of the wood chips in the United States are not justified, given the minimal pest risk posed by wood chips and the security of the mitigation measures in place from harvesting to shipping.

Response: These additional measures have proved effective and practical in the importation of other wood chips and are designed to reduce the exposure of the chips to plant pests or pathogens, which might result in infestation. According to the evidence in the pest risk assessment, the potential mechanisms for wood chip infestation by nonindigenous pests are complex and suggest that additional mitigation measures might be necessary for the importation of these articles. We agree with the commenter that *Eucalyptus* wood chips destined for export from South America may be relatively free of most damaging organisms. However, some of the pest organisms of concern are pests that are native to South America but that have been capable of attacking *Eucalyptus* even though it is an introduced species that is native only to Australia, the Philippines, Papua New Guinea, and Indonesia. This adaptability suggests the potential for these pests to develop a wider host range. Although the mitigation measures in place from harvesting to shipping are effective, we believe that additional conditions are necessary to ensure that no plant pests are disseminated into the United States as a result of the importation of these wood chips once they have been treated with the surface pesticide spray.

[2] Morrell, Freitag, and Silva, ''Protection of Freshly Cut Radiata Pine Chips from Fungal Attack,'' Forest Products Journal, 48(2):57–59.

Comment: The additional condition that the wood chips be stored, handled, and safeguarded in a manner that would prevent any infestation of the wood chips by plant pests during the entire interval between treatment and export is not practical, and compliance with this condition is impossible because wood chips are typically stored outside in 40,000-ton piles that are 50 feet high in an area of about 90,000 square feet.

Response: This additional condition has been required for the importation of *Pinus radiata* wood chips from Chile for several years and no problems have been reported.

Comment: Most pulp mills are generally located in the vicinity of forested areas, thus complying with the additional condition that the storage area for the wood chips not be adjacent to wooded areas would be impossible for most mills. APHIS should define ''adjacent'' and ''wooded areas'' more clearly. Since *Eucalyptus* is a nonnative species in the United States, and is not similar to conifers or any North American hardwood species, this additional requirement is not necessary.

Response: We believe that this additional condition is a necessary and effective safeguard to protect against the potential for pest infestation and dissemination of pests as a result of the wood chips being stored near an unprotected and untreated wooded environment. It would be difficult to add a specific definition of ''adjacent'' and ''wooded areas'' to the regulations that would adequately address the pest risk in each individual case. We will therefore define these terms in the language of each individual compliance agreement. As noted previously, the process of entering into a compliance agreement includes site visits by authorized representatives to evaluate the capacities of each different facility and to determine if additional, specific requirements are necessary in order to prevent the spread of plant pests from that facility. At the time of the site visit, the authorized representatives will be able to ensure that each individual facility meets the additional condition that the wood chip storage not be adjacent to a wooded area in accordance with the regulations. Although *Eucalyptus* is a nonnative species in the United States, as noted previously, some of the pests of concern are native to South America but have exhibited an ability to adapt to a broader host range and to new hosts.

Pest Risk Assessment

Comment: The pest risk assessment team did not request information from the national plant protection organization of Uruguay and the phytosanitary measures should be adjusted to the risk of introduction of the pests present in Uruguay that would affect wood chips. The pests considered to have a high risk and a moderate risk potential for introduction into the United States are not present in Uruguay.

Response: The Wood Import Pest Risk Assessment and Mitigation Evaluation Team that conducted the pest risk assessment included representatives from APHIS, the United States Department of Agriculture Forest Service, Forest Service retirees, and the governments of Argentina, Brazil, Chile, and Uruguay. A site visit was made to Uruguay in April of 1998, and members of Uruguay's Department of Agriculture accompanied and assisted the team during the site visits. Although it is true that some of the pests listed as having a high risk potential for introduction into the United States are not present in Uruguay, three pests considered to have a high risk potential are present in Uruguay. These pests are: *Chydarteres striatus, Phoracantha semipuncata,* and *Retrachyderes thoracicus.* If the commenter provides research and evidence that these three pests are not present in Uruguay, we will consider the evidence at that time. The pests listed as having a moderate risk are not present in Uruguay, but our mitigation measures specifically target pests with a high risk potential.

Comment: Certain pests that are already present in the United States are still considered to have a high risk potential for introduction into the United States according to the pest risk assessment. The pests in question are: *Botryosphaeria dothidea, B. obtusa, B. ribis, Ceratocystis fimbriata, Erytricium salmonicolor, Steirastoma breve,* and *Phoracanta semipunctata.*

Response: While we agree with the commenter that some of the pests in question are present in the United States—*B. dothidea, B. obtusa, B. ribis, Ceratocystis fimbriata, Phoracanta semipunctata,* and *Erytricium salmonicolor*—we are mitigating specifically for the pests that were rated as having a high risk potential that are not present in the United States. These pests include: *Sarsina violescens, Scolytopsis brasiliensis, Xyleborus retusus, Xyleborus biconicus, Xyleborus* spp., *Chilecomadia valdiviana, Chydarteres striatus, Retrachyderes thoracicus, Trachyderes* spp., *Steirastoma breve,* and *Stenodontes spinibarbis.*

The pests mentioned by the commenter are listed in the pest risk assessment for several different reasons. Four of the pests in question—*B. dothidea, B. obtusa, B. ribis,* and *Ceratocystis fimbriata*—are all pest organisms native to the United States, however, genetic variation exhibited by the species results in differing capacities for causing damage. Because these species are present in South America in a genetic variation from the species already present in the United States, it is impossible to predict the potential extent of damage or range if these genetic variations were introduced into the United States with *Eucalyptus* as a host. Although *Erytricium salmonicolor* is present in the United States, it is nonindigenous and not widely distributed. Currently, it is found only in Florida, Louisiana, and Mississippi. Wider distribution of this pathogen would have unknown adverse effects on the United States. *Steirastoma breve* is not present in the United States. *Phoracanta semipunctata* is a nonindigenous pest and is found only in California. Wider distribution of this pest would have unknown adverse effects on the United States.

Economic Analysis

Comment: While the cost of the surface pesticide treatment is unknown, it will likely be closer to 3–5 percent of the value of the wood chips rather than less than 1 percent as stated in the economic analysis in the proposed rule. The overall costs associated with the requirements would make it cost prohibitive for a company to bring in occasional shipments of *Eucalyptus* wood chips to supplement its domestic supply of hardwood chips.

Response: The commenter did not provide any information to support the statement that the costs would be closer to 3–5 percent of the value of the wood chips. Although the actual overall costs associated with compliance with the requirements are difficult to estimate without additional information, we note that the domestic wood industry has been complying with these requirements when importing *Pinus radiata* wood chips from Chile and has not found compliance with the requirements to be cost prohibitive. Costs for the importer would depend on the market price for wood chips in the United States and overseas as well as the costs of purchasing the equipment required to spray the wood chips with the pesticide. Additional costs could make this treatment option cost prohibitive for smaller shipments of wood chips, but we note that we are allowing treatment with the surface pesticide treatment only as an alternative. Importers could still choose the current treatment options for wood

chips, which include heat treatment and fumigation, in order to bring in shipments of wood chips of temperate species of *Eucalyptus.* Although these treatment options are not as practical for large volumes of wood chips, they are viable options for small shipments.

Comment: The proposed rule failed to recognize the costs associated with the environmental controls required to manage the application and containment of the suggested chemicals. An effective and safe technology would have to be developed and special facilities would have to be built to contain the chemicals both offshore and in the United States.

Response: The chemicals used in the pesticide treatment are common chemicals that are registered with the EPA and are federally regulated and safe for application. The pesticide is similar to pesticides used by the domestic agricultural industry. We do not believe that costs associated with managing the application of the treatment or of storing the chemicals will be cost prohibitive. This pesticide treatment is currently in use for importing certain wood chips, and there have been no reported problems about the economic feasibility of the treatment.

General Comment

Comment: Because debarking is regularly practiced in Uruguay and because the *Eucalyptus* plantations are well-managed, have effective systems of pest detection, and are protected against pest infestation, wood chips should be considered a low phytosanitary risk commodity.

Response: According to research cited previously (Morrell, Freitag, and Silva) debarking does not mitigate for decay, mold, and fungus that can begin affecting the wood chips within 24 hours of chipping. Additional mitigation measures, such as treatment with a fungicide, which is a component of the surface pesticide treatment being offered, are necessary to ensure that the wood chips are free of decay, mold, and fungus.

Research and Development

Comment: The chemicals in the surface pesticide spray, especially the fungicide, are relatively specific in terms of the pests and pathogens that they target. If treatment with surface pesticides is going to continue to be a pest mitigation measure for wood chips, further research should be done to identify pesticides that will be effective against a wider range of pests. Further research should be done to test the efficacy of a variety of insecticide and fungicide mixtures applied to wood chips as surface sprays for insects and diseases associated specifically with *Eucalyptus* and other hardwood chips. Further research should be done to develop spray containment technology to reduce the potential negative environmental impact of chemical treatments.

Response: As noted previously, according to the findings of CPHST, we believe that the pesticide will be effective for mitigating potential pests associated with *Eucalyptus*, however, we would evaluate and consider any evidence that the commenter might provide regarding the efficacy of a variety of insecticide and fungicide mixtures applied to wood chips as a treatment for insects and diseases specifically associated with *Eucalyptus* and other hardwood chips. The environmental assessment addresses the potential negative environmental impact of the chemicals and provides evidence that the negative environmental impacts will be minimal, if the chemicals are used according to the label instructions. We welcome any scientific studies, research, and evidence related to any of the topics suggested in the comments for future research and development. We will evaluate all studies and research that we receive.

Therefore, for the reasons given in the proposed rule and in this document, we are amending § 319.40–7(e) to allow the same surface pesticide treatment used on *Pinus radiata* wood chips from Chile to be used on wood chips of temperate species of *Eucalyptus.* We are also amending § 319.40–6(c)(1) to require the same import conditions for temperate *Eucalyptus* wood chips from South America as those required for *Pinus radiata* wood chips from Chile.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the regulations that govern the importation of logs, lumber, and other unmanufactured wood articles into the United States to allow wood chips of temperate species of *Eucalyptus* from South America to be treated with a surface pesticide as an alternative to the current treatments. This action is necessary in order to provide an effective alternative treatment to those who wish to import wood chips of temperate species of *Eucalyptus* from South America and to prevent the introduction of plant pests into the United States through the importation of these articles.

The surface pesticide treatment for wood chips of temperate species of *Eucalyptus* from South America provides an alternative to the currently approved treatments, which include fumigation with methyl bromide, heat treatment, and heat treatment with moisture reduction. The cost of the surface pesticide treatment is comparable to that of the existing treatment of methyl bromide fumigation (see table 1), and is already being used to treat *Pinus radiata* wood chips from Chile, so we do not expect it to have a significant economic impact on the wood products industries. This rule benefits the U.S. wood products industries by making available an alternative treatment that is more cost effective for treating large volumes of temperate wood chips. The availability of this alternative treatment benefits the U.S. wood products industry by facilitating access to these wood chips, which are readily available and produce high-quality pulp.

TABLE 1.—TREATMENT COSTS FOR EUCALYPTUS WOOD CHIPS

	Heat	Methyl bromide	Heat with moisture reduction	Surface pesticide
Wood chips (1 ton)	$50 to $100	$0.50 to $3	$20 to $30	$1.50 to $3.

Source: U.S. Environmental Protection Agency, Dec. 1996, ''Heat Treatments to Control Pests on Imported Timber.''

Although there are no entities, large or small, currently importing wood chips of temperate species of *Eucalyptus* from South America into the United States, we expect that this rule will have positive economic effects for any entities that choose to import those articles by making available an alternative treatment that is more cost effective for treating large volumes of temperate wood chips.

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

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and a finding of no significant impact (FONSI) have been prepared for this final rule. The assessment provides a basis for the conclusion that the alternate treatment for wood chips of species of eucalyptus from South America under the conditions specified in this final rule do not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment.

The environmental assessment and FONSI were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and FONSI are available for viewing on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html.* Copies of the environmental assessment and FONSI are also available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.40–6, the introductory text of paragraph (c)(1) is revised to read as follows:

§ 319.40–6 Universal importation options.

* * * * *

(c) * * *

(1) *From Chile (pine) and South America (eucalyptus).* Wood chips from Chile that are derived from Monterey or Radiata pine (*Pinus radiata*) logs and wood chips from South America that are derived from temperate species of *Eucalyptus* may be imported in accordance with paragraph (c)(2) of this section or in accordance with the following requirements:

* * * * *

§ 319.40–7 [Amended]

■ 3. In § 319.40–7, paragraph (e) is amended as follows:

■ a. In the introductory text of the paragraph, by adding the words ''and wood chips from South America derived from temperate species of *Eucalyptus*'' after the word ''Chile''.

■ b. In paragraph (e)(2), in the paragraph heading, by adding the words ''*and Eucalyptus (temperate species) wood chips from South America*'' after the word ''*Chile*'' and, in the first sentence following the paragraph heading, by adding the words ''or on wood chips from South America derived from temperate species of *Eucalyptus*'' after the word ''Chile''.

Done in Washington, DC, this 12th day of January 2004.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–875 Filed 1–14–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16496; Airspace Docket No. 03–ACE–80]

Modification of Class E Airspace; Mapleton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

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

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 28, 2003 (68 FR 66701). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 19, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on January 5, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–915 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16498; Airspace Docket No. 03–ACE–82]

Modification of Class E Airspace; Mount Pleasant, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

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

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 2, 2003 (68 FR 67357) and subsequently published a correction to the direct final rule in the **Federal Register** on December 8, 2003 (68 FR 68449). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 19, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on January 5, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–916 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16763; Airspace Docket No. 03–ACE–100]

Modification of Class E Airspace; Springfield, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: New and amended Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) have been developed to serve Springfield-Branson Regional Airport, Springfield, MO. The Springfield-Branson Regional Airport airport reference point (ARP) has been redefined. These actions require modifications to Springfield, MO controlled airspace in order to provide airspace required for diverse departures and to protect aircraft executing SIAPs to Springfield-Branson Regional Airport. An examination of controlled airspace for Springfield, MO revealed discrepancies in the legal descriptions for the Springfield, MO Class E3 and Class E5 airspace areas. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Springfield-Branson Regional Airport. The Class E5 area is enlarged, discrepancies in the legal descriptions of Springfield, MO Class E3 and Class E5 airspace areas are corrected and the airspace areas and their legal descriptions are brought into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004, Comments for inclusion in the Rules Docket must be received on or before January 27, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16763/ Airspace Docket No. 03–ACE–100, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from the surface designated as an extension to the Class C airspace surface area (Class E3) and the Class E airspace area extending upward from 700 feet above the surface (Class E5) at Springfield, MO. RNAV (GPS) RWY 2, ORIGINAL SIAP; RNAV (GPS) RWY 20, ORIGINAL SIAP; RNAV (GPS) RWY 14, Amendment 1 SIAP; and RNAV (GPS) RWY 32, Amendment 1 SIAP have been developed to serve Springfield-Branson Regional Airport. The Springfield-Branson Regional Airport ARP has been redefined. The Springfield, MO Class E5 airspace area must be enlarged from a 6.7-mile radius of Springfield-Branson Regional Airport to a 6.9-mile radius in order to comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures and to contain aircraft executing SIAPs. An examination of controlled airspace for Springfield, MO revealed discrepancies in the legal descriptions for the Springfield, MO class E3 and Class E5 airspace areas. The Springfield-Branson Regional Airport ARP and the location of the Springfield collocated very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) must be amended in the Springfield, MO Class E3 and Class E5 legal descriptions to reflect current data. This action corrects the discrepancies and brings the airspace areas and their legal descriptions into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. class E airspace areas consisting of airspace extending upward from the surface and designated as an extension to a Class C surface area are published in paragraph 6003 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of the same FAA Order. The Class E airspace designations listed in this document

will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16763/Airspace Docket No. 03–ACE–100.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6003 Class E airspace areas designated as an extension.

The Class E airspace area listed below consists of airspace extending upward from the surface designated as an extension to a Class C surface area.

* * * * *

ACE MO E3 Springfield, MO

Springfield-Branson Regional Airport, MO
(Lat. 37°14′44″ N., long. 93°23′19″ W.)
Springfield VORTAC
(Lat. 37°21′21″ N., long. 93°20′03″ W.)

That airspace extending upward from the surface within 1.8 miles west and 2.2 miles east of the Springfield VORTAC 200° radial extending from the 5-mile radius of Springfield-Branson Regional Airport to the VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Springfield, MO

Springfield-Branson Regional Airport, MO
(Lat. 37°14′44″ N., long. 93°23′19″ W.)
Springfield VORTAC
(Lat. 37°21′21″ N., long. 93°20′03″ W.)
Springfield-Branson Regional Localizer
(Lat. 37°15′21″ N., long. 93°22′45″ W.)
Willard NDB
(Lat. 37°17′58″ N., long. 93°26′27″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Springfield-Branson Regional Airport and within 3 miles each side of the 020° radial of the Springfield VORTAC extending from the 6.9-mile radius of the airport to 8 miles north of the VORTAC and within 1.8 miles each side of the 324° bearing from the Willard NDB extending from the 6.9-mile radius of the airport to 7 miles northwest of the NDB and within 4 miles each side of the Springfield-Branson ILS localizer south course extending from the 6.9-mile radius of the airport to 14.5 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on January 5, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–917 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16497; Airspace Docket No. 03–ACE–81]

Modification of Class E Airspace; Milford, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

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

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a

request for comments in the **Federal Register** on November 28, 2003 (68 FR 66700). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 19, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 5, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–918 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 91

[OJP(OJP)–Docket No. 1099F]

RIN 1121–AA41

Grants for Correctional Facilities on Tribal Lands Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Second interim rule with request for comments.

SUMMARY: The Office of Justice Programs is issuing this second interim rule to update and further clarify what the Bureau of Justice Assistance considers to be an eligible ''Indian tribe'' and what is considered to be ''construction,'' under the Grants for Correctional Facilities on Tribal Lands Program.

DATES: This rule will become effective February 17, 2004. All comments must be received by March 15, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule, by U.S. mail, to Renee Giger, Bureau of Justice Assistance, Office of Justice Programs, 810 Seventh Street, NW., Washington, DC 20531; and by electronic mail, to: *gigerr@ojp.usdoj.gov.* Communications should refer to the above docket number and title.

FOR FURTHER INFORMATION CONTACT: Phillip Merkle, Senior Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, 810 Seventh Street, NW., Washington, DC 20531; Telephone: (202) 305–2550. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Justice Assistance (BJA) in the Office of Justice Programs (OJP) administers several major grant programs and provides technical assistance to state, local, and tribal governments to help them with the implementation of the 1994 Crime Act's corrections-related programs. One of these programs is the Grants for Correctional Facilities on Tribal Lands Program. This program provides funding for the construction of correctional facilities on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

Grant funds may not be used for the purchase of land or for the costs associated with the operation of the correctional facility.

History of This Rulemaking

On September 24, 1996, OJP published an interim rule (at 61 FR 49969), amending 28 CFR Part 91, Subpart C, Grants for Correctional Facilities, to implement the Violent Offender Incarceration and Truth-In-Sentencing Grants Program for Indian Tribes, as required by section 114 of the Fiscal Year 1996 Omnibus Consolidated Rescissions and Appropriations Act. Section 114 amended the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 13701 *et seq.*, to authorize a reservation of funds for the specific purpose of allowing the Attorney General to make discretionary grants to Indian tribes.

Since the publication of the 1996 interim rule, OJP has received requests for further clarification of certain terms. Accordingly, OJP is now issuing this second interim rule, revising Subpart C to update and clarify what is an eligible ''Indian tribe'' and what is considered ''construction'' under this program.

Regulatory Certifications

Administrative Procedure Act 5 U.S.C. 553

Because this rule makes only technical clarifications to a previously published interim rule, and imposes no new restrictions, the Department of Justice finds good cause for exempting it from the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule-making, and the 60-day period required for public comment. For the same reasons, a delay in the effective date of these changes would be unnecessary and contrary to the public interest.

Executive Order 12866

This regulation has been written and reviewed in accordance with Executive Order 12866, Sec. 1(b), Principles of Regulation. OJP has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, Sec. 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

OJP, 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 upon a substantial number of small entities because the economic impact is limited to OJP's appropriated funds.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Sec. 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 cost 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.

Paperwork Reduction Act

No new collection of information requirements as defined under the Paperwork Reduction Act (44 U.S.C. 3504(h)) are being added by this regulation.

Environmental Impact

OJP has evaluated this rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of OJP's actions, as required by the National Environmental Policy Act (42

U.S.C. § 4321 *et seq.*) and related directives. OJP has concluded that the issuance of this rule does not have a significant impact on the quality of the human environment and, therefore, does not require the preparation of an Environmental Impact Statement.

Energy Impact Statement

OJP has evaluated this rule and has determined that it creates no new impact on the energy supply or distribution.

List of Subjects in 28 CFR Part 91

Grant programs—Law.

■ Accordingly, for the reasons set forth in the preamble, 28 CFR part 91, as amended by the interim rule published at 61 FR 49969 on September 24, 1996, is further amended by this second interim rule as follows:

PART 91—GRANTS FOR CORRECTIONAL FACILITIES

■ 1. The authority citation for subpart C continues to read as follows:

Authority: 42 U.S.C. 13701 *et seq.*, as amended by Pub. L. 104–134.

■ 2. Subpart C is amended by revising the heading to read as follows:

Subpart C—Correctional Facilities on Tribal Lands

2. Section 91.22 is amended by revising paragraphs (d) and (e) to read as follows:

§ 91.22 Definitions.

* * * * *

(d) *Indian Tribe* means an eligible Native American tribe as defined by the Indian Self Determination Act, 25 U.S.C. 450b(e).

(e) *Construction* means the erection, acquisition, renovation, repair, remodeling, or expansion of new or existing buildings or other physical facilities, and the acquisition or installation of fixed furnishings and equipment. It includes facility planning (including environmental impact analysis), pre-architectural programming, architectural design, preservation, construction, administration, construction management, or project management costs. Construction does not include the purchase of land.

Deborah J. Daniels,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 04–281 Filed 1–14–04; 8:45 am]

BILLING CODE 4410–18–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in February 2004. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: February 1, 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during February 2004, (2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during February 2004, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during February 2004.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 4.10 percent for the first 20 years following the valuation date and 5.00 percent thereafter. These interest assumptions represent a decrease (from those in effect for January 2004) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for January 2004.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during February 2004, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 124, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*		*	
124	2–1–04	3–1–04	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 124, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*		*	
124	2–1–04	3–1–04	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	
February 2004	.0410	1–20	.0500	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of January 2004.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 04–873 Filed 1–14–04; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 289–0417a; FRL–7600–7]

Revision to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). The revision concerns the emission of volatile organic compounds (VOC) from the transfer of gasoline at dispensing stations. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on March 15, 2004 without further notice, unless EPA receives adverse comments by February 17, 2004. 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: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-

mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect a copy of the submitted rule 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 rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

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

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

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

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
MBUAPCD	1002	Transfer of Gasoline into Vehicle Fuel Tanks	04/16/03	08/11/03

On October 10, 2003, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We granted a limited approval/limited disapproval to MBUAPCD Rule 1002, originally adopted on February 22, 1989, into the SIP on July 25, 2001 (66 FR 38561).

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

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions.

The purpose of revisions to Rule 1002 is to correct the deficiencies cited in the limited approval/limited disapproval of July 25, 2001 as described below:

- (Deficiency: The maintenance inspection checklist has an incorrect reference and the components of the checklist are not identified.) 3.3.2: The inspection checklist is now stated to be one developed by the District or an equivalent one approved by the District.
- (Deficiency: Specific EPA-approved test methods for reverification of performance tests should be provided for, at a minimum, a static leak test, a dynamic back pressure test, an air-to-liquid volume ratio test, and a liquid removal rate test.) 4.7.1: The appropriate specific test methods are provided.
- (Deficiency: Performance test records, reverification of performance test records, maintenance records and throughput records (if an exemption is claimed) should be maintained for at least two years.) 4.5: Retention of appropriate records is required for two years.
- In addition, some definitions were added, specific requirements for driveoffs were added, and specific requirements for testing personnel were added.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). Gasoline dispensing sources in ozone nonattainment areas must have gasoline vapor recovery equipment (see section 182(a)(3)(A)). The MBUAPCD regulates an ozone maintenance attainment area (see 40 CFR part 81). Rule 1002 is therefore not required to fulfill RACT or have vapor recovery equipment, unless required in the maintenance attainment plan. However, Rule 1002 does fulfill RACT and does require vapor recovery equipment.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, U.S. EPA, OAQPS (May 25, 1988). (The Bluebook)
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, EPA Region IX (August 21, 2001). (The Little Bluebook)
- EPA Draft *Model Rule, Gasoline Dispensing Facility-Stage II Vapor Recovery*, U.S. EPA (August 17, 1992).
- *Gasoline Vapor Recovery Guidelines*, EPA Region IX (April 24, 2000).

B. Does the Rule Meet the Evaluation Criteria?

We believe Rule 1002 is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, fulfilling RACT requirements, and fulfilling vapor recovery equipment requirements. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills 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. If we receive adverse comments by February 17, 2004, 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 March 15, 2004. This will incorporate SJVUAPCD Rule 1002 into the federally-enforceable SIP. There are no sanction or FIP clocks associated with our previous action on this rule.

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 15, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: December 2, 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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(320)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(320) * * *

(i) * * *

(A) * * *

(*2*) Rule 1002, adopted on February 22, 1989 and revised on April 16, 2003.

* * * * *

[FR Doc. 04–836 Filed 1–14–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY66–271a, FRL–7610–5]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the State Plan submitted by New York implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines, as promulgated by EPA. The State Plan establishes performance standards for existing MSW landfills located in New York State and provides for the implementation and enforcement of those standards, which will reduce the designated pollutants. The State Plan revision consists of moving the federally approved MSW requirements from Subpart 360–2.21 of title 6 of the New York Codes, Rules and Regulations (NYCRR) to Part 208 of title 6 NYCRR.

DATES: This direct final rule is effective on March 15, 2004, without further notice, unless EPA receives adverse comment by February 17, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Electronic comments could be sent either to *Werner.Raymond@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. Please follow the on-line instructions for submitting comments.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kirk Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381 or *Wieber.Kirk@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 19, 1999 (64 FR 38582), EPA conditionally approved and subsequently on May 10, 2001 (66 FR 23851), EPA fully approved the New York State Plan for regulating existing Municipal Solid Waste (MSW) Landfills. The reader is referred to the July 19, 1999 and May 10, 2001, rulemaking actions for a more detailed description and the rationale of EPA's approval of the New York MSW Landfills State Plan. As part of that State Plan, New York adopted revisions to State rules to control air emissions from existing landfills in the State. The New York State rules for MSW Landfills were primarily found in Subpart 360–2.21 of title 6 of the New York Codes, Rules and Regulations (NYCRR) of the State of New York, entitled ''Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills''. On July 19, 1999, EPA approved the revisions to Part 360–2.21 as meeting EPA guidelines and policy.

II. State Submittal

On December 24, 2001, and supplemented on June 25, 2003, New York submitted to EPA a revision to the State Plan for MSW Landfills. The revision consisted of the adoption of Part 208, of title 6 NYCRR, entitled, ''Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills'' and the removal of Subpart 360–2.21. Part 208 replaces the MSW landfill provisions that were previously contained in Subpart 360–2.21. New York made this change because the MSW landfill requirements would be more effectively implemented under the State ''Air Regulations'', *i.e.*, Part 200 series of regulations of title 6 NYCRR rather than the State ''Solid Waste Management Regulations'', *i.e.*, Part 360 series of regulations of title 6 NYCRR. Specifically, this change would avoid duplication of conditions of permits and duplication of effort between the State Divisions of Air Resources and Solid and Hazardous Materials. The only difference among the two rules is the addition of compliance milestones into Part 208, as required by 40 CFR 60.23 for all state plans. These milestones specify the increments of progress a landfill must achieve between the time the landfill first becomes subject to Part 208 and the time it is in compliance with Part 208.

III. Conclusion

EPA has evaluated New York's revision to the Municipal Solid Waste Landfill State Plan submitted by New York for consistency with the Clean Air Act, EPA guidelines and policy. EPA has determined that removal/relocation of the MSW Landfill requirements from Subpart 360–2.21 of title 6 NYCRR entitled, ''Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills'' to Part 208 of title 6 NYCRR entitled, ''Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills'' is approvable.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan revision should adverse comments be filed. This rule will be effective March 15, 2004, without further notice unless the Agency receives adverse comments by February 17, 2004.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

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). New York's State plan applies to all affected sources regardless of whether it has been identified in its plan. Therefore, EPA has concluded that this rulemaking action does not have federalism implications nor does it have substantial direct effects on the States, on the

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 15, 2004. 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 62

Environmental protection, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: December 29, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 04–889 Filed 1–14–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. PR11–267w, FRL–7610–4]

Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico Removal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of direct final rule.

SUMMARY: Due to receipt of an adverse comment, EPA is removing the direct final rule which approved the ''State Plan'' submitted by the Commonwealth of Puerto Rico to fulfill the requirements of sections 111(d)/129 of the Clean Air Act for Commercial and Industrial Solid Waste Incineration (CISWI) units. The direct final rule was published on October 31, 2003 (68 FR 62019). As stated in the direct final rule, if adverse comments were received by December 1, 2003, a timely withdrawal would be published in the **Federal Register**. EPA subsequently received an adverse comment. EPA will address the comments in a subsequent final action based upon the proposed action also published on October 31, 2003 (68 FR 62040). EPA will not institute a second comment period on this action.

DATES: This action is effective January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kirk Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381 or at *Wieber.Kirk@epa.gov.*

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Acid gases, Carbon monoxide, Commercial and industrial solid waste, Intergovernmental relations, Organics, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 29, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

■ Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BBB—Puerto Rico

■ 2. Subpart BBB is amended by removing § 62.13108 and the undesignated center heading.

[FR Doc. 04–892 Filed 1–14–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7609–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announces the deletion of the Selected Perimeter Area of the Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), have determined that the Selected Perimeter Area of the RMA/NPL Site poses no significant threat to public health or the environment and, therefore, no further

remedial measures pursuant to CERCLA are appropriate.

This partial deletion pertains to the surface (soil, surface water, sediment), structures, and groundwater media of the Selected Perimeter Area of the On-Post OU of the RMA/NPL Site. The Surface Deletion Area of the On-Post OU RMA/NPL Site, composed of the surface and structures media only within an additional 123 acres, also is being deleted at this time. The rest of the On-Post and Off-Post OUs will remain on the NPL. This partial deletion of the Selected Perimeter Area will not change Appendix B of 40 CFR part 300, which was previously amended in January 2003 (68 FR 2699) to reflect that a partial deletion of 1.5 square miles from the RMA/NPL Site had occurred.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6660. Information on the RMA/NPL Site as well as the Deletion Docket and the Responsiveness Summary for this partial deletion are available at EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site, which includes the Deletion Docket and Responsiveness Summary for the partial deletion of the Selected Perimeter and Surface Deletion Areas, is maintained at the Joint Administrative Records Document Facility, Rocky Mountain Arsenal, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday or by appointment.

SUPPLEMENTARY INFORMATION: The Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site is located in southern Adams County, Colorado, approximately eight miles northeast of downtown Denver. The On-Post operable unit (OU) of the RMA/NPL Site addresses the source areas of contamination within the boundaries of RMA proper. The Off-Post OU addresses contamination north and northwest of the RMA proper boundaries. The Selected Perimeter Area consists of 4,930 acres along the perimeter of the On-Post OU in Commerce City, Colorado.

This partial deletion pertains to the surface (soil, surface water, sediment), structures, and groundwater media of the Selected Perimeter Area of the On-Post OU of the RMA/NPL Site. The Surface Deletion Area of the On-Post OU RMA/NPL Site, composed of the surface and structures media only within an additional 123 acres, also is being deleted at this time. The Off-Post OU and the rest of the On-Post OU will remain on the NPL.

On July 28, 2003, EPA published a Notice of Intent for Partial Deletion (NOIDp) in the **Federal Register** (68 FR 44259) and local newspapers which proposed to delete the Selected Perimeter Area from the RMA/NPL Site. Comments received during the public comment period primarily focused on the application of institutional controls and five-year reviews once the proposed property is deleted, as well as understanding how the boundaries of the Selected Perimeter Area were chosen. EPA also received 17 letters of support for proceeding with the partial deletion and two letters which provided recommendations but did not state a preference regarding the deletion.

In our Responsiveness Summary, EPA explained how institutional controls are currently in place for the entire On-Post OU as required by the 1989 Federal Facilities Agreement, 1992 RMA National Wildlife Refuge Act, and 1996 Record of Decision for the RMA/NPL Site. These documents require the transfer of the 100-foot wide areas along the perimeter of the On-Post OU to State/local governments for road widening ''be subject to perpetual restrictions that are attached to any deed to such property.'' Use restrictions for the remainder of the deleted Selected Perimeter Area will be managed by the U.S. Fish and Wildlife Service as outlined in the Interim RMA Institutional Control Plan, in coordination with the U.S. Army. The effectiveness of the institutional controls will be assessed as part of five-year reviews.

Five-year reviews for the RMA/NPL Site are conducted in accordance with EPA's Comprehensive Five-Year Review Guidance. As the lead agency for the RMA/NPL Site, the Army is responsible for conducting each site-wide, five-year review regardless of land transfer. While the Army cannot transfer this responsibility, they can contract with another agency or third party to conduct the actual five-year review activities. The next year-long, five-year review process, which includes public participation, is expected to begin in late 2004 so it can be completed by the December 2005 schedule.

EPA's responsiveness summary further explained how only areas which met the criteria of ''Responsible parties or other persons have implemented all appropriate response actions required'' (40 CFR 300.425(e)(1)(i)) were considered for deletion. Not all property that met the deletion criteria were included in EPA's proposal for deletion. However, the Selected Perimeter Area, in combination with the Surface Deletion Area, will allow the U.S. to effect the 1992 RMA National Wildlife Refuge Act and provide a direct benefit to communities adjacent to RMA by making the 100-foot-strips available for road widening which will ease access to Denver International Airport. The remainder of the Selected Perimeter and Surface Deletion Areas will provide for the establishment of a refuge of significant size encompassing the southern zone and the existing Visitor Center, the areas of highest public use.

The 17 entities who support the partial deletion cited their confidence in the environmental studies and the thoroughness of the cleanup activities conducted by the Army and Shell to meet standards set by EPA, the State of Colorado, and the Tri-County Health Department. EPA agrees that completion of the remedy requirements as well as recent site-wide studies adequately demonstrate that the Selected Perimeter Area does not present a threat to the environment or human health and it is appropriate to delete the Selected Perimeter Area from the RMA/NPL Site.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

Lists of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 5, 2004.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 04–834 Filed 1–14–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7609–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announces the deletion of the Surface Deletion Area of the Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), have determined that the Surface Deletion Area of the RMA/NPL Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

This partial deletion pertains to the surface (soil, surface water, sediment) and structures media only and excludes the groundwater media of the Surface Deletion Area of the On-Post OU of the RMA/NPL Site. The Selected Perimeter Area of the On-Post OU RMA/NPL Site, composed of the surface, structures, and groundwater media within an additional 4,930 acres, also is being deleted at this time. The rest of the On-Post and Off-Post OUs will remain on the NPL. This partial deletion of the Surface Deletion Area will not change Appendix B of 40 CFR part 300, which was previously amended in January 2003 (68 FR 2699) to reflect that a partial deletion of 1.5 square miles from the RMA/NPL Site had occurred.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, (303) 312–6660. Information on the RMA/NPL Site as well as the Deletion Docket and the Responsiveness Summary for this partial deletion are available at EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site, which includes the Deletion Docket and Responsiveness Summary for the partial deletion of the Surface Deletion and Selected Perimeter Areas, is maintained at the Joint Administrative Records Document Facility, Rocky Mountain Arsenal, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday or by appointment.

SUPPLEMENTARY INFORMATION: The Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site is located in southern Adams County, Colorado, approximately eight miles northeast of downtown Denver. The On-Post operable unit (OU) of the RMA/NPL Site addresses the source areas of contamination within the boundaries of RMA proper. The Off-Post OU addresses contamination north and northwest of the RMA proper boundaries. The Surface Deletion Area consists of 123 acres on the northern and southern perimeter of the On-Post OU in Commerce City, Colorado.

This partial deletion pertains to the surface (soil, surface water, sediment) and structures media only and excludes the groundwater media of the Surface Deletion Area of the On-Post OU of the RMA/NPL Site. The Selected Perimeter Area of the On-Post OU RMA/NPL Site, composed of the surface, structures, and groundwater media within an additional 4,930 acres, also is being deleted at this time. The rest of the On-Post and Off-Post OUs will remain on the NPL.

On July 28, 2003, EPA published a Notice of Intent for Partial Deletion (NOIDp) in the **Federal Register** (68 FR 44265) and local newspapers which proposed to delete the Surface Deletion Area from the RMA/NPL Site. Comments received during the public comment period primarily focused on the application of institutional controls and five-year reviews once the proposed property is deleted, as well as understanding how the boundaries of the Surface Deletion Area were chosen. EPA also received 17 letters of support for proceeding with the partial deletion and two letters which provided recommendations but did not state a preference regarding the deletion.

In our Responsiveness Summary, EPA explained how institutional controls are currently in place for the entire On-Post OU as required by the 1989 Federal Facilities Agreement, 1992 RMA National Wildlife Refuge Act, and 1996 Record of Decision for the RMA/NPL Site. These documents require the transfer of the 100-foot wide areas along the perimeter of the On-Post OU to State/local governments for road widening ''be subject to perpetual restrictions that are attached to any deed to such property.'' Use restrictions for the remainder of the deleted Surface Deletion Area will be managed by the U.S. Fish and Wildlife Service as outlined in the Interim RMA Institutional Control Plan, in coordination with the U.S. Army. The effectiveness of the institutional controls will be assessed as part of five-year reviews.

Five-year reviews for the RMA/NPL Site are conducted in accordance with EPA's Comprehensive Five-Year Review Guidance. As the lead agency for the RMA/NPL Site, the Army is responsible for conducting each site-wide, five-year review regardless of land transfer. While the Army cannot transfer this responsibility, they can contract with another agency or third party to conduct the actual five-year review activities. The next year-long, five-year review process, which includes public participation, is expected to begin in late 2004 so it can be completed by the December 2005 schedule.

EPA's responsiveness summary further explained how only areas which met the criteria of ''Responsible parties or other persons have implemented all appropriate response actions required'' (40 CFR 300.425(e)(1)(i)) were considered for deletion. Not all property that met the deletion criteria were included in EPA's proposal for deletion. However, the Surface Deletion Area, in combination with the Surface Deletion Area, will allow the U.S. to effect the 1992 RMA National Wildlife Refuge Act and provide a direct benefit to communities adjacent to RMA by making the 100-foot-strips available for road widening which will ease access to Denver International Airport. The remainder of the Selected Perimeter and Surface Deletion Areas will provide for the establishment of a refuge of significant size encompassing the southern zone and the existing Visitor Center, the areas of highest public use.

The 17 entities who support the partial deletion cited their confidence in the environmental studies and the thoroughness of the cleanup activities conducted by the Army and Shell to meet standards set by EPA, the State of Colorado, and the Tri-County Health Department. EPA agrees that completion

of the remedy requirements as well as recent site-wide studies adequately demonstrate that the Surface Deletion Area does not present a threat to the environment or human health and it is appropriate to delete the Surface Deletion Area from the RMA/NPL Site.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

Lists of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 5, 2004.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 04–835 Filed 1–1–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Amendment 192–95]

RIN 2137–AD54

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the effective date of a final rule published in the **Federal Register** on December 15, 2003 (68 FR 69778). That rule requires operators to develop integrity management programs for gas transmission pipelines located where a leak or rupture could do the most harm, *i.e.*, could impact high consequence areas (HCAs). The rule requires gas transmission pipeline operators to perform ongoing assessments of pipeline integrity, to improve data collection, integration and analysis, to repair and remediate the pipeline as necessary, and to implement preventive and mitigative actions. The published effective date was in error. This document corrects the effective date from January 14, 2004, to February 14, 2004, to meet the 60 day requirement for Congressional review of major rules. (5 U.S.C. 801(a)(4).)

EFFECTIVE DATE: The effective date for the final rule published on December 15, 2003, at 68 FR 69778 is corrected to read February 14, 2004.

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571, by fax at (202) 366–4566, or by e-mail at *mike.israni@rspa.dot.gov*, regarding the subject matter of the final rule.

Issued in Washington, DC, on December 22, 2003.

Samuel G. Bonasso,

Deputy Administrator.

[FR Doc. 04–275 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030227050–3082–02; I.D. 010904C]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Reopening of Commercial Fishery

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

ACTION: Commercial fishery reopening.

SUMMARY: NMFS announces that spiny dogfish commercial fishery will reopen. Vessels issued a Federal moratorium permit to harvest spiny dogfish may possess up to 300 lb (136 kg) of spiny dogfish per trip per calendar day on 0001 hours local time, January 12, 2004, through 2359 hours local time, April 30, 2004. The intent of this action is to allow for the full utilization of the commercial quota allocated to the spiny dogfish fishery.

DATES: Effective 0001 hours local time, January 12, 2004, through 2359 hours local time, April 30, 2004.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov*.

SUPPLEMENTARY INFORMATION: Section 648.231 of part 50 CFR requires NMFS to close the commercial fishery for spiny dogfish in the EEZ for each semi-annual quota period when the quota is determined to be harvested. The Administrator, Northeast Region, NMFS, based on dealer reports, state data, and other available information, determined that the quota for Quota Period 2 would be harvested (68 FR 41945, July 16, 2003), therefore, effective 0001 hours, July 18, 2003, the commercial fishery for spiny dogfish in the EEZ was closed. However, new projections indicate the quota of spiny dogfish may not be attained. Therefore, NMFS announces that the commercial fishery for spiny dogfish in the EEZ will reopen. Vessels issued a Federal moratorium permit to harvest spiny dogfish may possess up to 300 lb (136 kg) of spiny dogfish per trip per calendar day effective 0001 hours local time, January 12, 2004, through 2359 hours local time, April 30, 2004.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: January 12, 2003.

Bruce C. Morehead,

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

[FR Doc. 04–900 Filed 1–12–04; 2:38 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 10
Thursday, January 15, 2004

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 370

RIN 3206–AK28

Information Technology Exchange Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to implement provisions contained in the E-Government Act of 2002. This law authorizes the temporary assignment of employees in the field of information technology management (IT) between the Federal Government and private sector organizations. It also authorizes Federal agencies to accept, on a volunteer basis, the services of non-Federal IT employees.

DATES: We will consider comments received on or before March 15, 2004.

ADDRESSES: Send, deliver or fax, written comments to Ms. Leah M. Meisel, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street NW., Washington, DC 20415–9700; e-mail *employ@opm.gov;* fax: (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Mahoney at 202–606–0960 or by e-mail at *mjmahone@opm.gov.* Mr. Mahoney may also be contacted by TTY at (202) 418–3134, or by fax at (202) 606–2329.

SUPPLEMENTARY INFORMATION: On December 17, 2002, the President signed the E-Government Act of 2002 (Act), Public Law 107–347, into law. The Act authorizes the Federal Information Technology Exchange Program, under which a Federal agency may detail an exceptional employee to a private organization as well as receive a private sector employee on detail to the agency. It also authorizes Federal agencies to accept services volunteered by persons in the information technology management field. The Act adds a new chapter 37 to title 5, United States Code, and this regulation adds a corresponding part, part 370, Information Technology Exchange Program, to the Code of Federal Regulations in accordance with 5 U.S.C. 3707. The new part has nine sections, as follows:

Purpose

This section explains the purpose of this regulation which is to implement Section 209(b)(6) of the Act as well as 5 U.S.C. chapter 37, as enacted by Section 209(c) of the Act, in order to improve the competency of the Federal workforce in using information technology to deliver Government information and services. It also explains that details under this subpart allow Federal employees to serve with private sector organizations for a limited time period without loss of employee rights and benefits.

Definitions

This section contains terms defined in 5 U.S.C. chapter 37. To avoid redundancy, we refer readers to the law where appropriate. It also contains a definition of information technology management which will aid agencies in determining an individual's eligibility for assignment under this part.

Eligibility

This section explains the criteria under which individuals may be eligible for detail under this part. For the convenience of the reader, we have restated criteria contained in the Act. This section clarifies that members of the Senior Executive Service are eligible for assignment under this part. This section also clarifies that, for purposes of this part, appointments of equivalent tenure in the excepted service include appointments that have non-competitive conversion eligibility to the competitive service. These include, but are not limited to, Veterans' Recruitment Appointments (VRA) and appointments made under the Presidential Management Fellows program, the Federal Career Intern program, and the Student Career Experience program.

Length of Details

This section explains the time limits (including extensions) for details made under this part. It also reminds agencies they may not begin or extend details after December 17, 2007. It explains, however, that individuals serving on details prior to this date may continue to do so as long as the detail began or was extended on or before December 17, 2007.

This section also establishes a lifetime limit of 6 years on the total number of years a Federal employee may be detailed under this part. This lifetime limit makes this part consistent with the limit for assignments made under the Intergovernmental Personnel Act Mobility Program.

Written Agreements

This section requires an agency to enter into a written agreement before any detail under this part begins. It also explains the criteria that a written agreement must contain: Duties, duration, whether the individual will be supervised by a Federal or private sector employee, and employee responsibilities after the detail ends.

Terms and Conditions

This section clarifies that a Federal employee serving on a detail under this part remains a Federal employee, and thus, retains all rights, benefits, and considerations he or she normally would have possessed if the detail had not been accepted.

This section explains that a Federal employee on detail to a private sector organization may be supervised by private sector managers during the detail. An individual detailed from the private sector to a Federal agency may be supervised by Federal personnel. In either case, whoever will supervise the detailee must be described in the written agreement.

This section also explains that private sector employees are considered to be employees of the agency for purposes of corruption statutes, ethics, financial disclosure, injury compensation, and tort claims.

Lastly, this section explains that private sector organizations may not charge the Federal Government for the pay or benefits paid by the organization to an employee detailed to a Federal agency under this part. For the convenience of the reader, we have restated criteria contained in the Act.

Assignments to Small Business Concerns

This section explains that agencies must ensure that 20 percent of

assignments to private organizations be made to small business concerns when an agency makes five or more assignments in any year. Agencies that do not meet this requirement must submit a report to Congress, which is in addition to any documentation and reports which OPM may require of them. This section also provides guidance and examples for agencies to follow for computing 20 percent of assignments to private sector organizations.

Reporting Requirements

This section describes the Office of Personnel Management's obligations for submitting reports to Congress consistent with 5 U.S.C. 3706. It also specifies the dates by which agencies must report to OPM. This section also reminds agencies of their obligation to report to Congress consistent with 5 U.S.C. 3703(e)(3) and their obligation under 5 U.S.C. 3706(d) to provide OPM with whatever information OPM may require to fulfill its own Congressional reporting responsibility.

Agency Plans

This section explains that the head of an agency must establish an agency plan before using this part. An agency plan must include, but is not limited to, a designation of the agency officials with authority to review and approve assignments; the number of candidates needed to satisfy the agency's information technology needs; procedures for selecting and identifying agency employees for detail; expected costs and benefits of each detail; return rights and obligations for agency employees selected for detail; and documentation and recordkeeping requirements sufficient to allow reconstruction of each action taken under this part.

Executive Order 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would only apply to Federal agencies and employees.

List of Subjects in 5 CFR Part 370

Claims. Government employees. Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM proposes to add part 370 to title 5 of the Code of Federal Regulations, as follows:

PART 370—INFORMATION TECHNOLOGY EXCHANGE PROGRAM

Sec.
370.101 Purpose.
370.102 Definitions.
370.103 Eligibility.
370.104 Length of details.
370.105 Written agreements.
370.106 Terms and conditions.
370.107 Assignments to small business concerns.
370.108 Reporting requirements.
370.109 Agency plans.

Authority: Pub. L. 107–347, 116 Stat. 2924 (5 U.S.C. 3701–3707).

§ 370.101 Purpose.

(a) The purpose of this part is to implement the objectives of sections 209(b)(6) and (c) of the E–Government Act of 2002 (Pub. L. 107–347) which authorizes the Office of Personnel Management to establish an Information Technology Exchange Program. This statute authorizes the temporary assignment of information technology employees between the Federal Government and private sector organizations. The statute also authorizes agencies to accept, on a volunteer basis, the services of private sector information technology employees detailed under the Information Technology Exchange Program.

(b) Under this part, agency heads, or their designees, may approve details as a mechanism for improving the Federal workforce's competency in using information technology to deliver Government information and services. Details under this part allow Federal employees to serve with private sector organizations for a limited time period without loss of employee rights and benefits. Agencies may not make details under this part to meet the personal interests of employees, to circumvent personnel ceilings, or as a substitute for other, more appropriate personnel decisions or actions.

§ 370.102 Definitions.

In this part:

Agency means an Executive agency as defined in 5 U.S.C. 105, with the exception of the General Accounting Office.

Detail means:

(1) The assignment or loan of an employee of an agency to a private sector organization without a change of position from the agency that employs the individual (5 U.S.C. 3701(2)(A)), or

(2) The assignment or loan of an employee of a private sector organization to an agency without a change of position from the private sector organization that employs the individual (5 U.S.C. 3701(2)(B)).

Information technology management means the planning, organizing, staffing, directing, integrating, or controlling of systems and services used in the automated acquisition, storage, manipulation, management, movement control, display, switching, interchange, transmission, assurance, or reception of information. Information technology includes computers, network components, peripheral equipment, software, firmware, services, and related resources.

OPM means the Office of Personnel Management.

Small Business Concern means a business concern that satisfies the definitions and standards specified by the Administrator of the Small Business Administration (SBA), under section 3(a)(2) of the Small Business Act. SBA standards and definitions are codified at 13 CFR part 121. Agencies can find more information on the SBA's Web site at *http://www.sba.gov/size,* including a list of the six SBA area offices that have size specialists who deal with Federal agencies on size matters daily at *http://www.sba.gov/size/indexcontacts.html.* SBA's table of size standards is located at *http://www.sba.gov/size/indextableofsize.html.*

§ 370.103 Eligibility.

(a) To be eligible for a detail under this part, an individual must:

(1) Work in the field of information technology management;

(2) Be considered an exceptional performer by the individual's current employer; and

(3) Be expected by the individual's current employer to assume increased responsibilities for the management of information technology in the future.

(b) To be eligible for a detail under this part, a Federal employee, in addition to meeting the requirements of paragraph (a) of this section, must be serving at the GS–11 level or above (or equivalent), which includes members of the Senior Executive Service, under a career or career-conditional appointment or an appointment of

equivalent tenure in the excepted service. For purposes of this part appointments of equivalent tenure in the excepted service include, but are not limited to, Veterans' Recruitment Appointments and appointments made under the Presidential Management Intern program, the Federal Career Intern program, and the Student Career Experience program.

§ 370.104 Length of details.

(a) Assignments under this part may be for a period of between 3 months and one year, and may be extended in 3-month increments for a total of not more than 1 additional year, in accordance with 5 U.S.C. 3702(d).

(b) Agencies may not approve or extend details after December 17, 2007. An individual serving on a detail prior to this date may continue to do so as long as the detail began or was extended on or before December 17, 2007.

(c) A Federal agency may not send on assignment an employee who has served on a detail under this part for more than 6 years during his or her Federal career. OPM may waive this provision upon the request of the agency head, or his or her designee.

§ 370.105 Written agreements.

Before the detail begins, an agency must enter into a written agreement with any individual detailed under this part. The written agreement must specify:

(a) The terms and conditions of the detail (*e.g.*, duties, duration, including the terms on which extensions may be granted, if applicable);

(b) Whether the individual will be supervised by a Federal or private sector employee;

(c) The requirement for Federal employees to remain in the civil service upon completion of the assignment, for a period equal to the length of the assignment including any extension; and

(d) The obligations and responsibilities of all parties as described in 5 U.S.C. 3702 through 3704.

§ 370.106 Terms and conditions.

(a) A Federal employee detailed under this part:

(1) Remains a Federal employee without loss of employee rights and benefits attached to that status. These include, but are not limited to:

(i) Consideration for promotion;

(ii) Leave accrual;

(iii) Continuation of retirement benefits and health, life, and long-term care insurance benefits; and

(iv) Pay increases the employee otherwise would have received had he or she not been detailed;

(2) Remains covered for purposes of the Federal Tort Claims Act, and for purposes of injury compensation as described in 5 U.S.C. chapter 81; and

(3) Is subject to any action that may impact the employee's position while he or she is detailed.

(b) An individual detailed from a private sector organization under this part:

(1) Is deemed to be an employee of the agency for purposes of:

(i) 5 U.S.C. chapter 73;

(ii) 18 U.S.C. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;

(iii) 31 U.S.C. 1343, 1344, and 1349(b);

(iv) The Federal Tort Claims Act and any other Federal tort liability statute;

(v) The Ethics in Government Act of 1978;

(vi) Section 1043 of the Internal Revenue Code of 1986;

(vii) Section 27 of the Office of Federal Procurement Policy Act; and

(2) Does not have any right or expectation for Federal employment solely on the basis of his or her detail;

(3) May not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he or she is assigned;

(4) Is subject to such regulations as the President may prescribe; and

(5) Shall be covered by 5 U.S.C. chapter 81 as provided in 5 U.S.C. 3704(c).

(c) Individuals detailed under this part may be supervised by either Federal or private sector managers. For example, a Federal employee on detail to a private sector organization may be supervised by a private sector manager. Likewise, a private sector employee on detail to a Federal agency may be supervised by a Federal employee. The supervision of the duties of an individual detailed under this part must be described in the written agreement.

(d) As provided in 5 U.S.C. 3704(d), a private sector organization may not charge the Federal Government for the costs of pay or benefits paid by the organization to an employee assigned to an agency under this part.

§ 370.107 Assignments to small business concerns.

(a) The head of each agency shall take such actions as may be necessary to ensure that, of the assignments made to private sector organizations in each year, at least 20 percent are to small business concerns, in accordance with 5 U.S.C. 3703(e)(1).

(b) Agencies must round up to the nearest whole number when calculating the percentage of assignments to small business concerns needed to meet the requirements of this section. For example, an agency assigned 11 individuals to private sector organizations during a given year. To meet the 20 percent requirement, the agency must have made at least three (rounded up from 2.2) of these assignments to small business concerns. As another example, an agency assigned 19 individuals to private sector organizations during a given year. To meet the 20 percent requirement, the agency must have made at least four (rounded up from 3.8) of these assignments to small business concerns.

(c) For purposes of this section, assignments made in a year are those commencing in that year, in accordance with 5 U.S.C. 3703(e)(2)(C).

(d) Agencies which do not meet the requirements of this section are subject to the reporting requirements in 5 U.S.C. 3703(e)(3).

(e) An agency in any year which makes fewer than five assignments to private sector organizations is not subject to this section.

§ 370.108 Reporting requirements.

(a) OPM must prepare and submit to Congress semiannual reports in accordance with 5 U.S.C. 3706.

(b) Federal agencies using this part must prepare and submit to OPM semiannual reports in accordance with 5 U.S.C. 3706, including such other information as OPM considers appropriate, in accordance with 5 U.S.C. 3706(b)(3) and (d). These reports are due to OPM no later than April 7 and October 7 of each year for the immediately preceding 6-month period ending March 31 and September 30, respectively.

(c) Federal agencies which do not meet the requirements of § 370.107 must prepare and submit annual reports to Congress in accordance with 5 U.S.C. 3703(e)(3), as appropriate.

§ 370.109 Agency plans.

Before detailing agency employees or receiving private sector employees under this part, an agency must establish an Information Technology Exchange Program plan. The plan must include, but is not limited to, the following elements:

(a) A designation of the agency officials with authority to review and approve assignments;

(b) The number of candidates needed to satisfy the agency's information technology needs;

(c) Procedures for selecting and identifying exceptional agency employees for detail;

(d) Return rights and obligations for agency employees selected for detail; and

(e) Documentation and recordkeeping requirements sufficient to allow reconstruction of each action taken under this part.

[FR Doc. 04–862 Filed 1–14–04; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16596; Airspace Docket No. 03–ASO–20]

Proposed Amendment of Class D, E2, and E4 Airspace; Columbus Lawson AAF, GA, and Class E5 Airspace; Columbus, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D, E2 and E4 airspace at Columbus Lawson AAF, GA, and Class E5 airspace at Columbus, GA. As a result of the relocation of the Lawson AAF Instrument Landing System (ILS) and the extension of Runway (RWY) 15–33, it has been determined a modification should be made to the Columbus Lawson AAF, GA, Class D, E2 and E4 airspace, and to the Columbus, GA, Class E5 airspace areas to contain the ILS RWY 33, Standard Instrument Approach Procedure (SIAP) to the Lawson AAF Airport. Additional surface area airspace and controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16596/ Airspace Docket No. 03–ASO–20, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16596/Airspace Docket No. 03–ASO–20.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http:www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D, E2 and E4 airspace at Columbus Lawson AAF, GA, and Class E5 airspace at Columbus, GA. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace designated as surface areas and airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 5000, 6002, 6004 and 6005 respectively, of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO GA D Columbus Lawson AAF, GA [Revised]

Columbus Lawson AAF, GA
(Lat. 32°20′14″ N, long. 84°59′29″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of Lawson AAF, excluding that airspace within the Columbus Metropolitan Airport, GA, Class C airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ADO GA E2 Columbus Lawson AAR, GA [Revised]

Columbus Lawson AAF, FA
(Lat. 32°20′14″ N, long. 84°59′29″ W)

Within a 4.2-mile radius of Lawson AAF; excluding that airspace within the Columbus Metropolitan Airport, GA, Class C airspace area. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area

* * * * *

ASO GA E4 Columbus Lawson AAF, GA [Revised]

Lawson AAF, GA
(Lat. 32°20′14″ N, long. 84°59′29″ W)

Lawson VOR/DME
(Lat. 32°19′57″ N, long. 84°59′36″ W)

Lawson NDB
(Lat. 32°17′36″ N, long. 85°01′24″ W)

That airspace extending upward from the surface within 1.2 miles each side of the Lawson VOR/DME 214° radial extending from the 4.2-mile radius of Lawson AAF to 6 miles southwest of the NDB. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO GA E5 Columbus, GA [Revised]

Columbus Metropolitan Airport, GA
(Lat. 32°30′59″ N, long. 84°56′20″ W)

Lawson AAF, GA
(Lat. 32°20′14″ N, long. 84°59′29″ W)

Lawson VOR/DME
(Lat. 32°19′57″ N, long. 84°59′36″ W)

Lawson LOC
(Lat. 32°20′43″ N, long. 84°59′55″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Columbus Metropolitan Airport and within a 7.6-mile radius of Lawson AAF and within 2.5 miles each side of Lawson VOR/DME 340° radial, extending from the 7.6-mile radius to 15 miles north of the VOR/DME and within 4 miles each side of the Lawson LOC 127° course, extending from the 7.6-mile radius to 10.6 miles southeast of Lawson AAF.

* * * * *

Issued in College Park, Georgia on January 7, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–920 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16622; Airspace Docket No. 03–ASO–21]

Proposed Amendment of Class E Airspace; Lexington, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Lexington, TN. As a result of an evaluation, it has been determined a modification should be made to the Lexington, TN, Class E5 airspace area to contain the VHF Omnidirectional Range (VOR) or Global Positioning System (GPS) Runway 33, Standard Instrument Approach Procedure (SIAP) to Franklin Wilkins Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16622/Airspace Docket No. 03–ASO–21, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16622/Airspace

Docket No. 03–ASO–21.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Lexington, TN. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71.

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Lexington, TN [Revised]

Lexington, Franklin Wilkins Airport, TN
(Lat. 35°39′05″ N, long. 88°22′44″ W)
Jacks Creek VORTAC
(Lat. 35°35′56″ N, long. 88°21′32″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Franklin Wilkins Airport, and within 8 miles east and 4 miles west of the Jacks Creek VORTAC 166° radial extending from the 6.6-mile radius to 16 miles southeast of the VORTAC.

* * * * *

Issued in College Park, Georgia on January 7, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–919 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 1999P–5332]

Substances Affirmed as Generally Recognized as Safe: Menhaden Oil

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a tentative final rule to amend its regulations by reallocating the uses of menhaden oil in food that currently are established in § 184.1472 (21 CFR 184.1472). FDA has tentatively concluded that these uses of menhaden oil are generally recognized as safe (GRAS), but only when the menhaden oil is not used in combination with other added oils that are significant sources of eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA). Because FDA's proposed rule of February 26, 2002, did not include a condition of use for other added oils, FDA is issuing this tentative final rule to give interested persons an opportunity to comment on this use limitation.

DATES: Submit written or electronic comments by March 30, 2004.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3095.

SUPPLEMENTARY INFORMATION:

I. Background

Menhaden oil is a refined marine oil that is derived from menhaden fish (*Brevoortia* species). Menhaden oil differs from edible vegetable oils and animal fats in its high proportion of polyunsaturated fatty acids, including omega-3 fatty acids. EPA and DHA are the major source of omega-3 fatty acids from fish oil and together comprise approximately 20 percent by weight of menhaden oil. In response to a petition (GRASP 6G0316) from the National Fish Meal and Oil Association, FDA issued a final rule on June 5, 1997 (62 FR 30751)

(the June 1997 final rule), affirming menhaden oil as GRAS for use as a direct human food ingredient with limitations on the maximum use levels of menhaden oil in specific food categories. FDA concluded that these limitations are necessary to ensure that daily intakes of EPA and DHA from menhaden oil do not exceed 3.0 grams per person per day (g/p/d). As discussed in the following paragraphs, the maximum limit of 3.0 g/p/d on the total daily intake of EPA and DHA is a safeguard against the possible effects of these fatty acids on increased bleeding time (the time taken for bleeding from a standardized skin wound to cease), glycemic control in non-insulin-dependent diabetics, and increased levels of low-density lipoprotein (LDL) cholesterol. The concerns over possible adverse effects of fish oil consumption on bleeding time, glycemic control, and LDL cholesterol were discussed in the June 1997 final rule.

As part of FDA's evaluation of GRASP 6G0316, FDA examined the scientific literature for evidence that consumption of fish oils may contribute to excessive bleeding. In the June 1997 final rule, FDA concluded based on this examination of the scientific literature, including more than 50 reports on fish oils with data on bleeding time, that when consumption of fish oils is limited to 3.0 g/p/d or less of EPA and DHA, there is no significant risk for increased bleeding time beyond the normal range (62 FR 30751 at 30752 to 30753). FDA also concluded that amounts of fish oils providing more than 3.0 g/p/d of EPA and DHA have generally been found to produce increases in bleeding time that are statistically significant, but that there are insufficient data to evaluate the clinical significance of this finding. Therefore, because of the lack of data on clinical significance and because of the potential risk of excessive bleeding in some individuals with intakes at higher levels, FDA concluded that the safety of menhaden oil was generally recognized only at levels that limit intake of EPA and DHA to 3.0 g/p/d.

FDA also concluded in the June 1997 final rule that 3.0 g/p/d of EPA and DHA is a safe level with respect to glycemic control (62 FR 30751 at 30753). This conclusion was based on FDA's review of a series of studies on non-insulin-dependent diabetics. Studies on type-II diabetics that reported increased glucose used higher amounts (4.5 to 8 g/p/d) of omega-3 fatty acids. One study found no change in fasting blood glucose levels among type-II (non-insulin-dependent) diabetics treated with 3.0 g/p/d EPA plus DHA for 2 weeks. Two other studies that used 3.0 g/p/d EPA plus DHA for 6 weeks and 2.7 g/p/d EPA plus DHA for 8 weeks found only transient increases in blood glucose halfway through their respective supplementation periods. Another study that used 3.0 g/p/d EPA plus DHA for 3 weeks found comparable increases in fasting blood glucose when either fish oil or safflower oil was fed, so the increase cannot be attributed specifically to omega-3 fatty acids. A study that compared the effects of fish oil and olive oil fed 3.0 g/p/d of EPA plus DHA did not find a difference in fasting glucose or glycosylated hemoglobin after fish oil supplementation compared to baseline; they did find a significant difference compared to the olive oil treatment, which produced changes in the opposite direction from fish oil. Based on its evaluation of the available information, FDA concluded in the June 1997 final rule that consumption of EPA and DHA in fish oils at 3.0 g/p/d by diabetics has no clinically significant effect on glycemic control, although higher amounts of EPA and DHA (4.5 g/p/d and above) remain of concern.

The June 1997 final rule also considered the reported effects of fish oil on LDL cholesterol levels in healthy persons with normal cholesterol levels, as well as in persons with diabetes mellitus, hypertension, abnormal blood lipid levels, and cardiovascular disease (62 FR 30751 at 30753 to 30754). As a result of its evaluation, FDA found that although reported study reports are variable, there appears to be a trend toward increased LDL cholesterol values with increased fish oil consumption in all population subgroups, with the magnitude of the increase appearing greater and more consistent in populations with abnormal blood lipid levels, hypertension, diabetes, and cardiovascular disease. Based on its evaluation, FDA concluded that 3.0 g/p/d of EPA and DHA is a safe level with respect to LDL cholesterol.

In the **Federal Register** of February 26, 2002 (67 FR 8744), FDA published a proposed rule to amend § 184.1472 by reallocating the uses of menhaden oil in food, while maintaining the total daily intake of EPA and DHA from menhaden oil at a level not exceeding 3.0 g/p/d. The proposal was based on a citizen petition from the National Fish Meal and Oil Association. The maximum limit of 3.0 g/p/d on the total daily intake of EPA and DHA is a safeguard against the possible adverse effects discussed in the June 1997 final rule and the February 2002 proposed rule. The reallocation is performed by the following three actions: (1) Reducing the maximum levels of use of menhaden oil in some of the currently listed food categories; (2) adding additional food categories along with assigning maximum levels of use in these new categories; and (3) eliminating the listing of subcategories, e.g., cookies and crackers, breads and rolls, fruit pies and custard pies, and cakes, and including them under broader food categories, e.g., baked goods and baking mixes.

The purpose of the maximum use levels of menhaden oil in the food categories is to ensure that the total daily intake of EPA and DHA does not exceed 3.0 g/p/d (67 FR 8744 to 8745). When the June 1997 final rule published affirming that menhaden oil is GRAS for use as a direct human food ingredient with specific limitations, FDA considered food sources of EPA and DHA likely to be in the diet at that time, but the agency did not take into account that other sources of EPA and DHA might be developed in the future. The implicit basis for the restrictions in the menhaden oil regulation was that while menhaden oil might be blended with other oils to make a particular food product, the sum of DHA and EPA would not exceed 3.0 g/p/d because other oils were not significant sources of DHA and EPA. However, since publication of the proposed rule, FDA has received notices from three companies that have concluded that fish oils, other than menhaden oil, are GRAS for use in the same food categories as those currently listed in § 184.1472(a)(3) at maximum use levels that are designed to assure that the combined daily intake of EPA and DHA would not exceed 3.0 g/p/d. These oils included small planktivorous pelagic fish body oil (oil derived primarily from sardine and anchovy fish) (Ref. 1), a fish oil concentrate (manufactured from oil extracted from edible marine fish species that normally include anchovy, sardine, jack mackerel, and mackerel) (Ref. 2), and tuna oil (Ref. 3). In each case, the company acknowledged the concerns raised by FDA in the June 1997 final rule and the proposed rule, about consumption of high levels of EPA and DHA. Furthermore, in each case the company stated that its determination of GRAS status related only to the circumstance where its fish oil product is used as the sole added source of EPA and DHA in any given food category and is not combined or augmented with any other EPA/DHA-rich oil.

Because of developing interest in food ingredients that are sources of EPA and DHA, FDA now believes that it is necessary to state explicitly in the regulation that when menhaden oil is added as an ingredient in foods, it may

not be used in combination with any other added oil that is a significant source of EPA and DHA. Without this restriction, the intake of DHA and EPA could exceed 3.0 g/p/d. Because this use restriction was not contained in the proposed rule, FDA is issuing this regulation as a tentative final rule under 21 CFR 10.40(f)(6). FDA will review any comments that are relevant to this condition of use and that are received within the 75-day comment period and will respond accordingly to these comments in the **Federal Register**.

FDA is also making an editorial update to § 184.1472(a)(2)(iii) to reflect that the name for the Office of Premarket Approval has been changed to the Office of Food Additive Safety.

II. Comments on the Proposed Rule

The agency provided 75 days for comments on the proposed rule. At the close of the comment period, the agency had received two comments that expressed concern regarding the environmental impact of the proposed rule. These two comments are addressed separately in section III of this document. The agency also received comments that were submitted from a fish oil company and a trade association that represents the fish oil industry that merely expressed general support for the agency's proposed rule. The other comments were from individual consumers who were opposed to the proposed rule.

Most of the comments FDA received expressing opposition to the proposed rule objected to declaring menhaden oil on food labels by the name ''omega-3 fatty acids'' or a variation of this name. Many of these comments asserted that ''omega-3 fatty acids'' is a misleading name for menhaden oil. Some comments were from vegetarians and vegans who stated that listing menhaden oil by the name ''omega-3 fatty acids'' will make it difficult for them to avoid this animal product in foods. There were also comments that stated that listing menhaden oil by the name ''omega-3 fatty acids'' will make it difficult for those with fish allergies to avoid this fish oil in foods.

The proposed rule did not address how menhaden oil is to be listed as an ingredient on food labels. Generally, under section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(i)(2)), a food is misbranded unless its label bears the common or usual name of each ingredient. Although menhaden oil is a significant source of omega-3 fatty acids, FDA knows of no basis for considering omega-3 fatty acids to be its common or usual name. Any consideration of an alternative name for menhaden oil, such as ''omega-3 fatty acids,'' is outside the scope of the proposed rule.

FDA also received comments from consumers asking the agency to consider the use of omega-3 fatty acids from sources other than menhaden fish, such as flax seed. FDA notes that although menhaden oil does contain omega-3 fatty acids (primarily EPA and DHA), omega-3 fatty acids are not the subject of the proposed rule. Therefore, the use of other oils is outside the scope of the proposed rule.

A few comments stated that the menhaden fish is unsuitable for human consumption and, therefore, oil from this fish should not be used as a food ingredient. As stated in the proposed rule, menhaden oil is already affirmed as generally recognized as safe as a direct human food ingredient (§ 184.1472). FDA has not received any new information or comments that would alter its previous determination that menhaden oil that meets the specifications in § 184.1472 is generally recognized as safe for use in food under the conditions specified.

Some of the comments FDA received expressing opposition to the proposed rule were against the addition of menhaden oil to foods because of a concern about the possibility of high levels of contaminants in the menhaden oil due to bioaccumulation of these contaminants in the menhaden fish. Bioaccumulation describes the process that results in an increase in the concentration of a chemical in a biological organism over time, compared to the chemical's concentration in the environment. FDA has evaluated data on levels of various chemical contaminants, such as pesticides, polychlorinated biphenyls and dioxins in menhaden oil. Based on these data, FDA finds no basis for a safety concern from food uses of menhaden oil due to possible bioaccumulation of lipophilic chemical contaminants in the source fish.

III. Environmental Impact

The agency received two comments expressing concern about the impact that the proposed rule will have on the menhaden fish population. One comment asked whether this action will result in the ''near extinction'' of menhaden, mackerel, and sardines, and further asked how near extinction, if it results, would effect ocean ecosystems. The other comment asserted that menhaden are being overfished to extinction, and that because of their population decline, larger game fish populations off the Atlantic coast are dropping proportionately. Neither comment cited supporting data or information.

To ensure that the maximum sustainable yield of menhaden is not exceeded and to provide long-term production, the menhaden fisheries are monitored by the Atlantic and Gulf States Marine Fisheries Commissions (which are under the jurisdiction of the National Marine Fisheries Service (NMFS)), as well as by State authorities. If there is a threat to the long-term yield of a fishery, generally, limits will be imposed by these organizations. At present, the Atlantic and Gulf menhaden fisheries are considered to be healthy and not overfished. With regard to the impact that the proposed rule will have on mackerel and sardines, the United Nation's Foreign Agricultural Organization reports that the primary practice used to catch menhaden has one of the lowest discard ratios of any method for general commercial fishing. (Less than 3 percent by weight of the total menhaden catch are other species of fish.) In addition, NMFS reports a numerical bycatch incidence (i.e., fish that are unintentionally caught) of less than 0.1 percent for the menhaden fishing industry. For these reasons, the agency does not believe that the proposed rule would result in overfishing of menhaden or have a significant impact on other species of fish. In summary, the comments do not provide a basis on which to change the conclusions of the environmental analysis that was prepared for the proposed rule, as discussed in the following paragraph.

The agency has previously considered the environmental effects of affirming menhaden oil as GRAS as a direct human food ingredient, provided that the combined daily intake of EPA and DHA from menhaden oil does not exceed 3.0 g/p/d (62 FR 30751 at 30754). The analysis assumed that the maximum use levels would be completely used for each food category and concluded that this action will not have a significant impact on the menhaden population. This rule will reallocate the maximum levels among food categories but will not increase the total maximum allowable level. Therefore, our previous analysis is applicable. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required.

IV. Analysis of Economic Impacts

A. Final Regulatory Impact Analysis

FDA has examined the economic implications of this tentative final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this tentative final rule is not a significant regulatory action as defined by Executive Order 12866.

In the economic analysis of the proposed rule, we stated that the main benefit of this rule would be the expansion of the potential uses of menhaden oil made possible by the new maximum levels. Firms choosing to use menhaden oil will bear labeling and other costs. Because these costs are voluntary, they will be borne only if doing so is anticipated to be advantageous to the firm. Although firms making products that now use menhaden oil at levels below the current maximum but above the new maximum could bear potential compliance costs, we noted in the proposed rule that FDA did not know of any products in that category. We received no comments on this conclusion, or on any other part of the preliminary regulatory impact analysis.

B. Final Regulatory Flexibility Analysis

FDA has examined the economic implications of this tentative final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that this tentative final rule would not have a significant economic impact on a substantial number of small entities.

The use of the menhaden oil by any small business is voluntary and will be undertaken only if doing so is anticipated to be advantageous to the small business. Small businesses would only bear a compliance cost if, as stated previously, they make products that are below the current maximum but above the new maximum.

The agency specifically requested comments from small businesses on its assumption that no small businesses make products that will be affected by reducing the maximum levels of menhaden oil in pies, cakes, fats, oils, fish products, and meat products. We received no comments on that assumption or any other part of the initial regulatory flexibility analysis.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rulemaking if the rule would include a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' The current inflation-adjusted statutory threshold is $112 million. FDA has determined that this tentative final rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

V. Paperwork Reduction Act

This tentative final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Federalism

FDA has analyzed this tentative final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the tentative final rule does not contain policies 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. Because the agency concludes that this tentative final rule does not contain policies that have federalism implications as defined in the order, a federalism summary impact statement is not required.

VII. Comments

Interested person may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. GRAS notice GRN 000102, including the response letter to GRN 000102 dated September 3, 2002, from Alan M. Rulis of FDA to Edward Iorio of Jedwards International, available at *http://www.cfsan.fda.gov/~rdb/opa-gras.html*.

2. GRAS notice GRN 000105, including the response letter to GRN 000105 dated October 15, 2002, from Alan M. Rulis of FDA to Nancy L. Schnell of Unilever United States, Inc., available at *http://www.cfsan.fda.gov/~rdb/opa-gras.html*.

3. GRAS notice GRN 000109, including the response letter to GRN 000109 dated December 4, 2002, from Alan M. Rulis of FDA to Anthony Young of Piper Rudnick, LLP, available at *http://www.cfsan.fda.gov/~rdb/opa-gras.html*.

List of Subjects in 21 CFR Part 184

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 184 be amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

2. Section 184.1472 is amended by revising paragraph (a)(2)(iii) and (a)(3) and adding paragraph (a)(4) to read as follows:

§ 184.1472 Menhaden oil.

(a) * * *

(2)(iii) *Saponification value.* Between 180 and 200 as determined by the American Oil Chemists' Society Official Method Cd 3–25—''Saponification Value'' (reapproved 1989), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or available for inspection at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration,

5100 Paint Branch Pkwy., College Park, MD 20740, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

* * * * *

(3) In accordance with § 184.1(b)(2), the ingredient may be used in food only within the following specific limitations to ensure that total intake of eicosapentaenoic acid or docosahexaenoic acid does not exceed 3.0 grams/person/day:

Category of food	Maximum level of use in food (as served)
Baked goods, baking mixes, § 170.3(n)(1) of this chapter.	5.0 percent
Cereals, § 170.3(n)(4) of this chapter.	4.0 percent
Cheese products, § 170.3(n)(5) of this chapter.	5.0 percent
Chewing gum, § 170.3(n)(6) of this chapter.	3.0 percent
Condiments, § 170.3(n)(8) of this chapter.	5.0 percent
Confections, frostings, § 170.3(n)(9) of this chapter.	5.0 percent
Dairy product analogs, § 170.3(n)(10) of this chapter.	5.0 percent
Egg products, § 170.3(n)(11) of this chapter.	5.0 percent
Fats, oils, § 170.3(n)(12) of this chapter, but not in infant formula.	12.0 percent
Fish products, § 170.3(n)(13) of this chapter.	5.0 percent
Frozen dairy desserts, § 170.3(n)(20) of this chapter.	5.0 percent
Gelatins, puddings, § 170.3(n)(22) of this chapter.	1.0 percent
Gravies, sauces, § 170.3(n)(24) of this chapter.	5.0 percent
Hard candy, § 170.3(n)(25) of this chapter.	10.0 percent
Jams, jellies, § 170.3(n)(28) of this chapter.	7.0 percent
Meat products, § 170.3(n)(29) of this chapter.	5.0 percent
Milk products, § 170.3(n)(31) of this chapter.	5.0 percent
Nonalcoholic beverages, § 170.3(n)(3) of this chapter.	0.5 percent
Nut products, § 170.3(n)(32) of this chapter.	5.0 percent
Pastas, § 170.3(n)(23) of this chapter.	2.0 percent
Plant protein products, § 170.3(n)(33) of this chapter.	5.0 percent
Poultry products, § 170.3(n)(34) of this chapter.	3.0 percent
Processed fruit juices, § 170.3(n)(35) of this chapter.	1.0 percent
Processed vegetable juices, § 170.3(n)(36) of this chapter.	1.0 percent
Snack foods, § 170.3(n)(37) of this chapter.	5.0 percent
Soft candy, § 170.3(n)(38) of this chapter.	4.0 percent
Soup mixes, § 170.3(n)(40) of this chapter.	3.0 percent
Sugar substitutes, § 170.3(n)(42) of this chapter.	10.0 percent
Sweet sauces, toppings, syrups, § 170.3(n)(43) of this chapter.	5.0 percent
White granulated sugar, § 170.3(n)(41) of this chapter.	4.0 percent

(4) To ensure safe use of the substance, menhaden oil shall not be used in combination with any other added oil that is a significant source of eicosapentaenoic acid or docosahexaenoic acid.

* * * * *

Dated: January 6, 2004.

L. Robert Lake,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 04–811 Filed 1–14–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter 1

Meeting of the No Child Left Behind Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Announcement of negotiated rulemaking committee meeting.

SUMMARY: The Secretary of the Interior has established an advisory Committee to develop recommendations for proposed rules for Indian education under the No Child Left Behind Act of 2001. As required by the Federal Advisory Committee Act, we are announcing the date and location of the next meeting of the No Child Left Behind Negotiated Rulemaking committee.

DATES: The Committee's next meeting will be held February 2–7, 2004. The meeting will begin at 8:30 pm (PST) on Monday, February 2 and end at 5 pm (PST) on Saturday, February 7, 2004.

ADDRESSES: The meeting will be held at the San Diego Mission Bay Hilton, 901 Camino Del Rio South, San Diego, California 82108, telephone (619) 543–9000.

FOR FURTHER INFORMATION CONTACT: Shawna Smith, No Child Left Behind Negotiated Rulemaking Project Management Office, P.O. Box 1430, Albuquerque, NM 87103–1430; telephone (505) 248–7241/6569; fax (505) 248–7242; email *ssmith@bia.edu.* We will post additional information as it becomes available on the Office of Education Programs Web site under ''Negotiated Rulemaking'' at *http//www.oiep.bia.edu.*

SUPPLEMENTARY INFORMATION: The Secretary, after consultation with the tribes, has revised the charter of the negotiated rulemaking committee established to negotiate regulations to implement the No Child Left Behind Act of 2001 (Pub. Law 107–110). Under this revised charter, the committee will negotiate new regulations covering Closure or Consolidation of Schools (Section 1121(d)) and National Criteria for Home Living Situations (Section 1122). For more information on negotiated rulemaking under the No Child Left Behind Act, see the **Federal Register** notices published on December 10, 2002 (67 FR 75828) and May 5, 2003 (68 FR 23631) or the Web site at *http//www.oiep.bia.edu* under ''Negotiated Rulemaking.''

There is no requirement for advance registration for members of the public who wish to attend and observe the Committee meeting or any work group meetings. Members of the public may make written comments on the above-listed items to the Committee by sending them to the NCLB Negotiated Rulemaking Committee, Project Management Office, P.O. Box 1430, Albuquerque, New Mexico 87103. We will provide copies of the comments to the Committee.

The agenda for the February 2–7, 2004, meeting is as follows:

No Child Left Behind Negotiated Rulemaking Committee February 2–7, 2004, Hilton San Diego Mission Valley, San Diego, CA

Agenda

Purpose of Meeting: Develop recommendations for proposed rules under two sections of the No Child Left Behind Act of 2001—Sections 1121(d) and 1122.

(Breaks at 10 a.m. and 3 p.m. each day and lunch from 12 p.m.–1:30 p.m.)

Monday, February 2, 2004

8:30 a.m.
Opening Remarks
Introductions, Logistics, and Housekeeping
Review and Recommitment to Ground Rules
Update on First 6 Rules
Review Agenda
9 a.m.
Public Comments
9:30 a.m.–5 p.m.
Closure or Consolidation of Schools
Section 1121(d) of the No Child Left Behind Act of 2001

Tuesday, February 3, 2004

8:30 a.m.
Public Comments
9 a.m.
Housekeeping
9:30 a.m.–5 p.m.
National Criteria for Home-Living Situations—Section 1122 of the No Child Left Behind Act of 2001

Wednesday, February 4, 2004

8:30 a.m.
Public Comments
9 a.m.–5 p.m.
National Criteria for Home-Living Situations—Section 1122 of the No Child Left Behind Act of 2001

Thursday, February 5, 2004

8:30 a.m.
Public Comment
9 a.m.–5 p.m.
National Criteria for Home-Living Situations—Section 1122 of the No Child Left Behind Act of 2001

Friday, February 6, 2004

8:30 a.m.
Public Comment
9 a.m.–5 p.m.
National Criteria for Home-Living Situations—Section 1122 of the No Child Left Behind Act of 2001

Saturday, February 7, 2004

8:30 a.m.
Public Comment
9 a.m.
National Criteria for Home-Living Situations—Section 1122 of the No Child Left Behind Act of 2001
5 p.m.
Clarification of next steps
Evaluations
Closing remarks
Adjourn

Dated: January 8, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–858 Filed 1–14–04; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–287]

RIN 1625–AA11

Regulated Navigation Area; USCG Station Port Huron, Port Huron, Michigan, Lake Huron

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Regulated Navigation Area (RNA) around the entrance to the moorings for Station Port Huron. These regulations are necessary to manage vessel traffic and ensure the operability of Coast Guard vessels departing Station Port Huron. These regulations are intended to restrict vessels from fishing, mooring and anchoring in a portion of Lake Huron in the vicinity of the United State Coast Guard Station Port Huron.

DATES: Comments and related material must reach the Coast Guard on or before March 15, 2004.

ADDRESSES: You may mail comments and related material to Commander, Marine Safety Compliance Operations Branch (mco), Ninth Coast Guard District, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060, or deliver them to room 2069 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902–6045.

Commander (mco), Ninth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Ninth Coast Guard District, room 2069, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Jim McLaughlin, Chief, Marine Safety Compliance Operations Branch, Ninth Coast Guard District Marine Safety Division, at (216) 902–6045.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–287), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (mco), Ninth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

A large number of recreational fishermen typically fish right off the entrance to the Station Port Huron Moorings. As such, it is typical for fishing line to cross the path of any station vessels exiting the harbor, especially in time-critical emergency situations. During the summer of 2003, on at least 4 occasions, vessels from Station Port Huron were removed from operations due to fishing line being wrapped around their shafts.

In these instances, Station Port Huron's boats were unavailable for search and rescue response during the most active portion of the year, the summer boating season. Having vessels out of service on a regular basis has resulted in a life-threatening situation. Station Port Huron has not been able to rely on having all of their underway assets available on a 24-hour basis, severely effecting time critical mission response.

In addition, due to security concerns it is necessary to prohibit vessels from anchoring or mooring within the RNA. On several occasions, vessels have been discovered inside Station Port Huron's

boat basin or anchored so close to the Station's property that crewmembers trespassed upon Federal property upon disembarking the vessel. This routine invasion of the boat basin and Government property is a threat to the security and safety of the station and its crew.

Station Port Huron is situated on the southern end of Lake Huron at the mouth of the St. Clair River. As such, it is a heavily traveled area both for commercial and recreational vessels. Station Port Huron's area of responsibility continues south approximately 13 miles down the St. Clair River and approximately 10 miles north to Port Sanilac, Michigan. Due to the wide geographic area coupled with the extent of vessel traffic, it is critical that all Station vessels be operable at all times and that response times not be hindered.

As such, the Coast Guard is proposing to establish an RNA that would prohibit fishing, mooring and anchoring in the immediate vicinity of the entrance to Station Port Huron's moorings, unless the vessel operator receives advanced approval from the Captain of the Port Detroit. Vessels not engaging in these activities would be allowed to transit this area.

Discussion of Rule

The proposed RNA would encompass the following: starting at the northwest corner at 43°00.4′ N, 082°25.327′ W; east to 43°00.4′ N, 082°25.238′ W; then south to 43°00.3′ N, 082°25.238′ W; then west to 43°00.3′ N, 082°25.327′ W; then following the shoreline north back to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 83).

This proposed RNA would extend approximately 400-feet from shore and be approximately 600-feet in width. Only vessels fishing, mooring or anchoring are prohibited from being within this RNA.

Regulatory Evaluation

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

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

This determination is based on the relative small size of the zone and the limited class of vessels restricted from this area, *i.e.* fishing, mooring or anchoring vessels. In addition, vessels may engage in these activities provided the vessel operator receives prior approval from the Captain of the Port Detroit.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander (mco), Ninth Coast Guard District (*see* **ADDRESSES**).

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.920 to read as follows:

§ 165.920 Regulated Navigation Area: USCG Station Port Huron, Port Huron, MI, Lake Huron.

(a) *Regulated Navigation Area.* A regulated navigation area is established in Lake Huron encompassed by a line connecting the following points: starting at the northwest corner at 43°00.4′ N, 082°25.327′ W; then east to 43°00.4′ N, 082°25.238′ W; then south to 43°00.3′ N, 082°25.238′ W; then west to 43°00.3′ N, 082°25.327′ W; then following the shoreline north back to the point of origin (NAD 83).

(b) *Special regulations.* (1) No vessel may fish, anchor, or moor within the RNA without obtaining the advanced approval of the Captain of the Port (COTP) Detroit. COTP Detroit can be reached by telephone at (313) 568–9580, or by writing to: MSO Detroit, 110 Mt. Elliot Ave., Detroit MI 48207–4380.

(2) Vessels not engaging in fishing, anchoring or mooring may transit the RNA.

Dated: December 18, 2003.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 04–913 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–009]

RIN 1625–AA00

Security Zones; San Francisco Bay, San Francisco, CA and Oakland CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish security zones in areas of the San Francisco Bay adjacent to San Francisco International Airport and Oakland International Airport. These security zones are necessary to ensure public safety and prevent sabotage or terrorist acts at these airports. Entry into these security zones would be prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before March 15, 2004.

ADDRESSES: You may mail comments and related material to the Waterways Branch of the Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501. The Waterways Branch of Coast Guard Marine Safety Office San Francisco Bay maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Francisco Bay 03–009), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures.

The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

On September 21, 2001, we issued a temporary final rule under docket COTP San Francisco Bay 01–009, and published that rule in the **Federal Register** (66 FR 54663, Oct. 30, 2001). That rule (codified as 33 CFR 165.T11–095) established a security zone

extending 1,800 yards seaward from the Oakland airport shoreline and a security zone extending 2,000 yards seaward from the San Francisco airport shoreline. Upon further reflection, and after discussion with airport officials and members of the public, we issued a new temporary rule in title 33 of the Code of Federal Regulations. That rule (67 FR 5482, Feb. 6, 2002, codified as 33 CFR 165.T11–097) reduced the size of the security zones to 1,000 yards seaward from both the Oakland and San Francisco airport shorelines.

We received several written comments about the 1,000-yard security zones established by that rule (33 CFR 165.T11–097). Virtually all of those comments urged a reduction in size of the security zones in order to allow increased public access to San Francisco Bay for fishing, windsurfing and similar uses. As a result, we issued a new temporary rule (67 FR 44566, July 3, 2002) that further reduced the size of the security zones to 200 yards seaward from both the Oakland and San Francisco airport shorelines. That rule (codified as 33 CFR 165.T11–086) expired on December 21, 2002.

Since the time that the security zones were allowed to expire, there have been several security incursions involving personnel gaining access to the airports from boats. In addition, the Department of Homeland Security in consultation with the Homeland Security Council, recently made the decision to raise the national threat level from an Elevated to High risk of terrorist attack based on intelligence indicating that Al-Qaida is poised to launch terrorist attacks against U.S. interests. To address these security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against one of these airports would have on the public interest, the Coast Guard proposes to establish permanent security zones extending approximately 200 yards seaward around the Oakland and San Francisco airports. These security zones are necessary to provide for the safety of individuals and facilities within and adjacent to the San Francisco and Oakland airports and to ensure that the airports are not used as targets of, or platforms for, terrorist attacks. Due to heightened security concerns, and the catastrophic impact a terrorist attack on one of these airports would have on the public, the transportation system, and surrounding areas and communities, security zones are prudent for these airports.

Discussion of Proposed Rule

In this proposed rule, the Coast Guard would establish two security zones within the navigable waters of San Francisco Bay extending approximately 200 yards seaward from the shorelines of the Oakland International Airport and the San Francisco International Airport. The two security zones are designed to provide increased security for the airports, while minimizing the impact to vessel traffic, fishing, windsurfing and other activities upon San Francisco Bay. Two hundred yards from the shoreline is estimated to be an adequate zone size to provide increased security for each airport by providing a standoff distance for blast and collision, a surveillance and detection perimeter, and a margin of response time for security personnel. Buoys would be installed to indicate the perimeter of the security zone at each airport. This proposed rule, for security reasons, would prohibit entry of any vessel or person inside the security zone without specific authorization from the Captain of the Port or his designated representative.

Vessels or persons violating this proposed security zone would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port would enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation restricts access to the zones, the effect of this regulation would not be significant because: (i) These security zones are established in an area of the San Francisco Bay that is seldom used, (ii) the zones would encompass only a small portion of the waterway; (iii) vessels would be able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the proposed security zones is the minimum necessary to provide adequate protection for the San Francisco International Airport and the Oakland International Airport. The entities most likely to be affected are small recreational vessel traffic engaged in fishing or sightseeing activities.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities for several reasons: These security zones would not occupy an area of the San Francisco Bay that is frequently transited, small vessel traffic would be able to pass safely around the area, and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. Buoys would be installed to mark the perimeter of the security zone at each airport and small entities and the maritime public would be advised of these security zones via public notice to mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a

significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

An ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) will be available in the docket where located under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1192 to read as follows:

§ 165.1192 Security Zones; Waters surrounding San Francisco International Airport and Oakland International Airport, San Francisco Bay, California.

(a) *Locations.* The following areas are security zones:

(1) *San Francisco International Airport Security Zone.* This security zone includes all waters extending from the surface to the sea floor within approximately 200 yards seaward from the shoreline of the San Francisco International Airport and encompasses all waters in San Francisco Bay within a line connecting the following geographical positions—

Latitude	*Longitude*
37°36′19″ N	122°22′36″ W
37°36′45″ N	122°22′18″ W
37°36′26″ N	122°21′30″ W
37°36′31″ N	122°21′21″ W
37°36′17″ N	122°20′45″ W
37°36′37″ N	122°20′40″ W
37°36′50″ N	122°21′08″ W
37°37′00″ N	122°21′12″ W
37°37′21″ N	122°21′53″ W
37°37′39″ N	122°21′44″ W
37°37′56″ N	122°21′51″ W
37°37′50″ N	122°22′20″ W
37°38′25″ N	122°22′54″ W
37°38′25″ N	122°23′02″ W

and along the shoreline back to the beginning point.

(2) *Oakland International Airport Security Zone.* This security zone includes all waters extending from the surface to the sea floor within approximately 200 yards seaward from

the shoreline of the Oakland International Airport and encompasses all waters in San Francisco Bay within a line connecting the following geographical positions—

Latitude	*Longitude*
37°43′35″ N	122°15′00″ W
37°43′40″ N	122°15′05″ W
37°43′34″ N	122°15′12″ W
37°43′24″ N	122°15′11″ W
37°41′54″ N	122°13′05″ W
37°41′51″ N	122°12′48″ W
37°41′53″ N	122°12′44″ W
37°41′35″ N	122°12′18″ W
37°41′46″ N	122°12′08″ W
37°42′03″ N	122°12′34″ W
37°42′08″ N	122°12′32″ W
37°42′35″ N	122°12′30″ W
37°42′40″ N	122°12′06″ W

and along the shoreline back to the beginning point.

(b) *Regulations.* (1) Under § 165.33, entering, transiting through, or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Enforcement.* All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

Dated: January 5, 2004.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 04–914 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 289–0417b; FRL–7600–8]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). The revision concerns the emission of volatile organic compounds (VOC) from the transfer of gasoline at dispensing stations. We are approving a local rule that regulates 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 February 17, 2004.

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

You can inspect a copy of the submitted rule 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 rule revisions 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.

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

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local MBUAPCD Rule 1002. In the Rules section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is 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: December 2, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–837 Filed 1–14–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY66–271b; FRL–7610–6]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the State Plan submitted by New York implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines, as promulgated by EPA. The State Plan establishes performance standards for existing MSW landfills located in New York State and provides for the implementation and enforcement of those standards, which will reduce the designated pollutants. The State Plan revision consists of moving the federally approved MSW requirements from Subpart 360–2.21 of title 6 of the New York Codes, Rules and Regulations (NYCRR) to part 208 of title 6 NYCRR. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving New York's State Plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further

action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before February 17, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Electronic comments could be sent either to *Werner.Raymond@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. Please follow the on-line instructions for submitting comments.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381 or *Wieber.Kirk@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: December 29, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 04–890 Filed 1–14–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[ID. 010504A]

Fisheries Off West Coast States and in the Western Pacific;Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

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

ACTION: Notice of receipt of four exempted fishing permit applications, announcement of the intent to issue EFPs, request for comments.

SUMMARY: NMFS announces the receipt of four exempted fishing permit (EFP) applications from the Washington State Department of Fish and Wildlife (WDFW) and the intent to issue the requested EFPs. If awarded, these EFPs will allow vessels with valid Washington State delivery permits to harvest and retain federally managed groundfish in Rockfish Conservation Areas (RCAs). (RCAs are large-scale depth-related closed areas where overfished rockfish species are commonly found) and to retain federally managed groundfish species in excess of cumulative trip limits. These activities are otherwise prohibited.

Vessels fishing under each of the EFPs will be required to carry either a State-sponsored sampler or a Federal groundfish observer while conducting EFP fishing. Samplers/observers will collect catch and effort data and retain specimens that are otherwise not available shoreside. These EFP proposals are intended to promote the objectives of the Pacific Coast Groundfish Fishery Management Plan by providing much needed data on total catch, incidental catch rates by fishing strategy, and the effectiveness of different gear configuration. The information gathered through these EFPs may lead to future rulemakings.

DATES: Comments must be received by January 30, 2004.

ADDRESSES: Comments should be submitted to and copies of the EFP application are available from Becky Renko, Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko (206)526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by the FMP and implementing regulations at 50 CFR 600.745 and 50 CFR 660.350.

On November 20, 2003, NMFS received four completed EFP applications from WDFW. The individual EFP applications are summarized below. The applicants presented these EFP applications at the Pacific Fishery Management Council's (Council) meeting in November 2003. The Council considered the applications and recommended that NMFS issue the EFPs for the proposed activity. Copies of the applications are available for review from NMFS (see **ADDRESSES**).

No optimum yield (OY) is expected to be exceeded as a result of the EFP fishing. All groundfish landed under EFPs are counted against the OY for those species and will not result in total harvest above the established levels announced in the Pacific Coast Groundfish Fishery Annual Specifications and Management Measures for 2004. For overfished species, specific OY allowances or OY set-a-sides were specified for EFP fishing in 2004. Therefore, each EFP will have overall harvest limits for the overfished species. If a harvest limit is reached for any of the overfished species, the EFP will be terminated. Each EFP will also contain individual vessel limits for specified overfished rockfish stocks. If a vessel achieves any of these individual vessel limits, restrictions specified in the EFP will be imposed.

Each EFP requires the participating vessels to carry a State-sponsored sampler or Federal groundfish observer. Observers will collect data that can be used to estimate incidental catch rates, total catch by species or species groups, and to assess the effectiveness of selective gear configurations. To the extent possible, data provided by the observers will be compatible with that collected by the NMFS coastwide observer program.

Data collected during these EFPs are expected to have a broad significance to the management of the groundfish fishery by providing much needed information on: (1) total catch by vessels directly harvesting different target species, (2) catch rates of overfished species by fishing location, (3) gear selectivity, (4) age structure, and (5) the feasibility of a full retention program for rockfish species.

Spiny Dogfish (*Squalus acanthiias*)

Spiny dogfish is an abundant and important species in the groundfish fishery off Washington State. Fixed gear is used to directly harvest spiny dogfish. Fishing with fixed gear in areas where spiny dogfish have historically been

harvested will be prohibited in 2004, because the areas fall within the non-trawl RCA. Little is known about the bycatch catch rates of other groundfish, including overfished species, by vessels specifically targeting spiny dogfish. However, fishers believe that spiny dogfish can be harvested with much lower bycatch rates than are currently assumed.

If this EFP is issued, it will allow one vessel, which has historically harvested spiny dogfish, to use fixed gear to directly harvest and retain spiny dogfish in a Non-trawl RCA and to retain and land groundfish in excess of cumulative trip limits. These activities are otherwise prohibited by Federal regulations. Fishing under the proposed EFP will occur between February 1 and May 31, 2004. The vessel will be required to retain all rockfish and the proceeds from the sale of rockfish in excess of current trip limits will be forfeited to the State of Washington. All EFP and non-EFP fishing during the effective dates of the EFP will be restricted to waters north of Destruction Island (47°40′30″ N. lat.).

There will be no monthly limit on the harvest of spiny dogfish, but the harvest of spiny dogfish will be constrained by individual vessel limits for yelloweye rockfish. Approximately 300 mt of dogfish are expected to be taken during the EFP fishing. If a permitted vessel harvests 275 lbs (124.74 kg) per month of yelloweye rockfish, the vessel will be restricted from fishing in the Non-trawl RCA for the remainder of the calendar month.

Walleye Pollock (*Theragra chalcogramma*)

The walleye pollock stock is primarily found off the west coast of Vancouver island. However, harvestable amounts of walleye pollock move south into Washington waters every five to seven years. The length of time they are available south of the U.S. Canada border is unknown. When fishers harvest walleye pollock, which is not a groundfish, they incidentally encounter groundfish such as Pacific whiting, yellowtail rockfish and spiny dogfish.

An EFP is necessary to allow walleye pollock vessels to fish within the Trawl RCA with midwater trawl gear and to delay complete sorting of their catch until the point of offloading. An EFP is needed to delay sorting because regulations prohibit the retention of groundfish taken in a closed area or the retention of groundfish in excess of cumulative trip limits if taken outside the conservation areas.

If the permit is issued, two vessels are expected to fish under this EFP. Vessels will be required to retain all groundfish, except spiny dogfish, and the proceeds from the sale of groundfish landed in excess of trip limits will be forfeited to the State of Washington. Fishing under the proposed EFP will occur between August 1 and October 31, 2004. All fishing by participating vessels, both EFP and non-EFP fishing, during the effective dates of the EFP will be restricted to waters north of Destruction Island (47°40′30″ N. lat.).

There will be no monthly limit on the harvest of walleye pollock, but the harvest of pollock will be constrained by individual vessel limits for widow rockfish and canary rockfish. If a permitted vessel reaches the limit for widow rockfish of 500 lb (226 kg) per month in tows where pollock is the targeted species, the vessel cannot make any directed pollock tows for the rest of that month. If a permitted vessel reaches the limit for canary rockfish of 200 lb (124.74 kg), the vessel cannot continue to fish under the EFP.

Arrowtooth Flounder (*Atheresthes stomias*)

Fishing for arrowtooth flounder, which is an abundant and commercially important groundfish species off Washington, is constrained by efforts to rebuild canary rockfish, an overfished species. Many of the areas where arrowtooth flounder have historically been harvested are within the Trawl RCA, where fishing with bottom trawl gear is prohibited.

The purpose of the exempted fishing activity is to measure the rate at which bycatch species, such as canary, darkblotched, yelloweye and widow rockfish, are taken with an experimental trawl net by vessels targeting arrowtooth flounder. The experimental trawl net has been specifically designed to be more selective for flatfish, such as arrowtooth flounder, than the trawl nets that have historically been used in the fishery.

If the permit is issued, this EFP will allow approximately five vessels, which have historically participated in the arrowtooth flounder fisheries: to use bottom trawl gear to fish for arrowtooth flounder in the Trawl RCA; to retain groundfish taken within a rockfish conservation area; and to retain and sell arrowtooth flounder and petrale sole in excess of their cumulative trip limits provided harvest limits for overfished species are not exceeded. These activities are otherwise prohibited by Federal regulations. Vessels will be required to retain all rockfish. Other than arrowtooth flounder and petrale sole, proceeds from the sale of groundfish in excess of current trip limits will be forfeited to the State of Washington.

There will be no monthly limit on the harvest of arrowtooth flounder, but the harvest of arrowtooth flounder will be constrained by individual vessel limits for canary rockfish. If a permitted vessel reaches the limit for canary rockfish of 275 (lb) (124.74 kg) per month in tows where arrowtooth flounder is the targeted species, the vessel's activities will be restricted for the remainder of the month. Overall EFP threshold limits are also defined for the overfished groundfish species.

Fishing under the proposed EFP will occur between May 1 and August 31, 2003. All fishing by participating vessels, EFP and non-EFP fishing, during the effective dates of the EFP will be restricted to waters north of Destruction Island (47°40′30″ N. lat.).

Nearshore Flatfish

The nearshore flatfish species (Dover sole, petrale sole, rex sole, arrowtooth flounder, and other flatfish) are abundant and commercially important groundfish species off Washington. Fishing for these species is constrained by efforts to rebuild overfished rockfish species, particularly canary rockfish. Fishers who have historically targeted these species believe that the fishery can be prosecuted with a much lower canary rockfish bycatch rate than is currently assumed.

If this EFP is issued, it will allow three vessels, which have historically landed nearshore flatfish to use large footrope trawl gear to harvest groundfish in nearshore areas, and to retain groundfish to sell in excess of cumulative trip limits provided that harvest limits for overfished species are not exceeded. These activities are otherwise prohibited by Federal regulations. Large footrope trawl gear will be modified by the participating vessels with the intent of identifying gear configurations that will be more selective for the nearshore flatfish species.

The EFP will restrict vessels to the large footrope limits for the nearshore flatfish species, which are greater than the small footrope limits. Large footrope gear is otherwise prohibited in nearshore areas. If a permitted vessel reaches the limit for canary rockfish of 180 lb (81.648 kg) per month in tows where nearshore flatfish species are targeted, the vessel cannot make any directed nearshore flatfish tows for the rest of that month. If the individual vessel limit of 700 lb (317.52 kg) of canary rockfish is reached the vessel cannot continue to fish under the EFP. Vessels will be required to retain all

rockfish. Proceeds from the sale of groundfish in excess of the cumulative trip limits will be forfeited to the State of Washington.

Fishing under the proposed EFP will occur between March 1 and June 30, 2004. All fishing by participating vessels, both EFP and non-EFP fishing, during the effective dates of the EFP will be restricted to waters north of Destruction Island (47°40′30″ N. lat.).

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

Dated: January 12, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–910 Filed 1–14–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 10

Thursday, January 15, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–04–03]

Lamb Promotion, Research, and Information: Certification of Organizations for Eligibility To Make Nominations to the Lamb Promotion, Research, and Information Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State, regional, and national lamb producer, seedstock producer, feeder, and first handler organizations or associations that desire to be certified as eligible to nominate lamb producers, seedstock producers, lamb feeders, or first handlers of lamb or lamb products for appointment to the Lamb Promotion, Research, and Information Board (Board). Previously certified organizations do not need to reapply. To nominate a producer, seedstock producer, feeder, or first handler member to the Board, organizations must first be certified by USDA. Notice is also given that upcoming vacancies are anticipated and that during a period to be established by USDA, nominations will be accepted from eligible organizations.

DATES: Applications for certification must be received by close of business February 17, 2004.

ADDRESSES: Certification form LS–82 as well as information regarding the certification and nomination procedures may be requested from Kenneth R. Payne, Chief; Marketing Programs Branch, Room 2638–S; Livestock and Seed Program; AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251 or obtained via the Internet at *http://www.ams.usda.gov/lsg/mpb/lamb/lambforms.htm*.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch on (202) 720–1115, via facsimile on (202) 720–1125, or via e-mail at *Kenneth.Payne@usda.gov*.

SUPPLEMENTARY INFORMATION: The Commodity Promotion, Research, and Consumer Information Act of 1996 (Act) (7 U.S.C. 7411 *et seq.*) authorizes the establishment and implementation of a lamb promotion, research, and information program. Pursuant to the Act, a proposed Lamb Promotion, Research, and Information Order (Order) was published in the **Federal Register** on September 21, 2001 (66 FR 48764). The final Order was published in the **Federal Register** on April 11, 2002 (67 FR 17848). The Order provides for the establishment of a 13-member Board that consists of 6 producers representing regions east and west of the Mississippi River, 3 feeders representing regions east and west of the Mississippi River, 1 seedstock producer, and 3 first handlers appointed by USDA. Of the six producers, two must be located east of the Mississippi River and represent the eastern region; two must be located west of the Mississippi River and represent the western region; while the remaining two can be selected without regard to the geographic location. The feeders cannot all be located in the same geographic region. The duties and responsibilities of the Board are provided under the Order.

The Order provides that USDA shall certify or otherwise determine the eligibility of any State, regional, or national lamb producer, seedstock producer, feeder, or first handler organizations or associations that meets the eligibility criteria established under the Order. Those organizations that meet the eligibility criteria specified under the Order will be certified as eligible to nominate members for appointment to the Board. Those organizations should ensure that the nominees represent the interests of producers, seedstock producers, feeders, and first handlers.

The Order provides that the members of the Board shall serve for terms of 3 years, except that appointments to the initially established Board shall be proportionately for 1-, 2-, and 3-year terms. No person may serve more than two consecutive 3-year terms. USDA will announce when nominations will be due from eligible organizations and when any subsequent nominations are due when a vacancy does or will exist. The following unit/regions have vacancies in early 2005:

Unit/Region	Members
Producer Member: From either Region 1 or Region 2—Must own annually 100 or less head of lambs	1
Producer Member: From either Region 1 or Region 2—Must own annually more than 500 head of lambs	1
Feeder Member: From either Region 1 or Region 2—Either less than 5,000 lambs fed annually or 5,000 or more lambs fed annually	1
First Handler Member	1

Any eligible producer, seedstock producer, feeder, or first handler organization that is not currently certified and is interested in being certified to nominate producers, seedstock producers, feeders, or first handlers for appointment to the Board, must complete and submit an official ''Application for Certification of Organization,'' form. That form must be received by close of business February 17, 2004.

Only those organizations that meet the criteria for certification of eligibility specified under § 1280.206(b) under the Order are eligible for certification. In certifying an organization, the following will be considered:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the number of active producers, seedstock producers, feeders, or first handlers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organizations are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the purpose and objectives of the Act.

In addition, the primary consideration in determining the eligibility of an organization will be:

(1) The membership of the organization consists primarily of producers, seedstock producers, feeders, or first handlers who market or handle a substantial quantity of lamb or lamb products; and

(2) A primary purpose of the organization is in the production or marketing of lamb and lamb products.

All certified organizations will be notified in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms.

The information collection requirements referenced in this notice has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35) and have been assigned OMB No. 0581–0198, except Board nominees information form has been assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 7411–7425.

Dated: January 9 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–845 Filed 1–14–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today denied a petition for trade adjustment assistance (TAA) that was filed on December 4, 2003, by a group of crawfish producers in Louisiana.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that imports of crawfish did not increase during the January–December 2002 marketing year, a condition required for certifying a petition for TAA.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.assistance@fas.usda.gov.*

Dated: December 31, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–847 Filed 1–14–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today denied a petition for trade adjustment assistance (TAA) that was filed on December 4, 2003, by the United Fisheries Co-op, Inc., Biloxi, Mississippi.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that domestic producer prices did not decline at least 20 percent during the January–December 2002 marketing year when compared with the previous 5-year average, a condition required for certifying a petition for TAA.

FOR FURTHER INFORMATION, CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, mail: *trade.assistance@fas.usda.gov.*

Dated: December 31, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–846 Filed 1–14–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Province Advisory Committee will meet in Corvallis, OR, January 22, 2004. The theme of the meeting is Introduction/Overview/Business Planning. The agenda includes: Payments to counties Update, Aquatic Conservation Strategy EIS, Corvallis to Coast Trails, Sand Camping Environmental Assessment, 2003 Monitoring Trip Update, 2004 Agenda Items/Theme, Public Comment and Round Robin.

DATES: The meeting will be held January 22, 2004, beginning at 9 a.m.

ADDRESSES: The meeting will be held at the Siuslaw National Forest Supervisor's Office, 4077 SW Research Way, Corvallis, Oregon.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to Siuslaw National Forest Supervisor, P.O. Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council Discussion is limited to Forest Service/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 3 p.m. for fifteen minutes. The meeting is expected to adjourn around 3:30 p.m.

Dated: January 8, 2004.

Jane L. Cottrell,

Acting Forest Supervisor.

[FR Doc. 04–864 Filed 1–14–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on March 3, 2004 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on March 3, 2004 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Crescent Fire Protection District, 255 West Washington Boulevard, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *1chapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items include a report on the Regional RAC meeting held in Sacramento in November 2003, and a presentation on the unique aspects of the Siskiyou Klamath Bioregion. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: January 9, 2004.

Jean M. Hawthorne,

Acting Deputy Forest Supervisor.

[FR Doc. 04–887 Filed 1–14–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Golden Valley Electric Association, Inc.; Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of an environmental assessment (EA).

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has prepared an environmental assessment (EA) for a project proposed by Golden Valley Electric Association, Inc., (GVEA) of Fairbanks, Alaska. The project consists of constructing a 138kV transmission line between the GVEA North Pole Power Plant, North Pole, Alaska, and the Carney Substation, which is approximately 22 miles southeast of North Pole.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, U.S. Department of Agriculture, RUS, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–1414, FAX: (202) 720–0820, e-mail: *nurul.islam@usda.gov*. Information is also available from Mr. Greg Wyman, Manager of Construction Services, GVEA, POB 71249, Fairbanks, Alaska 99707–1249, telephone (907) 451–5629. His e-mail address is: *gwyman@gvea.com*.

SUPPLEMENTARY INFORMATION: GVEA proposes to construct the North Pole-Carney Substation 138kV Transmission Line Project, which is approximately 22 miles in length. The primary purpose of the facility is to meet the projected future increases in regional power requirements and to improve the quality of service to existing customers. To accommodate the new transmission line, either a new substation would be built next to the North Pole Power Plant, or the existing generating/substation facilities at North Pole would be modified to provide an additional breaker to feed the transmission line and other breaker bays for future growth. In addition, GVEA would modify the Carney Substation to provide an additional breaker to allow for termination of the transmission line. The Carney Substation work would take place within the existing substation footprint.

Alternatives to the proposed project are discussed in detail in the EA. They include the no action, energy conservation, purchase of power, upgrade existing transmission lines, and constructing new transmission facilities.

The EA is available for public review at RUS or GVEA at the addresses provided in this notice and at the following locations:

(1) Noel Wien Public Library, 1215 Cowles Street, Fairbanks, AK 99701.

(2) North Pole City Library, 601 Snowman Lane, North Pole, AK 99705.

Questions and comments should be sent to RUS at the address provided in this notice. RUS will accept questions and comments on the EA for 30 days from the date of publication of this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR part 1794, RUS Environmental Policies and Procedures.

Dated: January 6, 2004.

Lawrence R. Wolfe,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 04–876 Filed 1–14–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–868]

Notice of Extension of Preliminary Results of Antidumping Duty Review: Certain Folding Metal Tables and Chairs from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain folding metal tables and chairs (''FMTC'') from the People's Republic of China (''PRC'') in response to requests by petitioner Meco Corporation (''petitioner''), interested party EJ Footwear (''EJ''), and respondent Wok and Pan Industry, Inc. (''Wok & Pan''). The review covers shipments to the United States for the period December 3, 2001, to May 31, 2003, by Dongguang Shichang Metals Factory, Ltd. (''Shichang'') and Wok & Pan. For the reasons discussed below, we are extending the preliminary results of this administrative review by 120 days, to no later than June 29, 2004.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Anya Naschak at (202) 482–6375 or John Drury at (202) 482–0195; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2003, in response to the Department's notice of opportunity to request a review published in the **Federal Register**, Wok & Pan requested the Department conduct an administrative review of the antidumping duty order on FMTC from the PRC (*See Notice of Antidumping Duty Order: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 43277 (June 27, 2002)) for its exports of subject merchandise. On June 26, 2003, EJ requested the Department conduct an administrative review of entries of subject merchandise made by Shichang. On June 30, 2003, the petitioner requested the Department conduct an administrative review of entries of subject merchandise made by three Chinese producers/exporters: Feili Furniture Development Co., Ltd and Feili (Fujian) Co., Ltd (''Feili''), New-Tec Integration Co., Ltd. (''New-Tec''), and Shichang. The Department initiated the review for all companies. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 68 FR 44524, July 29, 2003 (''*Initiation Notice*'').

On October 27, 2003, petitioner filed a letter withdrawing their request for review for Feili Group and New-Tec. On October 30, 2003, the Department requested that Feili Group and New-Tec produce an official copy of its request for review and evidence showing that this request had been appropriately served on interested parties. The Department determined that Feili Group and New-Tec had not in fact filed a timely request for review. Because petitioner had withdrawn its request within the time limits set by 19 CFR 351.213(d)(1), the Department rescinded its review of Feili Group and New-Tec on November 26, 2003. *See Certain Folding Metal Tables and Chairs from the People's Republic of China: Notice of Partial Rescission of First Antidumping Duty Administrative Review*, 68 FR 66397 (November 26, 2003). The preliminary results are currently due not later than March 1, 2004.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the last day of the anniversary month of the order for which the administrative review was requested. Because of the complexity of the issues, the scheduling of verification, and the numerous filing difficulties experienced by all the parties in this case, it is not practicable for the Department to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Furthermore, the Department requires additional time to evaluate information submitted by Shichang.

Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) of the Department's regulations, the Department is extending the time limits for the preliminary results by 120 days, to no later than June 29, 2004. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: January 8, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group 3.

[FR Doc. 04–907 Filed 1–14–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Individually Quick Frozen Red Raspberries From Chile: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission of first administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on individually quick frozen red raspberries from Chile. This review covers sales of individually quick frozen red raspberries to the United States during the period December 31, 2001 through June 30, 2003. Based on a request for withdrawal of the review with respect to certain companies, we are rescinding, in part, the first administrative review.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Cole Kyle, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1503.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department of Commerce (''the Department'') published in the **Federal Register** a notice of the opportunity to request an administrative review in the above-cited segment of the antidumping duty proceeding (*see* 68 FR 39511). We received a timely filed request for review of 51 companies from the Pacific Northwest Berry Association, Lynden, Washington, and each of its individual members, Curt Maberry Farm, Enfield Farms, Inc., Maberry Packing, and Rader Farms, Inc. (collectively, ''the petitioners''). We also received timely filed requests for review from Fruticola Olmue S.A. (''Olmue''), Santiago Comercio Exterior Exportaciones Ltda. (''SANCO''), and Vital Berry Marketing S.A. (''Vital Berry'').[1] On August 22, 2003, we initiated an administrative review of the 51 companies (*see* 68 FR 50750).

On November 20 and, further, on December 12, 2003, the petitioners requested that the Department extend the deadline for interested parties to withdraw review requests. In accordance with its regulatory discretion in this respect, as detailed at 19 CFR 351.213(d)(1) (2003), the Department granted the petitioners' requests and extended the deadline for interested parties to withdraw their requests for review. *See* Memorandum to the File dated November 20, 2003, *Request for Extension of Deadline for Withdrawing from Review; see also* Memorandum to the File dated December 12, 2003, *Second Request for Extension of Deadline for Withdrawing from Review.*

On January 2, 2004, we received comments from Valles Andinos S.A. (''Valles Andinos'') opposing any potential request by the petitioners that their request for review of that company be withdrawn.

On January 5, 2004, we received a timely filed request from the petitioners withdrawing their request for review for all of the companies for which they had requested an administrative review, except Uren Chile S.A.

Partial Rescission of Antidumping Administrative Review

Because the petitioners were the only party to request an administrative review for all companies except Olmue, SANCO, and Vital Berry, and because they filed their withdrawal request within the deadline established by the Department, we are hereby rescinding the administrative review with respect to the following companies in accordance with 19 CFR 351.213(d)(1):

Agricola Nova Ltda.;
Agrocomercial Las Tinajas Ltda.;
Agroindustria Framberry Ltda.;
Agroindustria Niquen Ltda.;
Agroindustria Sagrada Familia Ltda.;
Agroindustria y Frigorifico M y M Ltda.;
Agroindustrial Frisac Ltda.;
Agroindustrial Frutos del Maipo Ltda.;
Agroindustrial Merco Trading Ltda.;
Agroindustrias San Francisco Ltda.;
Agross S.A.;
Alimentos Prometeo Ltda.;
Alimentos y Frutos S.A.;
Andesur S.A.;
Angloeuro Comercio Exterior S.A.;
Armijo Carrasco, Claudio del Carmen;
Arvalan S.A.;
Bajo Cero S.A.;
Certified Pure Ingredients (Chile) Inc. y Cia. Ltda.;
Chile Andes Foods S.A.;
Comercializadora Agricola Berries & Fruit Ltda;
Comercializadora de Alimentos del Sur Ltda.;
Comercio y Servicios S.A.;
Copefrut S.A.;
C y C Group S.A.;
Exportaciones Meyer S.A.;
Exportadora Pentagro S.A.;
Francisco Nancuvilu Punsin;
Frigorifico Ditzler Ltda.;
Frutas de Guaico S.A.;
Fruticola Viconto S.A.;
Hassler Monckeberg S.A.;
Hortifrut S.A.;
Interagro Comercio Y Ganado S.A.;
Kugar Export Ltda.;
Maria Teresa Ubilla Alarcon;
Multifrigo Valparaiso S.A;
Nevada Export S.A.;
Prima Agrotrading Ltda.;
Procesadora y Exportadora de Frutas y Vegetales;
Rio Teno S.A.;
Sociedad Agricola Valle del Laja Ltda.;
Sociedad Exportaciones Antiquina Ltda.;
Sociedad San Ernesto Ltda.;
Terra Natur S.A.;
Terrazas Export S.A.;
Valles Andinos S.A.

[1] These three companies were included in the petitioners' request for review of 51 companies.

Concerning Valles Andinos' objection to the petitioners' request to withdraw the review with respect to Valles Andinos, we note that Valles Andinos did not itself request an administrative review. Rather, the review was requested solely by the petitioners. Therefore, because the petitioners requested a review of Valles Andinos and subsequently withdrew that request in a timely fashion, we are rescinding the administrative review with respect to Valles Andinos, as indicated above.

The following companies remain respondents in this administrative review: Olmue, SANCO, Vital Berry, and Uren Chile.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(I).

The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of this notice.

Cash Deposit Rates

For the companies for which this review is rescinded, the cash deposit rate will continue to be 6.33 percent, the ''all others'' rate established in the less-than-fair-value investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries From Chile,* 67 FR 40270 (June 12, 2002).

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended and 19 CFR 351.213(d)(4).

Dated: January 9, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–906 Filed 1–14–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative review.

SUMMARY: The United States Court of International Trade has affirmed the Department of Commerce's final remand results affecting the final weighted-average margins for the 1997–1998 administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. There was no appeal to the United States Court of Appeals for the Federal Circuit. As there is now a final and conclusive court decision in this case, we are amending the final results of review and we will instruct the U.S. Customs and Border Protection to liquidate entries subject to this review. The period of review is June 1, 1997, through May 31, 1998.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: S. Anthony Grasso or Andrew Smith, AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3853 or (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1999, the Department of Commerce (the ''Department'') published the final results of administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRB''), from the People's Republic of China covering the period June 1, 1997, through May 31, 1998. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review,* 64 FR 61837 (November 15, 1999) (''*Final Results*'').

Luoyang Bearing Factory and the Timken Company contested the Department's decision in the *Final Results.* In issuing its decision in this case, the United States Court of International Trade (''CIT'') instructed the Department to exclude the category ''consumption of traded goods'' from the direct input costs used in the calculation of the surrogate overhead, profit, and SG&A ratios used in the Department's antidumping duty margin calculations.

The Department issued final results of redetermination pursuant to remand on December 30, 2002, and on July 14, 2003. The CIT affirmed the Department's final remand results and dismissed the case on October 27, 2003. *See Luoyang Bearing Factory* v. *United States,* Slip Op. 03–141 (CIT October 27, 2003). There was no appeal to the United States Court of Appeals for the Federal Circuit. As there is now a final and conclusive court decision in this action, we are amending our final results of review and we will instruct the U.S. Customs and Border Protection (''CBP'') to liquidate entries subject to this review.

Amendment to Final Results

Pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the ''Act''), we are now amending the final results of administrative review of the antidumping duty order of TRBs from the People's Republic of China for the period of review June 1, 1997, through May 31, 1998. In the *Final Results,* we established antidumping duty margins for Luoyang Bearing Factory (''Luoyang'') and Premier Bearing and Equipment, Ltd. (''Premier''). Accordingly, we are amending the

antidumping duty margins for Luoyang and Premier consistent with those final results of redetermination pursuant to remand.

The revised weighted-average dumping margins for Luoyang and Premier are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Luoyang Bearing Factory	5.15
Premier Bearing and Equipment, Ltd.	24.55

The Department will issue appraisement instructions directly to the CBP. The Department will instruct CBP to assess appropriate antidumping duties on the relevant entries of the subject merchandise covered by this review.

This notice is issued and published in accordance with section 751(a)(1) of the Act.

Dated: January 9, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–905 Filed 1–14–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122203D]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of an application for a scientific research/enhancement permit (1463); request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit from Ted Sedell, U. S. Forest Service in Corvallis, OR (permit 1463). The permit would affect one Evolutionarily Significant Unit (ESU) of salmonids identified in the Supplementary Information section of this notice. This document serves to notify the public of the availability of the permit application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Daylight Savings Time on February 17, 2004.

ADDRESSES: Written comments on the modification request should be sent to the Arcata Field Office, Protected Resources Division, NMFS, 1655 Heidon Road, Arcata, CA, 95521. Comments may also be sent via fax to 707 825 4840. Comments will not be accepted if submitted via e-mail or the Internet.

The permit application and related documents are available for review, by appointment at the Arcata Field Office, Protected Resources Division, NMFS, 1655 Heidon Road, Arcata, CA, 95521, (ph: 707–825–5180; fax: 707 825 4840).

FOR FURTHER INFORMATION CONTACT: Karen Hans at 707–825–5180, or e-mail: *Karen.Hans@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications (1) Are applied for in good faith, (2) would not operate to the disadvantage of the listed species which are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and permit modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

This notice is relevant to the following ESU:

Coho salmon (*Oncorhynchus kisutch*): threatened Southern Oregon/Northern California Coast (SONCC).

Individuals requesting a hearing on the application listed in this notice should set out in writing the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Permit Application Received

Ted Sedell, U.S. Forest Service, requests a permit for the take of 700 juvenile ESA-listed SONCC coho salmon associated with studies assessing presence and population abundances of fish and amphibian species in selected streams/rivers throughout northern California. The study is part of a larger survey program designed to monitor land use actions on all federal lands covered by the Northwest Forest Plan (NWFP). The applicant proposes to use single pass electrofishing as the method of capture. Permit 1463 will expire December 31, 2006.

Dated: January 9, 2004.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–908 Filed 1–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122203E]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of applications for scientific research/enhancement permits (1464 and 1467); request for comment.

SUMMARY: Notice is hereby given that NMFS has received permit applications from S.P. Cramer & Associates, Inc. (S.P. Cramer) in Chico, CA (1464), and A.P. Klimley in Davis, CA (1467). The permits would affect federally endangered Sacramento River winter-run Chinook salmon, threatened Central Valley spring-run Chinook salmon, and threatened Central Valley steelhead. This document serves to notify the public of the availability of the permit applications for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments must be received at the appropriate address or fax number (*see* ADDRESSES) no later than 5 p.m. Pacific Standard Time on February 17, 2004.

Written comments on the permit applications should be sent to the Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95814. Comments may also be sent via fax to 916–930–3629. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are also available for review by appointment, for permits 1464 and 1467 at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario at 916–930–3614, or e-mail: *Rosalie.delRosario@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications (1) are applied for in good faith, (2) would not operate to the disadvantage of the listed species which are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and permit modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Individuals requesting a hearing on either or both of the applications listed in this notice should set out in writing the specific reasons why a hearing on that application would be appropriate (*see* **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to federally endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), and threatened Central Valley steelhead (*O. mykiss*).

Permit Applications Received

S.P. Cramer requests a 5-year permit (1464) to take juvenile Central Valley steelhead to monitor its migratory behavior of O. mykiss in the Calaveras River, CA. The applicant requests authorization for an estimated annual take of 6,423 juvenile Central Valley steelhead (with 4.7 percent incidental mortality) resulting from capturing, tagging, and releasing fish.

A.P. Klimley requests a 2-year permit (1467) to handle and release adult winter-run Chinook salmon, spring-run Chinook salmon, and Central Valley steelhead that may be incidentally caught in nets deployed to capture green sturgeon (Acipenser medirostris) in the San Francisco Estuary and Sacramento River. Klimley requests authorization for an estimated annual take of 6 adult Sacramento River winter-run Chinook salmon, 15 adult Central Valley spring-run Chinook salmon, and 3 adult Central Valley steelhead, with no more than one third incidental mortality resulting from capture and release of fish.

Dated: January 9, 2004.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–909 Filed 1–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120803A]

Taking of Marine Mammals Incidental to Specified Activities; Brunswick Harbor Deepening Project, Glynn County, Georgia

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers-Savannah District (Corps) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to deepening the inner harbor portion of the Brunswick Harbor in Glynn County, GA to a depth of -36 ft (-11 m) mean low water (MLW) in the inner harbor and -38 ft (-11.6 m) MLW across the bar channel. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a 1–year IHA, to the Corps to incidentally take, by harassment, small numbers of bottlenose dolphins (Tursiops truncatus) as a result of conducting this activity.

DATES: Comments and information must be received no later than February 17, 2004.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments cannot be accepted if submitted via e-mail or the Internet. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here. Publications referenced in this document are available for viewing, by appointment during regular business hours, at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2322, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On November 6, 2003, NMFS received a request from the Corps for an IHA to take bottlenose dolphins incidental to deepening the inner harbor portion of Brunswick Harbor during the Brunswick Harbor Deepening Project in Glynn County, GA. The Corps is proposing improvements to the existing navigation facilities at Brunswick Harbor. The proposal is a 6–ft (1.8 m) deepening of the navigation channel from the inner harbor across the bar channel to the ocean. The new authorized depth would range from a depth of -36 ft (-11 m) MLW in the inner harbor and -38 ft (-11.6 m) MLW across the bar channel. Completion of the dredging project is likely to employ a cutterhead dredge and confined blasting.

The Corps' proposed action is to modify the Brunswick Harbor Deepening Project to allow pretreatment (blasting) to improve performance of dredging. The proposal to allow blasting during dredging operations is limited to only the central section of the inner harbor work. The potential blast area runs primarily in a section of the South Brunswick River from near the mouth of Turtle River into St. Simons Sound, a length of approximately 26,500 ft (8077 m), and includes the first 2,250 ft (685.8 m) in East River and an addition 1000–ft (304.8 m) section about 6000 feet (1829 m) further upstream in East River. Approximately 590,000 cubic yards of material has been identified that may require blasting. No blasting would be allowed outside the reaches designated for blasting.

Pretreatment may include punch barge or blasting. Impacts from punch barge operations are expected to be similar to those for hydraulic cutterhead dredging. Material removed by dredging after pretreatment will be placed in the nearshore deposition areas near Jekyll Island or other areas approved by the resource agencies.

The Corps expects the contractor will employ underwater dredging and confined blasting to construct the project. Blasting has the potential to have adverse impacts on bottlenose dolphins inhabiting the area near the project. While the Corps does not presently have a blasting plan from the contractor, which will specifically identify the number of holes that will be drilled, the amount of explosives that will be used for each hole, the number of blasts per day (usually no more than three per day) or the number of days the construction is anticipated to take to complete, the Corps has provided a description of a completed project in San Juan Harbor, Puerto Rico to use as an example. For that project, the maximum weight of the explosives used for each event was 375 lbs (170 kg) and the contractors detonated explosives once or twice daily from July 16 to September 9, for a total of 38 individual detonations. Normal practice is for each charge to be placed approximately 5 - 10 ft (1.5 - 3 m) deep depending on how much rock needs to be broken and how deep a depth is sought. The charges are placed in the holes and tamped with rock. Therefore, if the total explosive weight needed is 375 lbs (170 kg) and they have 10 holes, they would average 37.5 lbs (17.0 kgs)/hole. However, the weight for the Corps' project in Brunswick Harbor is likely to be significantly less. Charge weight and other determinations are expected to be made by the Corps and the contractor approximately 30–60 days prior to commencement of the construction project. Because the charge weight and other information is not presently available, NMFS will require the Corps provide this information to NMFS, including calculations for impact/mitigation zones (for the protection of marine mammals and sea turtles from injury), prior to issuance of the IHA.

Description of the Marine Mammals Affected by the Activity

General information on marine mammal species found off the East Coast of the United States can be found in Waring et al. (2001, 2002). This report is available at the following location: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*

The only marine mammal species likely to be found in Brunswick Harbor is the bottlenose dolphin and West Indian manatee (*Trichechus manatus latirostris*). Take authorizations for manatees are issued by the U.S. Fish and Wildlife Service (FWS). There is no stock assessment available concerning the status of bottlenose dolphins in the inshore and nearshore waters off Georgia. The Dolphin Project conducts surveys for dolphins along the GA coast, but they have not conducted any scientific surveys within the project area. Anecdotal information from Georgia Department of Natural Resources indicates there may be up to about 30 individuals within the project area. The defined stocks of bottlenose dolphins that reside closest to the project area are the western North Atlantic coastal and offshore stocks of bottlenose dolphins, with minimum populations estimated to be 2,482 for the coastal stock and 24,897 for the offshore stock. Additional assessment information for these two stocks is available at the previously mentioned URL.

Potential Effects on Marine Mammals

Potential impacts to marine mammals from explosive detonations could include both lethal and non-lethal injury, as well as Level B harassment. Marine mammals may be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are more likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called ''cavitation.''

A second possible cause of mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

NMFS' criteria for determining non-lethal injury (Level A harassment) from explosives are the peak pressure that will result in: (1) the onset of slight lung hemorrhage, or (2) a 50–percent probability level for a rupture of the tympanic membrane. These are injuries from which animals would be expected to recover on their own. NMFS has also established dual criteria for what constitutes Level B acoustic harassment: (1) an energy-based TTS (temporary threshold shift) criterion from received sound levels 182 dB re 1 microPa^2–sec cumulative energy flux in any 1/3 octave band above 100 Hz for odontocetes (derived from experiments with bottlenose dolphins (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000)); and (2) 12 psi peak pressure cited by Ketten (1995) as associated with a safe outer limit for minimal, recoverable auditory trauma (i.e., TTS). The Level B Harassment zone therefore is the minimum distance at which neither criterion is exceeded.

Mitigation and Monitoring

In the absence of these acoustic measurements (because of the high cost and complex instrumentation needed), in order to protect endangered, threatened and protected species (manatees, dolphins, sea turtles), the following equations have been proposed by the Corps for blasting projects to determine zones for injury or mortality from an open water explosion and to

assist the Corps in establishing mitigation to reduce impacts to the lowest level practicable. These equations are believed to be more conservative than the dual criteria since they are based on (1) a species more sensitive than dolphins (humans) and (2) unconfined charges and the proposed blasts in Brunswick Harbor will be confined (stemmed) charges. The equations are:

Caution Zone radius = 260 (lbs/delay)$^{1/3}$

Safety Zone radius = 520 (lbs/delay)$^{1/3}$

The caution zone represents the radius from the detonation beyond which mortality is not expected from an open-water blast. The safety zone is the approximate distance beyond which non-serious injury (Level A harassment) is unlikely from an open-water explosion. These zones will be used for implementing mitigation measures.

In Brunswick Harbor (or any area where explosives are required to obtain channel design depth), marine mammal/sea turtle protection measures will be employed by the Corps. For each explosive charge, the Corps proposes that detonation will not occur if a marine mammal is sighted by a dedicated marine mammal/sea turtle observer within an area that is two times the caution zone (called the marine mammal safety zone) where the caution zone is a circular area around the detonation site with the following radius: R = 260(W)1/3 (260 times the cube root of the weight of the explosive charge in pounds) where: R = radius of the caution zone in ft; W = weight of the explosive charge in lbs).

Although the caution zone is considered to be an area where mortality is possible, the Corps believes that because all explosive charges will be stemmed (placed in a drilled hole and tamped with rock), the areas for potential mortality and injury will be significantly smaller than this zone and therefore it is unlikely that even non-serious injury would occur if, as is believed to be the case, monitoring this zone is effective. For example, since bottlenose dolphins are commonly found on the surface of the water, implementation of a mitigation/monitoring program is expected by NMFS to be close to 100 percent effective.

According to the Corps, bottlenose dolphins and other marine mammals have not been documented as being directly affected by dredging activities and therefore the Corps does not anticipate any incidental harassment of bottlenose dolphins by dredging.

The Corps proposes to implement mitigation measures and a monitoring program that will establish both caution- and safety- zone radii to ensure that bottlenose dolphins will not be injured during blasting and that impacts will be at the lowest level practicable. Mitigation measures include: (1) confining the explosives in a hole with drill patterns restricted to a minimum of 8 ft (2.44 m) separation from any other loaded hole; (2) restricting the hours of detonation from 2 hours after sunrise to 1 hr before sunset to ensure adequate observation of marine mammals and sea turtles in the safety zone; (3) staggering the detonation for each explosive hole in order to spread the explosive's total overpressure over time, which in turn will reduce the radius of the caution zone; (4) capping the hole containing explosives with rock in order to reduce the outward potential of the blast, thereby reducing the chance of injuring a dolphin, manatee, or sea turtle; (5) matching, to the extent possible, the energy needed in the ''work effort'' of the borehole to the rock mass to minimize excess energy vented into the water column; and (6) conducting a marine mammal/sea turtle watch with no less than two qualified observers from a small water craft and/or an elevated platform on the explosives barge, from at least 30 minutes before to 30 minutes after each detonation to ensure that there are no marine mammals or sea turtles in the area at the time of detonation.

The observer monitoring program will take place in a circular area at least three times the radius of the above described caution zone (called the watch zone). Particular attention will be placed in a circular area with a radius of two times the caution zone (the marine mammal safety zone). Any marine mammal(s) in the caution zone, marine mammal safety zone, or watch zone will not be forced to move out of those zones by human intervention. Detonation will not occur until the animal(s) move(s) out of the caution zone and safety zone on its own volition.

Reporting

Because this project may take a period of time longer than 1 year, NMFS is proposing to issue a 1–year IHA with the possibility for renewal upon application from the Corps. NMFS proposes to require the Corps to submit a report of activities 120 days before the expiration of the proposed IHA if the Corps plans to request a renewal of its IHA (and the proposed work has started), or within 120 days after the expiration of the IHA if a renewal is not being requested.

In the unlikely event a marine mammal or marine turtle is injured or killed during blasting, the Contractor shall immediately notify the NMFS Regional Office.

Endangered Species Act

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. The Corps is consulting with FWS regarding effects on manatees. Consultation will be concluded prior to issuance of an IHA.

National Environmental Policy Act (NEPA)

The Corps prepared an Final Environmental Impact Statement (FEIS) in 1998 for the Brunswick Harbor Deepening Project. A copy of this document is available upon request (*see* **ADDRESSES**). NMFS is reviewing this FEIS in relation to the Corps' application and will determine the appropriate action to take under NEPA prior to making a determination on the issuance of an IHA.

Preliminary Conclusions

NMFS has preliminarily determined that the Corps' proposed action, including mitigation measures to protect marine mammals, should result, at worst, in the temporary modification in behavior by bottlenose dolphins, including temporarily vacating the area, may be made by these species to avoid the blasting activity and the potential for minor visual and acoustic disturbance from dredging and detonations. This action is expected to have a negligible impact on the affected species or stocks of marine mammals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

Proposed Authorization

NMFS proposes to issue an IHA to the Corps for the harassment of small numbers of bottlenose dolphins incidental to deepening the inner harbor portion of Brunswick Harbor during the Brunswick Harbor Deepening Project in Glynn County, GA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of bottlenose dolphins and will have no more than a negligible impact on this marine mammal stock.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (*see* **ADDRESSES**).

Dated: January 8, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–901 Filed 1–14–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Office of the Secretary of the Air Force; Acceptance of Group Application Under Pub. L. 95–202 and Department of Defense Directive (DODD) 1000.20

''The U.S. and Foreign Civilian Employees of CAT, Inc., Who Were Flight Crew Personnel (U.S. Pilots, Co-Pilots, Navigators Flight Mechanics, and Air Freight Specialists) and Aviation Ground Support Personnel (U.S. Maintenance Supervisors, Operations Managers, and Flight Information Center Personnel), and Conducted Paramilitary Operations in Korea, French Indochina, Tibet and Indonesia From 1950 Through 1959; and U.S. and Foreign Civilian Employees of Air America Flight Who Were Crew Personnel and Ground Support Personnel, as Described, Who Conducted Paramilitary Operations in Laos From 1961 Through 1974, When the War in Laos Ended; and U.S. and Foreign Civilian Employees of Air America Who Were Flight Crew Personnel and Ground Support Personnel, as Described, and Conducted Paramilitary Operations in Vietnam From 1964 Through 1975, When Saigon Was Evacuated and Air America Flight Operations Ceased''

At the request of the application's author, the Department of Defense Civilian/Military Service Review Board (C/MSRB) has amended the nature of an application and accepted it under the provisions of Section 401, Public Law 95–202 and DoD Directive 1000.20. The application now includes ''foreign'' employees and, as amended, the C/MSRB has accepted an application on behalf of a group known as: ''The U.S. and Foreign Civilian Employees of CAT, Inc., Who Were Flight Crew Personnel (U.S. Pilots, Co-Pilots, Navigators, Flight Mechanics, and Air Freight Specialists) and Aviation Ground Support Personnel (U.S. Maintenance Supervisors, Operations Managers, and Flight Information Center Personnel) and Conducted Paramilitary Operations in Korea, French Indochina, Tibet and Indonesia From 1950 Through 1959; and U.S. and Foreign Civilian Employees of Air America Who Were Flight Crew Personnel and Ground Support Personnel, as Described, and Conducted Paramilitary Operations in Laos from 1961 Through 1974, When the War in Laos Ended; and U.S. and Foreign Civilian Employees of Air America Who Were Flight Crew Personnel and Ground Support Personnel, as Described, and Conducted Paramilitary Operations in Vietnam From 1964 Through 1975, When Saigon Was Evacuated and Air America Flight Operations Ceased.''

Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DoD Civilian/Military Service Review Board, 1535 Command Drive, EE-Wing, 3rd Floor, Andrews AFB, MD 20762–7002. Copies of documents or other materials submitted cannot be returned.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–861 Filed 1–14–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Secretary's Advisory Group. The purpose of the meeting is to allow the SAB to provide advice to the Secretary on short and long-term policy and strategy issues for the Air Force. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: 26–30 January 2004.

FOR FURTHER INFORMATION CONTACT: Lt Col Nowack, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–859 Filed 1–14–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 1st ACC Advisory Panel Meeting. The purpose of the meeting is to allow the SAB leadership to advise the commander of the 1st ACC Advisory Panel. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: 6–7 January 2004.

ADDRESSES: Bldg 205 Dodd Blvd., Langley AFB, VA.

FOR FURTHER INFORMATION CONTACT: Maj Tim Kelly, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–860 Filed 1–14–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership for Headquarters, U.S. Army Materiel Command

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: January 12, 2004.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Headquarters, U.S. Army Materiel Command are:

1. Major General John Doesburg, Commanding General, U.S. Army Research, Development and Engineering (RDE) Command, Aberdeen Proving Ground, Maryland.
2. Mr. Michael C. Schexnayder, Associate Director for Systems Missiles, Aviation and Missile RDE Center, Redstone Arsenal, Alabama.
3. Dr. Robin Buckelew, Director for Missile Guidance, Aviation and Missile RDE Center, Redstone Arsenal, Alabama.
4. Mr. Jerry Chapin, Deputy to the Commander, U.S. Army Tank-automotive & Armaments Command, Warren, Michigan.
5. Dr. James Chang, Director, Army Research Office, Research Triangle Park, North Carolina.
6. Mr. Michael A. Parker, Deputy to the Commander, U.S. Army Soldier & Biological Chemical Command, Aberdeen Proving Ground, Maryland.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–883 Filed 1–14–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Programmatic Environmental Impact Statement for a Proposed Introduction of the Oyster Species, Crassostrea ariakensis, Into the Tidal Waters of Maryland and Virginia To Establish a Naturalized, Reproducing, and Self-Sustaining Population of This Oyster Species; Correction

AGENCY: Department of the Army; U.S. Army Corps of Engineers, DoD.

ACTION: Notice; meeting location correction.

SUMMARY: The public scoping meeting scheduled at the MD DNR in the Tawes Building, Annapolis, Maryland 21401 on January 26, 2004 at 7 p.m. and the public scoping meeting scheduled at the VMRC offices at 2600 Washington Avenue, Newport News, Virginia on January 28, 2004 at 6 p.m. published in the **Federal Register** on Monday, January 5, 2004 (Vol. 69 FR 330) have been moved. The public scoping meeting in Maryland will now be held at the Radisson Hotel Annapolis, 210 Holiday Court, Annapolis, Maryland 21401 on the same date and at the same time, January 26, 2004 at 7 p.m. The public scoping meeting in Virginia will now be held at Warwick High School, 51 Copeland Lane, Newport News, VA on the same date and at the same time, January 28, 2004 at 6 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Kube at the Corps of Engineers, (757) 441–7504, Mr. Thomas O'Connell, Fisheries Service, Maryland DNR, (410) 260–8261, or Mr. Jack Travelstead, Virginia Marine Resources Commission, (757) 247–2247.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–884 Filed 1–14–04; 8:45 am]

BILLING CODE 3710–EN–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for Donation of the Amphibious Assault Ship ex-NEW ORLEANS (LPH 11) and the Aircraft Carrier ex-RANGER (CV 61)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the availability for donation, under the authority of 10 U.S.C. section 7306, of the amphibious assault ship ex-NEW ORLEANS (LPH 11) located at the MARAD National Defense Reserve Fleet, Suisun Bay, Benecia, CA and of the aircraft carrier ex-RANGER (CV 61) located at the NAVSEA Inactive Ships On-Site Maintenance Office, Bremerton, Washington. Eligible recipients include: (1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any organization incorporated as a non-profit entity under section 501 of the Internal Revenue Code. The transfer of a ship for donation under 10 U.S.C section 7306 shall be made at no cost to the United States government. The donee will be required to maintain the ship as a static museum/memorial in a condition that is satisfactory to the Secretary of the Navy. Prospective donees must submit a comprehensive application that addresses the significant financial, technical, environmental and curatorial responsibilities associated with donated Navy ships. Further application information can be found on the Navy Ship Donation Program Web site at *http://www.navsea.navy.mil/ndp.* All vessels currently in a donation hold status, including the ex-NEW ORLEANS (LPH 11) and the ex-RANGER (CV 61), will be reviewed by the Chief of Naval Operations during the annual Ship Disposition Review (SDR) process, at which time a determination will be made whether or not to extend the donation hold status. This notice of availability will expire in 6 months from the date of issue.

FOR FURTHER INFORMATION CONTACT: Commander, Naval Sea Systems Command, ATTN: Ms. Gloria Carvalho (PMS 333G), 1333 Isaac Hull Ave, SE., Stop 2701, Washington Navy Yard, DC 20376–2701, telephone number (202) 781–0485.

Dated: December 31, 2003.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–872 Filed 1–14–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2516]

Allegheny Energy Supply Company, LLC; Notice of Authorization for Continued Project Operation

January 7, 2004.

On December 17, 2001, Allegheny Energy Supply Company, LLC, licensee for the Dam No. 4 Hydro Station Project No. 2516, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2516 is located on the Potomac River in Berkeley and Jefferson Counties, West Virginia.

The license for Project No. 2516 was issued for a period ending December 31, 2003. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on

its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2516 is issued to Allegheny Energy Supply Company, LLC for a period effective January 1, 2004, through December 31, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 1, 2005, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Allegheny Energy Supply Company, LLC is authorized to continue operation of the Dam No. 4 Hydro Station Project No. 2516 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E4–54 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2517]

Allegheny Energy Supply Company, LLC; Notice of Authorization for Continued Project Operation

January 7, 2004.

On December 17, 2001, Allegheny Energy Supply Company, LLC, licensee for the Dam No. 5 Hydro Station Project No. 2517, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2517 is located on the Potomac River in Berkeley County, West Virginia.

The license for Project No. 2517 was issued for a period ending December 31, 2003. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2517 is issued to Allegheny Energy Supply Company, LLC for a period effective January 1, 2004 through December 31, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 1, 2005, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Allegheny Energy Supply Company, LLC is authorized to continue operation of the Dam No. 5 Hydro Station Project No. 2517 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E4–55 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–101]

ANR Pipeline Company; Notice of Negotiated Rate Filing

January 7, 2004.

Take notice that on December 31, 2003, ANR Pipeline Company, (ANR) tendered for filing two (2) negotiated rate agreements between ANR and ConocoPhillips Company pursuant to ANR's Rate Schedule ITS. ANR tenders these agreements, as well as a related Lease Dedication Agreement, pursuant to its authority to enter into negotiated rate agreements. ANR requests that the Commission accept and approve the agreements to be effective February 1, 2004.

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 section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–69 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-301-102]

ANR Pipeline Company; Notice Of Negotiated Rate Filing

January 7, 2004.

Take notice that on December 31, 2003, ANR Pipeline Company (ANR) tendered for filing and approval four amendments to existing negotiated rate service agreements between ANR and Wisconsin Gas Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective January 1, 2004.

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 section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–70 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–132–000]

Columbia Gas Transmission Corporation; Notice of Penalty Revenue Crediting Report

January 7, 2004.

Take notice that on December 31, 2003, Columbia Gas Transmission Corporation (Columbia) states that pursuant to section 19.6 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1, Columbia must file a report with the Commission within 60 days of the close of each Columbia contract year (November 1 to October 31) showing any Penalty Revenues it has received during the contract year, any Columbia costs netted against the Penalty Revenues, and the resulting Penalty Revenue credits due to Non-Penalized Shippers for each month of the contract year. Columbia states that it is providing the attached Penalty Revenue Crediting Report for the 2002–2003 contract year.

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 sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: January 14, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–60 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–056]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

January 7, 2004.

Take notice that on December 31, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of February 1, 2004:

Sixty-seventh Revised Sheet No. 25
Sixty-seventh Revised Sheet No. 26
Sixty-seventh Revised Sheet No. 27
Fifty-sixth Revised Sheet No. 28
Eighth Revised Sheet No. 28B
Fifth Revised Sheet No. 29A
Thirty-first Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to an Order issued September 15, 1999, by the Commission approving an uncontested settlement that resolves environmental cost recovery issues in the above-referenced proceeding. Columbia Gas Transmission Corporation, 88 FERC ¶ 61,217 (1999). The settlement established environmental cost recovery through unit components of base rates, all as more fully set forth in Article VI of the settlement agreement filed April 5, 1999 (Phase I Settlement).

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–65 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–133–000]

Columbia Gulf Transmission Company; Notice of Penalty Revenue Crediting Report

January 7, 2004.

Take notice that on December 31, 2003, Columbia Gulf Transmission Company (Columbia Gulf) states that pursuant to section 19.6 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1, it must file a report with the Commission within 60 days of the close of each Columbia Gulf contract year (November 1 to October 31) showing any Penalty Revenues it has received during the contract year, any Columbia Gulf costs netted against the Penalty Revenues, and the resulting Penalty Revenue credits due to Non-Penalized Shippers for each month of the contract year. Columbia Gulf states that it is providing the Penalty Revenue Crediting Report for the 2002–2003 contract year.

Columbia Gulf 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 sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: January 14, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–61 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–134–000]

Crossroads Pipeline Company; Notice of Penalty Revenue Crediting Report

January 7, 2004.

Take notice that on December 31, 2003, Crossroads Pipeline Company (Crossroads) states that pursuant to section 19.6 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, First Revised Volume 1, it must file a report with the Commission within 60 days of the close of each Crossroads contract year (November 1 to October 31) showing any Penalty Revenues it has received during the contract year, any Crossroads costs netted against the Penalty Revenues, and the resulting Penalty Revenue credits due to Non-Penalized Shippers for each month of the contract year. Crossroads states that it is providing the attached Penalty Revenue Crediting Report for the 2002–2003 contract year.

Crossroads 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 sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: January 14, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–62 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–131–000]

Florida Gas Transmission Company; Notice of Filing of Annual Report

January 7, 2004.

Take notice that on December 31, 2003, Florida Gas Transmission Company (FGT) tendered for filing, pursuant to section 19.1 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Third Revised Volume No. 1, schedules detailing certain information related to its Cash-Out Mechanism, Fuel Resolution Mechanism and Balancing Tools charges for the accounting months October 2002 through September 2003. No tariff changes are proposed.

FGT states that it has recorded excess revenues of $2,036,432 during the current Settlement Period, which when combined with the $4,373,252 net deficiency carried forward from the preceding Settlement Period and interest of $224,230, result in a cumulative net cost balance of $2,561,050 as of September 30, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions

or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: January 14, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–59 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–054]

Gas Transmission Northwest Corporation; Notice of Negotiated Rates

January 7, 2004.

Take notice that on December 31, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No.1–A, Fourth Revised Sheet No. 15, to become effective January 1, 2004.

GTN states that this sheet is being filed to reflect the continuation of a negotiated rate agreement pursuant to evergreen provisions contained in the agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

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 section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–53 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–136–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

January 7, 2004.

Take notice that on January 2, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Sheet No. 4C, proposed to become effective on February 2, 2004.

Iroquois states that the proposed changes would increase revenues from service on Iroquois' Eastchester Extension Project (Eastchester Project) by $16,990,556 million, based on the 12-month period ended September 30, 2003, as adjusted for changes projected to occur through June 30, 2004.

Iroquois states that the purpose of its filing is to establish incremental rates for the Eastchester Project, and resulting secondary access rates to Eastchester capacity from Iroquois' existing, non-expansion system. Iroquois further states that its rate filing is consistent with the Commission's directives in the Eastchester certificate orders in Docket No. CP00–232, and with section 1.2 of Iroquois' August 29, 2003, rate settlement in Docket No. RP03–589. Additionally, Iroquois states that the proposed rate increase is necessary to recover the higher actual costs of constructing the Eastchester Project, as well as allocated administrative and general costs, direct operation and maintenance costs, taxes, depreciation expense based on Iroquois' approved transportation depreciation rate, and an adequate return on its investment.

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 section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–64 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–015]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Negotiated Rates

January 7, 2004.

Take notice that on December 31, 2003, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1-A, Tenth Revised Sheet No. 4G, Third Revised Sheet No. 4H, to be effective January 1, 2004.

KMIGT states that the tariff sheets are being filed pursuant to section 36 of KMIGT's FERC Gas Tariff Fourth Revised Volume No. 1-B, and the procedures prescribed by the Commission in its December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'', in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997, and November 30, 2000, in Docket Nos. RP97–81–001, and RP01–70–000, respectively.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's 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 sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–68 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT of ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–135–000]

Southern Star Central Gas Pipeline; Notice of Informal Settlement Conference

January 7, 2004.

Take notice that an informal settlement conference will be convened in these proceedings commencing at 1 p.m. on January 12, 2004, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Lorna Hadlock (202) 502–8737, e-mail *Lorna.Hadlock@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–57 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–129–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

January 7, 2004.

Take notice that on December 30, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, revised tariff sheets listed on Appendix B to the filing to become effective February 1, 2004.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern states that Section 15.1 provides that Texas Eastern shall file, to be effective each February 1, revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers. Texas Eastern further states that the revised tariff sheets also reflect the EPC Surcharge, which is designed to clear the balance in the Deferred EPC Account.

Texas Eastern states that all costs of electric power compression required for the incremental services under the TIME and Freehold Projects are appropriately assigned to the incremental projects as required by the Commission Orders certificating the TIME and Freehold Projects.

Texas Eastern states that the proposed rate changes to the primary firm capacity reservation charges, usage rates and 100% load factor average costs reflected on the revised tariff sheets, for example, for full Access Area Boundary service from the Access Area Zone, East Louisiana, to the three market area zones are as follows:

Zone	Reservation	Usage	100% load factor
Market 1	$0.008/Dth	$0.0002/Dth	$0.0005/Dth
Market 2	0.024/Dth	0.0007/Dth	0.0015/Dth
Market 3	0.033/Dth	0.0011/Dth	0.0022/Dth

Texas Eastern states that copies of its filing have been mailed to all affected customers and 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 Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–58 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–017]

Texas Gas Transmission, LLC; Notice of Negotiated Rate Agreement

January 7, 2004.

Take notice that on January 5, 2004, Texas Gas Transmission, LLC (Texas Gas), submitted for filing a Negotiated Rate Agreement with Indiana Utilities Corporation (IUC).

Texas Gas states that the purpose of this filing is to file a copy of a Negotiated Rate Agreement between Texas Gas and IUC establishing negotiated rates applicable to transportation under its Small Customer General Transportation (SGT) service agreement.

Texas Gas states that this Negotiated Rate Agreement is being submitted in compliance with ''Section 38. Negotiated Rates'' of the General Terms and Conditions (GT&C) of Texas Gas's FERC Gas Tariff, Second Revised No. 1, and the Commission's modified policy on negotiated rates (104 FERC ¶ 61,134 (2003)).

Texas Gas states that copies of this filing are being mailed to all parties on the official service list in this docket, to Texas Gas's official service list, to Texas Gas's jurisdictional customers, and to 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 section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–56 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–061]

TransColorado Gas Transmission Company; Notice of Compliance Filing

January 7, 2004.

Take notice that on December 31, 2003, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 21 and Original Sheet No. 22B to be effective December 31, 2003.

TransColorado states that the filing is being made in compliance with the Commission's Letter Order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect a negotiated-rate contract with Red Cedar Gathering. TransColorado requested a waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective December 31, 2003.

TransColorado states that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–66 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–136–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

January 7, 2004.

Take notice that on December 31, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Commission negotiated Rate Schedule FT–1 service agreements associated with its Grasslands Pipeline Project in Docket Nos. CP02–37–000, *et al.*

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 section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–63 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–28–011]

Wyoming Interstate Company, Ltd; Notice of Negotiated Rates

January 7, 2004.

Take notice that on December 31, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, with an effective date of January 1, 2004:

Second Revised Sheet No. 102
Second Revised Sheet No. 108 through 109
Third Revised Sheet No. 110
Second Revised Sheet No. 111 through 114

WIC states that these tariff sheets implement one new negotiated rate transaction, update an existing transaction, and remove several expired transactions.

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 section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–67 Filed 01–14–04; 8:45 AM]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–487–000, et al.]

National Energy Generating Company, LLC, et al.; Electric Rate and Corporate Filings

January 8, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. National Energy Generating Company, LLC, Peach IV Power Corporation, Black Hawk III Power Corporation, Lake Road Generating Company, L.P.

[Docket No. EC04–48–000]

Take notice that on December 30, 2003, National Energy Generating Company, LLC, Peach IV Power Corporation, Black Hawk III Power Corporation, and Lake Road Generating Company, L.P., as agent for Lake Road Trust Ltd., each a wholly-owned indirect subsidiary of National Energy & Gas Transmission, Inc., filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization for a proposed intra-corporate reorganization.

Comment Date: January 20, 2004.

2. National Energy Generating Company, LLC, National Energy Generating Holdings, Inc,. La Paloma Power Corporation, La Paloma Generating Company, LLC

[Docket No. EC04–49–000]

Take notice that on December 30, 2003, National Energy Generating Company, LLC, National Energy Generating Holdings, Inc., La Paloma Power Corporation and La Paloma Generating Company, LLC, as agent for La Paloma Generating Trust Ltd., each a wholly-owned indirect subsidiary of National Energy & Gas Transmission, Inc., filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization for a proposed intra-corporate reorganization.

Comment Date: January 20, 2004.

3. Lake Road Trust Ltd., The Connecticut Light and Power Company

[Docket No. EC04–50–000]

Take notice that on December 30, 2003, Lake Road Trust Ltd. (Lake Road) and The Connecticut Light and Power Company (CL&P) (together, Applicants), filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization to transfer certain jurisdictional facilities held by Lake Road to CL&P.

Comment Date: January 20, 2004.

4. Quachita Power, LLC Complainant, v. Entergy Louisiana, Inc. and Entergy Services, Inc. Respondents

[Docket No. EL04–49–000]

Take notice that on January 7, 2004, Quachita Power, LLC (Quachita) filed a complaint against Entergy Louisiana, Inc. and Entergy Services, Inc. (together, Entergy) relating to the payment of transmission credits and interest under the Interconnection and Operating Agreement between Quachita and Entergy.

Comment Date: January 27, 2004.

5. Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC

[Docket Nos. ER99–3151–003 and ER99–837–004]

Take notice that on December 30, 2003, Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC submitted a compliance filing in response to the Commission's November 17, 2003 Order Amending Market-based Rate Tariffs and Authorizations in Docket Nos. EL01–118–000 and 001.

Comment Date: January 20, 2004.

6. Alliant Energy Corporate Services, Inc.

[Docket No. ER03–762–003]

Take notice that on December 23, 2003, Alliant Energy Corporate Services, Inc. (AESC) submitted for filing Original Sheet Nos. 27 and 28 under FERC Electric Tariff Volume No. 1, pursuant to Commission Order issued December 11, 2003 in Docket No. EL01–118–000, *et. al.*

Comment Date: January 13, 2004.

7. New York Independent System Operator, Inc.

[Docket No. ER03–766–002]

Take notice that on December 30, 2003, the New York Independent System Operator, Inc., filed its report on the operation of scarcity pricing and Special Case Resources/Emergency Demand Response Program pricing from June 23, 2003 through November 30, 2003.

Comment Date: January 20, 2004.

8. New York Independent System Operator, Inc.

[Docket No. ER04–54–001]

Take notice that on December 30, 2003, the New York Independent System Operator, Inc. (NYISO), tendered for filing a compliance filing in connection with the Commission's December 15, 2003 order issued in ER04–54–000.

The NYISO states that it has served a copy of the filing on all parties listed on the official service list in Docket No. ER04–54–000, on all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and the electric regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 20, 2004.

9. GPU Advanced Resources, Inc.

[Docket No. ER04–343–000]

Take notice that on December 30, 2003, GPU Advanced Resources, Inc. (GPU AR) submitted a notice of cancellation of its market-based rate sales tariff, GPU Advanced Resources, Inc., Rate Schedule FERC No. 1.

GPU AR states that it has served copies of the filing on regulators in Pennsylvania and New Jersey.

Comment Date: January 20, 2004.

10. Exelon New Boston, LLC

[Docket No. ER04–344–000]

Take notice that on December 30, 2003, Exelon New Boston, LLC (Exelon New Boston), tendered for filing a proposed amendment and restatement of its reliability must-run agreement with ISO New England, Inc., Exelon New Boston, Electric Rate Schedule FERC No. 3. Exelon New Boston requests an effective date of January 1, 2004.

Exelon New Boston states that copies of the filing have been mailed to the ISO New England, Inc., and to each affected state regulatory agency.

Comment Date: January 20, 2004.

11. Illinois Power Company

[Docket No. ER047–345–000]

Take notice that on December 30, 2003, Illinois Power Company (Illinois Power) tendered for filing five executed service agreements for Network Integration Transmission Service (Service Agreements), subject to Illinois Power's Open Access Transmission Tariff (OATT). The service agreements are the following: (1) First Revised Service Agreement for Network Integration Transmission Service entered into by Illinois Power and The Cincinnati Gas & Electric Company (CG&E), PSI Energy, Inc. (PSI), and Cinergy Services, Inc., as agent for and on behalf of CG&E and PSI, dated November 24, 2003 (designated as First Revised Service Agreement No. 338); (2) Fourth Revised Service Agreement for Network Integration Transmission Service entered into by Illinois Power and Illinois Municipal Electric Agency, dated December 24, 2003 (designated as Fourth Revised Service Agreement No. 270); (3) Second Revised Service Agreement for Network Integration Transmission Service entered into by Illinois Power and Southern Illinois Power Cooperative, Inc., dated December 17, 2003 (designated Second Revised Service Agreement No. 243); (4) First Revised Service Agreement for Network Integration Transmission Service entered into by Illinois Power and Soyland Power Cooperative, Inc., dated December 23, 2003 (designated as First Revised Service Agreement No. 355); and (5) Second Revised Service Agreement for Network Integration Transmission Service entered into by Illinois Power and Wabash Valley Power Association, dated November 24, 2003 (designated Second Revised Service Agreement No. 353).

Comment Date: January 20, 2004.

12. Central Hudson Gas & Electric Corporation

[Docket No. ER04–346–000]

Take notice that on December 30, 2003, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing an executed First Amendment to Amended and Restated Power Project Output Sales Agreement, dated December 29, 2003, between Central Hudson and West Delaware Hydro Associates L.P. (West Delaware), together with an Amended and Restated Hydroelectric Power Project Output Sales Agreement, dated November 1, 1998, between Central Hudson and West Delaware. Central Hudson has requested an effective date of January 1, 2004.

Central Hudson states that the tendered agreements provide for interconnection service and power sales by West Delaware to Central Hudson from West Delaware's approximately 7.5 MW hydroelectric facility located at the West Delaware Water Tunnel outlet in Sullivan County, New York. Central Hudson states that West Delaware is a qualifying facility under the Public Utility Regulatory Policies Act of 1978, which makes the interconnection and power sales service subject to New York State jurisdiction. However, Central Hudson states that, in the near future, West Delaware intends to become a market participant under the New York Independent System Operator's Market Administration and Control Area Services Tariff on file with the Commission, which will subject Central Hudson's interconnection service to the Commission's jurisdiction. Accordingly, Central Hudson has filed the referenced agreements for Commission review.

Comment Date: January 20, 2004.

13. Ameren Services Company

[Docket No. ER04–347–000]

Take notice that on December 30, 2003, Ameren Services Company (ASC) tendered for filing an executed Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and Wabash Valley Power Association. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Wabash Valley Power Association pursuant to Ameren's Open Access Transmission Tariff

Comment Date: January 20, 2004.

14. The Detroit Edison Company

[Docket No. ER04–348–000]

Take notice that on December 30, 2003, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for Ancillary Services By and Between Detroit Edison Company and the Midwest Independent Transmission System Operator, Inc., acting as agent on behalf of certain of its Transmission Customers, dated December 1, 2003 (the Agreement). The Agreement is being filed as Service Agreement No. 1 under Detroit Edison's Ancillary Services Tariff.

Comment Date: January 20, 2004.

15. Golden Spread Electric Cooperative, Inc.

[Docket No. ER04–349–000]

Take notice that on December 30, 2003, Golden Spread Electric Cooperative, Inc. (Golden Spread), tendered for filing Amendments to First Revised Rates Schedule Nos. 25 and 27. Golden Spread states that the filing will allow Golden Spread Member Greenbelt Electric Cooperative, Inc. to change power delivery points from its Dedicated Service Rate Schedule to its System Service Rate Schedule and will allow Golden Spread Member Lighthouse Electric Cooperative, Inc. to add delivery points to its System Service Rate Schedule. Golden Spread requests an effective date of January 1, 2004, subject to receipt of necessary Lender approvals.

Comment Date: January 20, 2004.

16. XL Trading Partners America LLC

[Docket No. ER04–350–000]

Take notice that on December 30, 2003, XL Trading Partners America LLC (XL Trading America) petitioned the Commission for acceptance of XL Trading America's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: January 20, 2004.

17. Monongahela Power Company

[Docket No. ER04–351–000]

Take notice that on December 30, 2003, Allegheny Energy Service Corporation on behalf of Monongahela Power Company (Mon Power), doing business as Allegheny Power, tendered for filing pursuant to the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a Notice of Termination of Monongahela Power Company, Rate Schedule FERC Nos. 53, 54 and 55 consisting of Power Service Agreements between Mon Power and the City of Philippi, Harrison Rural Electrification Association and the City of New Martinsville, respectively. Mon Power states that the Agreements terminated by their own terms effective on November 30, 2003.

Comment Date: January 20, 2004.

18. Northeast Generation Company

[Docket No. ER04–352–000]

Take notice that on December 30, 2003, Northeast Generation Company (NGC) submitted pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's regulations rate schedule modifications for sale of electricity to Select Energy, Inc. in order to withdraw a Power Supply Agreement on file with the Commission. NGC requests an effective date of December 31, 2003.

NGC states that a copy of the filing was mailed to Select Energy, Inc.

Comment Date: January 20, 2004.

19. Southern Company Services, Inc.

[Docket No. ER04–353–000]

Take notice that on December 30, 2003, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), filed two rollover transmission service agreements under the Open Access Transmission Tariff of Southern Companies, FERC Electric Tariff, Fourth Revised Volume No. 5.

Comment Date: January 20, 2004.

20. Wisconsin Power and Light Company

[Docket No. ER04–355–000]

Take notice that on December 30, 2003, Wisconsin Power and Light Company (WPL) on its own behalf and on behalf of Municipal Wholesale Power Group, and Wisconsin Public Power Inc. (the Parties) submitted an amendment to the settlement agreement among the Parties on file with the Commission. WPL states that the amendment is memorialized in a letter agreement among the Parties dated December 17, 2003.

Comment Date: January 20, 2004.

21. New York Independent System Operator, Inc.

[Docket No. ER04–356–000]

Take notice that on December 30, 2003, the New York Independent System Operator, Inc. (NYISO), filed modifications to its October 16, 2003, filing in which the NYISO proposed to revise its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) to (1) establish Congestion Shortfall Charges and Congestion Surplus Payments, and (2) establish Auction Shortfall Charges and Auction Surplus Payments. NYISO states that the modifications will correct the OATT and Services Tariff to exclude the effect of phase angle regulator schedule changes in calculating Congestion Shortfall Charges, Congestion Surplus Payments, Auction Shortfall Charges, and Auction Surplus Payments. The NYISO has requested that the modifications become effective on the date that the provisions in the October 16, 2003, filing became effective.

The NYISO states that it has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Service Commission, and the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 20, 2004.

22. Michael J. Chesser

[Docket No. ID–3966–001]

Take notice that on December 30, 2003, Michael J. Chesser filed with the Federal Energy Regulatory Commission an application for authority to hold interlocking positions under Section 305(b) of the Federal Power Act.

Comment Date: January 20, 2004.

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. E4–50 Filed 1–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–45–000, et al.]

Vermont Electric Cooperative, Inc., et al.; Electric Rate and Corporate Filings

January 7, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Vermont Electric Cooperative, Inc.

[Docket No. EL04–45–000]

Take notice that on December 24, 2003, Vermont Electric Cooperative, Inc. (VEC) tendered for filing a Request for Waiver of Requirements of Order Nos. 889, 2004 and 2001. The Vermont Public Service Board and the Vermont Department of Public Service were mailed copies of this filing.

Comment Date: January 23, 2004.

2. NRG Power Marketing Inc., Arthur Kill Power LLC, Astoria Gas Turbines Power LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Conemaugh Power LLC, Connecticut Jet Power LLC, Devon Power LLC, Dunkirk Power LLC, Huntley Power LLC, Indian River Power LLC, Keystone Power LLC, Louisiana Generating LLC, LSP Energy Limited Partnership, LSP-Kendall Energy, LLC, LSP-Nelson Energy LLC, LSP-Pike Energy LLC, Meriden Gas Turbines LLC, Middletown Power LLC, Montville Power LLC, NEO California Power LLC, NEO Chester-Gen LLC, NEO Freehold-Gen LLC, NRG Energy Center Dover LLC, NM Colton Genco LLC, NM Mid Valley Genco LLC, NM Milliken Genco LLC, Norwalk Power LLC, NRG Ashtabula Generating LLC, NRG Audrain Generating LLC, NRG Energy Center Paxton LLC, NRG Ilion LP, NRG Lake Shore Generating LLC, NRG Marketing Services LLC, NRG McClain LLC, NRG New Jersey Energy Sales LLC, NRG Northern Ohio Generating LLC, NRG Rockford LLC, NRG Rockford II LLC, NRG Sterlington Power LLC, Oswego Harbor Power LLC, Somerset Power LLC, and Vienna Power LLC

[Docket Nos. ER97–4281–013, ER99–2161–004, ER99–3000–002, ER02–1572–001, ER02–1571–001, ER00–2810–002, ER99–4359–001, ER99–4358–001, ER99–2168–004, ER99–2162–004, ER00–2807–002, ER00–2809–002, ER00–1259–002, ER98–2259–003, ER99–2602–003, ER00–2448–002, ER02–538–001, ER02–566–001, ER99–4355–001, ER99–4356–001, ER01–1558–001, ER00–3160–002, ER02–320–004, ER02–321–004, ER02–322–004, ER99–4357–001, ER02–1055–001, ER01–2969–002, ER00–2313–002, ER02–1395–001, ER02–1056–001, ER03–955–003, ER02–68–002, ER02–2032–001, ER02–1054–001, ER02–1396–001, ER02–1412–001, ER00–3718–002, ER99–3637–002, ER99–1712–004, and ER00–2808–002]

Take notice that on December 17, 2003, the above-captioned NRG Companies submitted for filing revised market-based rate tariffs to reflect that the NRG Companies are no longer affiliated with Xcel Energy, Inc., and in response to the Commission's November 17 Order Amending Market-based Rate Tariffs and Authorizations in Docket Nos. EL01–118–000 and 001.

Comment Date: January 20, 2004.

3. Alliant Energy Corporate Services, Inc.

[Docket No. ER02–762–004]

Take notice that on December 23, 2003, Alliant Energy Corporate Services, Inc. submitted a compliance filing in response to the Commission's November 17, 2003, Order Amending Market-based Rate Tariffs and Authorizations, in Docket No. EL01–118 and 001.

Comment Date: January 20, 2004.

4. NorthWestern Energy

[Docket No. ER03–329–003]

Take notice that on December 17, 2003, NorthWestern Energy submitted for filing FERC Electric Tariff, Second Revised Volume No. 6, to (1) reflect the name change from Montana Power Company to Northwestern Energy and (2) comply with the Commission's November 17 Order Amending Market-based rate Tariffs and Authorizations, in Docket Nos. EL01–118–000 and 001.

Comment Date: January 20, 2004.

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. E4–51 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–34–000, et al.]

Onondaga Cogeneration Limited Partnership, et al.; Electric Rate and Corporate Filings

January 6, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Onondaga Cogeneration Limited Partnership

[Docket Nos. EC04–34–000 and ER00–895–002]

Take notice that on December 24, 2003, Onondaga Cogeneration Limited Partnership (Onondaga) tendered for filing a supplement to its application filed on December 5, 2003. Onondaga states that the supplement consists of a First Amendment to Purchase and Sale Agreement by and among UtilCo Group, Inc., MEP Holdings, Inc. and MEP Investments, LLC, as Sellers and Teton Power Funding, LLC, as Purchaser.

Comment Date: January 14, 2004.

2. United States Department of Energy Western Area Power Administration

[Docket No. EF04–5031–000]

Take notice that on December 29, 2003, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–110, did confirm and approve, to be effective on February 1,

2004, and ending December 31, 2008, the Western Area Power Administration's Rate Schedules P–SED–F7 and P–SED–FP7 for Firm Power Service and Firm Peaking Power Service for the Pick-Sloan Missouri Basin Program-Eastern Division.

The Deputy Secretary of the Department of Energy states that the rates in Rate Schedules P–SED–F7 and P–SED–FP7 will be in effect on an interim basis pending the Federal Energy Regulatory Commission's approval of these or of substitute rates on a final basis, ending December 31, 2008.

Comment Date: January 20, 2004.

3. United States Department of Energy Western Area Power Administration

[Docket No. EF04–5181–000]

Take notice that on December 29, 2003, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–105, did confirm and approve on an interim basis, to be effective February 1, 2004, and ending December 31, 2008, the Western Area Power Administration's Rate Schedule L–F5 for the Loveland Area Projects.

The Deputy Secretary of the Department of Energy states that the rates in Rate Schedule L–F5 will be in effect on an interim basis pending the Federal Energy Regulatory Commission's approval of these or of substitute rates on a final basis.

Comment Date: January 20, 2004.

4. Logan Generating Company, L.P.

[Docket No. ER95–1007–017]

Take notice that on December 29, 2003, Logan Generating Company, L.P. submitted a compliance filing in response to the Commission's November 17, 2003, Order amending Market-based Rate Tariffs and Authorizations, in Docket Nos. EL01–118–000 and 001.

Comment Date: January 20, 2004.

5. Pittsfield Generating Company, L.P.

[Docket No. ER98–4400–007]

Take notice that on December 29, 2003, Pittsfield Generating Company, L.P. submitted a compliance filing in response to the Commission's November 17, 2003, Order amending Market-based Rate Tariffs and Authorizations, in Docket Nos. EL01–118–000 and 001.

Comment Date: January 20, 2004.

6. AES Londonderry, LLC

[Docket No. ER00–1147–002]

Take notice that on December 29, 2003, AES Londonderry, LLC (AES Londonderry) tendered for filing a triennial market power update in compliance with the Commission's order issued March 16, 2000, 90 FERC ¶ 61,252 (2000). As part of its triennial market power update, AES Londonderry submitted amendments to its market-based rate tariff in compliance with the Commission's November 17, 2003, Order amending Market-based Rate Tariffs and Authorizations, in Docket Nos. EL01–118–000 and 001. AES Londonderry states that it also submitted for approval certain ministerial changes to its existing Code of Conduct reflecting current corporate affiliations.

Comment Date: January 20, 2004.

7. Colton Power, L.P.

[Docket No. ER01–2644–005]

Take notice that on December 29, 2003, Colton Power, L.P. submitted a compliance filing in response to the Commission's November 17, 2003, Order Amending Market-based Rate Tariffs and Authorizations in Docket Nos. EL01–118–000 and 001.

Comment Date: January 20, 2004.

8. New England Power Pool ISO New England Inc.

[Docket No. ER02–2330–022]

Take notice that on December 29, 2003, ISO New England Inc. (ISO) submitted a Status Report on Development of Day-Ahead Demand Response Program in compliance with the Commission's November 17, 2003, Order on Requests for Rehearing and Compliance Filing, 105 FERC ¶ 61,211.

The ISO states that copies of the filing have been served on all parties to the above-captioned proceeding.

Comment Date: January 20, 2004.

9. Keystone Energy Group, Inc.

[Docket No. ER02–2605–002]

Take notice that on December 29, 2003, Keystone Energy Group, Inc. submitted a compliance filing in response to the Commission's November 17, 2003, Order Amending Market-based Rate Tariffs and Authorizations in Docket Nos. EL01–118–000 and 001.

Comment Date: January 20, 2004.

10. Sierra Pacific Energy, LP

[Docket No. ER04–7–001]

Take notice that on December 24, 2003, Sierra Pacific Energy, LP submitted a compliance filing in response to the Commission's November 17, 2003, Order Amending Market-based Rate Tariffs and Authorizations in Docket Nos. EL01–118–000 and 001.

Comment Date: January 14, 2004.

11. Duke Energy Corporation

[Docket No. ER04–339–000]

Take notice that on December 24, 2003, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing a new Service Agreement for Network Integration Transmission Service (NITSA), including a new Network Operating Agreement and Facility Connections Requirements , between Duke and South Carolina Electric & Gas Company. Duke seeks an effective date for the NITSA of January 1, 2004.

Comment Date: January 14, 2004.

12. San Diego Gas & Electric Company

[Docket No. ER04–340–000]

Take notice that on December 24, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing its forecast of the charges it will pay under its Reliability Must Run (RMR) contracts with the California Independent System Operator (ISO) for the year 2004, and a proposed allocation for recovering those costs in rates. SDG&E projects a total RMR revenue requirement of $106.239 million. In addition, SDG&E proposes to change from an Equal Percentage Marginal Costs allocation methodology to a 12-Month Coincident Peak methodology. SDG&E states that, under section 5.2.7 of the ISO tariff, it is the Responsible Utility (RU) for payments to operators of RMR units within its territory. Further, SDG&E states that it recovers its costs for those payments through a dedicated rate component, and requests an effective date of January 1, 2004, for the proposed rate.

SDG&E states that copies of the filing have been served on the ISO, Electricity Oversight Board, California Energy Commission and the California Public Utilities Commission.

Comment Date: January 14, 2004.

13. Vermont Electric Cooperative, Inc.

[Docket No. ER04–341–000]

Take notice that on December 24, 2003, Vermont Electric Cooperative, Inc. (VEC) tendered for filing its Open Access Transmission Tariff and certain rate schedules for jurisdictional transmission service. VEC states that the filing seeks to effect certain terms and conditions of a Purchase and Sale Agreement under which VEC has agreed to purchase from Citizens Communications Company (Citizens) certain electric transmission and distribution facilities in Vermont. VEC requests an effective date as of the closing of the transaction.

VEC states that each of the customers under the OATT and rate schedules, Citizens, the Vermont Public Service Board, and the Vermont Department of Public Service were mailed copies of the filing.

Comment Date: January 14, 2004.

14. PJM Interconnection, L.L.C.

[Docket No. ER04–342–000]

Take notice that on December 29, 2003, PJM Interconnection, L.L.C. (PJM) submitted for filing revisions to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to adjust the allocation period for excess congestion revenues from a calendar year basis to a PJM planning period (June 1 to May 31) basis. PJM requests an effective date of December 31, 2003.

PJM states that copies of the filing have been served on all PJM members, and each State electric utility regulatory commission in the PJM region.

Comment Date: January 20, 2004.

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. E4–52 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1893-042]

Public Service Company of New Hampshire; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

January 7, 2004.

Take notice that the following hydroelectric license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P-1893-042.

c. *Date Filed:* December 30, 2003.

d. *Applicant:* Public Service Company of New Hampshire (PSNH).

e. *Name of Project:* Merrimack River Project.

f. *Location:* On the Merrimack River, in Merrimack and Hillsborough counties, New Hampshire. The project does not occupy Federal lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* James J. Kearns, 780 North Commercial Street, P.O. Box 330, Manchester, NH, (603) 634–2936.

i. *FERC Contact:* Steve Kartalia, *stephen.kartalia@ferc.gov* (202) 502-6131.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form a factual basis for complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days after the application filing and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: February 27, 2004.

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 require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The project consists of the following three developments:

The Amoskeag Development consists of the following existing facilities: (1) A 29-foot-high, 710-foot-long concrete gravity dam comprised of: (i) a low crest section with 5-foot-high flashboards; and (ii) a high crest section with 3-foot-high flashboards; (2) a 7-mile-long, 478-acre reservoir; (3) a powerhouse, integral with the dam, containing three generating units with a total installed capacity of 16,000 kW; (4) a 415-foot-long, 34.5-kV double circuit transmission line; and (5) other appurtenances.

The Hooksett Development consists of the following existing facilities: (1) A dam comprised of: (i) a 340-foot-long stone masonry section with 2-foot-high flashboards connected to; (ii) a 250-foot-long concrete section with 2-foot-high flashboards; (2) a 15-foot by 20-foot Taintor gate; (3) a 5.5-mile-long, 405-acre reservoir; (4) a powerhouse containing a single generating unit with an installed capacity of 1,600 kW; and (5) other appurtenances.

The Garvins Falls Development consists of the following existing facilities: (1) An 18-foot-high, 550-foot-long concrete and granite gravity dam comprised of: (i) a low crest section with 3-foot-high flashboards; and (ii) a high crest section with 1.2-foot-high flashboards; (2) an 8-mile-long reservoir; (3) a 500-foot-long water canal with a 10-foot-wide waste gate; (4) two powerhouses, each containing two generating units for a total installed capacity of 12,300 kW; (5) a 340-foot-long, 34.5-kV transmission line; and (6) other appurtenances.

o. A copy of the application is on file with the Commission and is available for public inspection in the Public Reference Room. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last threee 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, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

p. 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. To view upcoming FERC events, go to *http://www.ferc.gov* and click on ''View Entire Calendar''.

q. With this notice, we are initiating consultation with the New Hampshire State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

r. *Procedural Schedule and Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in the summer of 2005.

Issue Acceptance or Deficiency Letter—April 2004
Issue Scoping Document—July 2004
Notice that application is ready for environmental analysis—January 2005
Notice of the availability of the EA—June 2005
Ready for Commission decision on the application—December 2005

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E4–71 Filed 01–14–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7610–2]

Draft Toxicological Review of Toluene: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency.

ACTION: Notice of external peer-review panel meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an external peer-review panel meeting to review the external review draft document entitled, ''Toxicological Review of Toluene: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (NCEA–S–1264). The document was prepared by EPA's National Center for Environmental Assessment (NCEA) of the Office of Research and Development. EPA will use comments and recommendations from the expert panel meeting to finalize the draft document.

DATES: The peer-review panel meeting will begin on February 5, 2004, at 8:30 a.m. and end at 5 p.m. Members of the public may attend as observers.

ADDRESSES: The external peer-review panel meeting will be held at the Jurys Washington Hotel, 1500 New Hampshire Ave., NW., Washington, DC. Under an Interagency Agreement with EPA and the Department of Energy, the Oak Ridge Institute of Science and Education (ORISE) is organizing, convening, and conducting the peer-review panel meeting. To attend the meeting, register by January 23, 2004, by calling ORISE, PO Box 117, MS 17, Oak Ridge, TN 37831–0117, at (865) 241–5784 or (865) 241–3168 (facsimile). Interested parties may also register on-line at: *ShapardL@orau.gov*. Space is limited, and reservations will be accepted on a first-come, first-served basis.

A limited number of paper copies are available by contacting the IRIS Hotline at (202) 566–1676 or (202) 566–1749 (facsimile). If you are requesting a paper copy, please provide your name, mailing address, and the document title and number, ''Draft Toxicological Review of Toluene: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (NCEA–S–1264). Copies are not available from ORISE.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and logistics should be directed to Leslie Shapard, ORISE, PO Box 117, MS 17, Oak Ridge, TN 37831–0117, at 865–241–5784 (telephone), (865) 241–3168 (facsimile), *ShapardL@orau.gov* (email).

If you have questions about the document, contact Lynn Flowers, IRIS Staff, National Center for Environmental Assessment, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (202) 564–1537; facsimile: (202) 565–0075; e-mail: *flowers.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION: The draft report is a reassessment of the chronic health effects of toluene which was first entered into the IRIS data base in 1987. The report provides the scientific basis for deriving an oral reference dose (RfD) and inhalation reference concentration (RfC) for the noncancer health risk from exposure to toluene. A cancer assessment is also included in the draft report.

IRIS is a data base that contains scientific Agency consensus positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The data base (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, the data base provides RfDs and RfCs for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

Toluene (CASRN 108–88–3) or methylbenzene is used as a gasoline additive to increase octane ratings, in benzene production, and as a solvent in paints, coatings, inks, adhesives, and cleaners. Toluene is also used in the production of nylon, plastics and polyurethanes. Toluene is released to the environment, mostly into the atmosphere during the production, transport, and use of gasoline. Toluene has been detected in drinking water supplies, particularly in locations near leaking underground storage tanks containing fuel products. Toluene has also been detected in soil and water at or near certain hazardous waste sites and in smoke from wood and cigarettes.

EPA has established an official public docket for this action under Docket ID No. ORD–2003–0015. The official public docket consists of the document referenced in this notice and a list of charge questions that have been submitted to the external peer reviewers. Both documents are available on the Internet at *http://www.epa.gov/edocket/*. Once in the system, select ''search,'' then key in the appropriate docket identification number.

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.

Dated: January 7, 2004.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 04–895 Filed 1–14–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0002; FRL–7341–6]

Public Workshop on Plant-Incorporated Protectant Experimental Use Permits; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is holding a public workshop entitled Plant-Incorporated Protectant (PIP) Experimental Use Permits (EUP): Process and Compliance. EPA recognizes that some PIP EUP regulatory issues require review and clarification, and is seeking public participation and input to help identify the best approaches to regulatory improvements pertaining to PIP EUPs.

DATES: The meeting will be held on February 10 and 11, 2004 from 8:30 a.m. to 5 p.m.

Requests to participate in the meeting, identified by docket ID number OPP–2004–0002, must be received on or before February 2, 2004.

ADDRESSES: The meeting will be held at the Crystal City Hilton, 2399 Jefferson Davis Hwy, Arlington, VA 22202. Telephone number: (703) 418–6800.

Requests to participate in the meeting may be submitted to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Karen Heisler, Region 9 (CMD–1) 75 Hawthorne St., San Francisco, CA 94105; telephone number: 415–947–4240; fax number: 415–947–3583; e-mail address: *Heisler.Karen@epa.gov*. To preregister for the workshop by February 2, 2004 contact Teresa Bullock at American Farmland Trust by e-mail: tbullock@niu.edu, by telephone: (815) 753–9347 or by fax: (815) 753–9348).

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the general public, and may be of particular interest to persons who apply for, manage, or conduct research under a PIP Experimental Use Permit, or whose work involves issues related to biotechnology-derived PIP EUPs. Potentially affected entities may include, but are not limited to: applicants for PIP experimental use permits; Federal, State, and local regulators of biotechnology; government, industry, and academic researchers working in the field of agricultural biotechnology; non-governmental organizations; agricultural/agronomic associations, and the biotechnology trade association. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this 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 OPP–2004–0002. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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 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.

II. Background

A. What Topics Will the Workshop Address?

The basic goal of this workshop is to address and clarify certain aspects of PIP EUPs such as the definition of terms and permit conditions so that the PIP EUP program, including associated field obligations, is clear to EUP applicants and researchers. The workshop is expected to improve the PIP EUP process and result in increased compliance, thereby enhancing protection of the environment and human health. The workshop will address the PIP EUP application and permitting process, and associated compliance issues. EPA will provide background on its PIP EUP regulatory goals, and a preselected panel comprised of stakeholders from industry, academia, and public interest groups will discuss their goals and needs. EPA will solicit input from workshop participants on specific topics, including the PIP EUP application and permitting process; permit terminology and definitions; the enforceability of EUP language and activities; containment and confinement issues; and content and data requirements. Participants will be asked to identify concerns and recommend potential solutions. EPA anticipates holding panel discussions on three additional topics: The comparability of U.S. Department of Agriculture and EPA experimental biotechnology programs; the balancing of proprietary information with public transparency; and compliance issues and needs. These topics are directly related to ensuring environmental protection, maintaining a healthy climate for experimental research, and promoting public confidence; information from the workshop may be used as guidance in further Agency deliberations of these topics. To ensure that a diversity of views are represented in these

discussions, panelists will be preselected from stakeholder groups, including industry, government, academia, and public interest groups.

B. How Should I Prepare for the Workshop?

The workshop will be a working meeting, with participants expected to provide thoughtful discussion and concrete suggestions on the topics identified above. EPA requests attendees to participate in all sessions to ensure productive collaboration and adequate representation of stakeholder perspectives. EPA also requests that participants review relevant background documents prior to the meeting. A tentative agenda and related documents will be made available at *http://www.epa.gov/pesticides/biopesticides.* EPA supports the goals of green conferencing and strongly encourages participants at this meeting to recycle, reduce the use of paper products and bulk mailings, and use mass transit. The meeting location is within walking distance of the Crystal City Metro Stop on the Blue and Yellow Lines. More about green conferencing can be found at: *http://www.epa.gov/oppt/greenmeetings/*.

III. How Can I Request to Participate in this Meeting?

Preregister for this workshop by contacting Teresa Bullock at American Farmland Trust by email *tbullock@niu.edu*, by telephone (815–753–9347) or by fax (815– 753–9348). You must preregister on or before February 2, 2004 or you can register on site the day of the workshop.

List of Subjects

Environmental protection, FIFRA, Plant-Incorporated Pesticides, Experimental Use Permits, Biotechnology, Biopesticides.

Dated: January 8, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division.

[FR Doc. 04–893 Filed 1–14–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0055; FRL–7340–8]

Questions and Answers for the New Chemicals Program; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of, and opportunity to comment on, the ''Questions and Answers for the New Chemicals Program (Q&A).'' The Q&A document is intended to explain and clarify the requirements of TSCA section 5 and selected EPA regulations implementing TSCA section 5, and to provide useful information to persons subject to these requirements.

DATES: Comments, identified by docket ID number OPPT–2003–0055, must be received on or before March 15, 2004.

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: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Virginia Lee, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0883; e-mail address: *lee.virginia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are involved in the manufacture or import of chemical substances subject to TSCA section 5. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical 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–2003–0055. 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/*.

The Q&A is available electronically at *http://www.epa.gov/opptintr/newchems/*.

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 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–2003–0055. 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–2003–0055. 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 Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC, Attention: Docket ID Number OPPT–2003–0055. 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?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. 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 specific examples to illustrate your concerns.
4. Offer alternative ways to improve the document.
5. Make sure to submit your comments by the deadline in this notice.
6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA is announcing the availability of and soliciting comments on the ''Questions and Answers for the New Chemicals Program (Q&A).'' It is not a substitute for applicable legal requirements, nor is it a regulation itself. Thus, it does not impose legally binding requirements on any party, including EPA or the regulated community.

In addition to the Q&A being available electronically and in the EPA docket, it is also available upon request from the TSCA Hotline.

List of Subjects

Environmental protection, Chemicals.

Dated: December 31, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 04–891 Filed 1–14–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7610–1]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and Solicitation of Requests for a Public Hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the rules governing National Primary Drinking Water Regulations Implementation that the State of West Virginia has revised its approved Public Water System Supervision Program. West Virginia has adopted a Radionuclides Rule to establish a new maximum contaminant level (MCL) for uranium and revise monitoring requirements. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by February 17, 2004. This determination shall become effective on February 17, 2004, if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically to Jennie Saxe at *saxe.jennie@epa.gov*. All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Environmental Engineering Division, West Virginia Department of Health and Human Resources, 815 Quarrier Street, Suite 418, Charleston, WV 25301–2616.

FOR FURTHER INFORMATION CONTACT: Jennie Saxe, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814–5806 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by [insert date 30 days from date of publication], a public hearing will be held.

A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: December 15, 2003.

Thomas Voltaggio,

Acting Regional Administrator, EPA, Region III.

[FR Doc. 04–888 Filed 1–14–04; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on January 6, 2004 (69 FR 659), of the regular meeting of the Farm Credit Administration Board (Board) scheduled for January 8, 2004. This notice is to amend the agenda by adding an item to a closed session of that meeting.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The agenda for January 8, 2004, is amended by adding the following item to a closed session as follows:

Closed Session*

Reports

- Examination issue.

*Session closed—exempt pursuant to 5 U.S.C. 552b(c)(8).

Dated: January 13, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–1068 Filed 1–13–04; 3:53 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, January 20, 2004, to consider the following matter:

Summary Agenda: No matters are scheduled

Discussed Agenda: Memorandum and resolution re: Joint Notice of Proposed Rulemaking—Community Reinvestment Act Regulations.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–3742.

Dated: January 13, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–1069 Filed 1–13–04; 3:53 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that, at 10:24 a.m. on Tuesday, January 13, 2004, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory and corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman John M. Reich, seconded by Director Thomas J. Curry, concurred in by Ms. Julie Williams, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), Ms. Carolyn Buck, acting in the place and stead of Director James E. Gilleran (Director, Office of Thrift Supervision), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: January 13, 2004.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 04–1070 Filed 1–13–04; 3:53 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice: Change in Time of Closed Meeting; Change in Date and Time of Open Meeting

Federal Register *Citations of Previous Announcements:* 69 FR 1289, January 8, 2004, 69 FR 1746, January 12, 2004.

Change of Meeting Times and Date: The closed meeting of the Board of Directors previously scheduled for 11 a.m. on Wednesday January 14, 2004, is now scheduled to begin at 10 a.m. on Wednesday, January 14, 2004. The open meeting of the Board of Directors originally scheduled for 10 a.m. on January 14, 2004, is now scheduled to begin at 2 p.m. on Friday, January 23, 2004. It will follow the previously announced public hearing. *See* 69 FR 1289 (January 8, 2004).

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: January 13, 2004.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 04–980 Filed 1–13–04; 11:46 am]

BILLING CODE 6725–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: December 2003

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of December 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject name	Address	Effective date
Program-Related Convictions:		
Allmon, Jeffrey	Centralia, WA	1/20/2004
Archon, Vashon	New Iberia, LA	1/20/2004
Armenta, Lourdes	Anaheim, CA	9/22/2003
Broadnax, Lashayna	Silver Creek, MS	1/20/2004
Brooks, Nickie	Cincinnati, OH	1/20/2004
Brown, Anetha	Jackson, MS	1/20/2004
Brown, Renarda	Jackson, MS	1/20/2004
Bruce, James	San Bernardino, CA	1/20/2004
Bryant, Joyce	Pompano Beach, FL	1/20/2004
Bryant, Joyce	Pompano Beach, FL	1/20/2004
Cabrera, Teresa	La Habra, CA	1/20/2004
Carney, Diane	Emmetsburg, IA	1/20/2004
Coen, Lenoris	Ivydale, WV	1/20/2004
Cruz-Gomez, Maria	Salt Lake City, UT	1/20/2004
Deburger, Donna	Goodyear, AZ	1/20/2004
Edwards, Alta	West Point, MS	1/20/2004
Elshingety, Musa	Minersville, PA	1/20/2004
Faenza, Matthew	Ringwood, NJ	1/20/2004

Subject name	Address	Effective date
Flores-Meiggs, Mirtha	Salt Lake City, UT	1/20/2004
Frumkin, Eli	Great Neck, NY	1/20/2004
Gootgeld, Donna	Hollywood, FL	1/20/2004
Graham, Willie	St Paul, MN	1/20/2004
Green, Donald	Cumberland, MD	1/20/2004
Herbst, Robert	Independence, KY	1/20/2004
Huerta, Albert	Montgomery, PA	1/20/2004
Kai, Lyle	Kailua, HI	1/20/2004
Kirshner, Howard	Hewlett Harbor, NY	1/20/2004
Kozelka, Charles	Cleveland, OH	1/20/2004
Lombardi, Luis	Lawndale, CA	1/20/2004
Lopez-Falcone, Juan	Miami, FL	1/20/2004
Mitchell, Melody	Colorado Springs, CO	1/20/2004
Moody, Carthan	Morgantown, WV	1/20/2004
Mullins, Jeannine	Columbus, OH	1/20/2004
Okon, Martin	Los Angeles, CA	1/20/2004
Orozco, Raquel	Temecula, CA	9/22/2003
Pacheco, Michael	Passaic, NJ	1/20/2004
Parodi, Leroy	Las Vegas, NV	1/20/2004
Reliable Medical Care, Inc	Las Vegas, NV	1/20/2004
Robbins-Fitzgerald, Lynn	New York, NY	1/20/2004
Rodriguez, Jackeline	Draper, UT	1/20/2004
RX 2000 Pharmacy, Inc	Jersey City, NH	1/20/2004
Sadati, Liane	Miami Lakes, FL	1/20/2004
Siegfried, Susan	Chaska, MN	1/20/2004
Simmons, Sandra	Fontana, CA	1/20/2004
Slone, Phillip	Centerville, OH	1/20/2004
Slone, Sharon	Marion, OH	1/20/2004
Stamm, Amie	Arnold, MO	1/20/2004
Torres, Rafaela	Salt Lake City, UT	1/20/2004
Tye, Dora	Phoenix, AZ	1/20/2004
Valenzuela, Jessica	Salt Lake City, UT	1/20/2004
Ventura, America	Long Beach, CA	1/20/2004
Wells, Dennis	Beatrice, NE	1/20/2004
Westcare Transport, Inc	Culver City, CA	1/20/2004
Williamson, Tammy	Seattle, WA	1/20/2004
Felony Conviction For Health Care Fraud:		
Bruder, Gary	Wellington, FL	1/20/2004
Cichowicz, Wayne	Cicero, IL	1/20/2004
Durban, Tacy	Sebree, KY	1/20/2004
Hicks, Brenda	Mansfield, OH	1/20/2004
Mills, Gregory	Chillicothe, OH	1/20/2004
Paolino, Richard	Houtzdale, PA	1/20/2004
Shields, Donna	Aurora, CO	1/20/2004
Thomas, Rosie	Jackson, MS	1/20/2004
Three Irons, Gale	Hardin, MT	1/20/2004
Welsh, Eddie	Dover, NH	1/20/2004
Felony Controlled Substance Conviction:		
Amendola, James	Philadelphia, PA	1/20/2004
Bires, Patti	Greensburg, PA	1/20/2004
Brown, Jo-Ellen	Des Moines, IA	1/20/2004
Brown, Theresa	Ligonier, PA	1/20/2004
Collier, Wesley	Waymart, PA	1/20/2004
Dimartino, Carrado	Belmont, MA	1/20/2004
Feher, Elissa	Fort Gratiot, MI	1/20/2004
Frazier, Rena	Newberry, SC	1/20/2004
Kennedy, Lesley	Cincinnati, OH	1/20/2004
McCool, Elizabeth	Staunton, VA	1/20/2004
Nguyen, Thomas	New Cumberland, PA	1/20/2004
Oltman, Deborah	Chapin, IA	1/20/2004
Posner, Donny	Simi Valley, CA	1/20/2004
Raab, Terri	Jamesburg, NJ	1/20/2004
Richard, John	Greenwood, AR	1/20/2004
Patient Abuse/Neglect Convictions:		
Arnett, Lowell	Lexington, KY	1/20/2004
Calder, Patricia	Canton, SD	1/20/2004
Caneday, Michael	Canon City, CO	1/20/2004
Council, Michael	Baltimore, MD	1/20/2004
Eldredge, Allen	Collinga, CA	1/20/2004
Harjochee, Harbor	Wetumka, OK	1/20/2004
Kaiser, Charles	Chesterfield, MO	1/20/2004
Legault, Dale	Ogdensburg, NY	1/20/2004
Maddox, Neitra	Conley, GA	1/20/2004
Pardede, Suherman	Tulsa, OK	1/20/2004

Subject name	Address	Effective date
Piper, James	Madison, WI	1/20/2004
Platt, Lisa	Anchorage, AK	1/20/2004
Reynolds, Charlene	Mountain Home, AR	1/20/2004
Robinson, Roy	Chattanooga, TN	1/20/2004
Soesbe, Bob	Gregory, SD	1/20/2004
Taylor, Dale	Farnham, VA	1/20/2004
Woodard, Dean	Myrtle Beach, SC	1/20/2004
Conviction For Health Care Fraud:		
Stevens, Rayne	Green Bay, WI	1/20/2004
Controlled Substance Convictions:		
Trunck, William	Waldoboro, ME	1/20/2004
License Revocation/Suspension/Surrendered:		
Adame, Antonio	San Jacinto, CA	1/20/2004
Adamson, Robin	Delaware, OH	1/20/2004
Allard, Angela	Evansville, IN	1/20/2004
Allen, Karen	Jacksonville, FL	1/20/2004
Allen, Patricia	Anderson, IN	1/20/2004
Alperstein, Arnold	Owings Mills, MD	1/20/2004
Appell, Antoinette	Homosassa, FL	1/20/2004
Armstrong, Dion	New Orleans, LA	1/20/2004
Askevich, Minnie	Santa Ana, CA	1/20/2004
Babbs, Mary	Hot Springs, AR	1/20/2004
Baldwin, Kathy	Big Flat, AR	1/20/2004
Bartles, Bobbi	Clarinda, IA	1/20/2004
Benedict, Autumn	Wesley Chapel, FL	1/20/2004
Bracamontes, Geronimo	Sonoma, CA	1/20/2004
Bradford, Brenda	Baltimore, MD	1/20/2004
Braswell, Patricia	Ocean Springs, MS	1/20/2004
Brigando, Marianne	Edison, NJ	1/20/2004
Brown, David	Phoenix, AZ	1/20/2004
Brown, Garry	Piedmont, AL	1/20/2004
Bruno, Christina	Rolla, MO	1/20/2004
Bussey, John	Atlanta, GA	1/20/2004
Butts, Lori	Pascoag, RI	1/20/2004
Byer, Lauri	Holicong, PA	1/20/2004
Callaway, Angelia	Houston, TX	1/20/2004
Cantu, Rudolf	Kingwood, TX	1/20/2003
Carlon, Kimberly	Long Beach, CA	1/20/2004
Cash, Julia	Staunton, VA	1/20/2004
Casoria, Mary	Lawrenceville, GA	1/20/2004
Chambers, Carol	Irvington, NJ	1/20/2004
Chiaramonte, Evelyn	Mesa, AZ	1/20/2004
Clabaugh, Dawn	South Bend, IN	1/20/2004
Cliche, Benoit	Miami, FL	1/20/2004
Cogswell, Jeanie	Urbana, IL	1/20/2004
Coleman, Lynn	Mesa, AZ	1/20/2004
Collette, Lisa	Ft. Myers, FL	1/20/2004
Colonna, Vincent	Cape Coral, FL	1/20/2004
Coon, Michael	Port Orange, FL	1/20/2004
Cooper, Marie	Charlotte, NC	1/20/2004
Copeland, Reid	Sedan, KS	1/20/2004
Cowan Indorf Paulk, Linda	Mustang, OK	1/20/2004
Croke, Judith	Yukon, OK	1/20/2004
Dalton, Larry	Colorado Springs, CO	1/20/2004
Danclar, Wayne	Riverdale, GA	1/20/2004
Davidson, Richard	Shelton, WA	1/20/2004
Davis, Lisa	Clinton, UT	1/20/2004
Dean, Ryan	Davie, FL	1/20/2004
Defazio, Ruth	The Villages, FL	1/20/2004
Dennison, Randy	Orion, IL	1/20/2004
Dickinson, Lynda	Mobile, AL	1/20/2004
Douglass, Judith	Mendota, IL	1/20/2004
Duncan, Kathleen	Lake Worth, FL	1/20/2004
Dunn, Sheila	Newport, RI	1/20/2004
Dutton, Edward	Macon, GA	1/20/2004
Eie, Yvonne	Orlando, FL	1/20/2004
Ellis, Daryl	Phenix City, AL	1/20/2004
Elsworth, Terry	St. Petersburg, FL	1/20/2004
Enriquez, Javier	Avondale, AZ	1/20/2004
Evans, Cathy	Arkadelphia, AR	1/20/2004
Fields, Rebecca	Perkins, OK	1/20/2004
Fitzgerald, Dawn	Tucson, AZ	1/20/2004
Foley, Edwin	Santa Clara, CA	1/20/2004
Ford, Michelle	Lynchburg, VA	1/20/2004

Subject name	Address	Effective date
Foss-McGaha, Lorrie	Huntsville, AL	1/20/2004
Foster, Steven	Dalton, GA	1/20/2004
Fox, Geoffrey	Mount Pleasant, MI	1/20/2004
Fulbright, Valera	McLoud, OK	1/20/2004
Gamble, Yolanda	St. Petersburg, FL	1/20/2004
Geiger, Douglas	Griffin, GA	1/20/2004
Gelb, Jack	Stamford, CT	1/20/2004
Gentile, Stephen	Malabar, FL	1/20/2004
Gilles, Cesar	Los Angeles, CA	1/20/2004
Gleason, Patricia	Denham Springs, LA	1/20/2004
Gomes, Michael	Port St Lucie, FL	1/20/2004
Gooberman, Lance	Merchantville, NJ	1/20/2004
Grajeda, Estella	North Hills, CA	1/20/2004
Guerrero, Maria	Surprise, CA	1/20/2004
Guerrero, Raul	S. Bound Bro, NJ	1/20/2004
Guerrero, Savino	Rosemead, CA	1/20/2004
Gunderson, Marla	Cape Coral, FL	1/20/2004
Haddad, Tina	Shawnee, OK	1/20/2004
Hatcher, Larry	Bellville, TX	1/20/2004
Holliday, Beverly	Commerce City, CO	1/20/2004
Ingmire, Josh	Spokane, WA	1/20/2004
Jacks, Jonathan	Lacoochee, FL	1/20/2004
Jeffrey, Suellen	Tacoma, WA	1/20/2004
Jones, Kylie	Wagoner, OK	1/20/2004
Kean, Deborah	Linton, IN	1/20/2004
Khalaf, Omar	Birmingham, AL	1/20/2004
Krasny, Elvira	Stamford, CT	1/20/2004
Kremer, Svetlana	Huntingdon Valley, PA	1/20/2004
Lamb, John	Plymouth, NC	1/20/2004
Lee, Melissa	Crystal Springs, MS	1/20/2004
Lepoff, Norman	Tustin, CA	1/20/2004
Levy, Karen	Rome, GA	1/20/2004
Lewis, Carolyn	Tucson, AZ	1/20/2004
Lipford, Tim	Greenwood, FL	1/20/2004
Lohr, Patricia	Lexington, NC	1/20/2004
Longas, Philip	Blountville, TN	1/20/2004
Lozzi, Linda	Franklin, WI	1/20/2004
Lucas, Christopher	Cullman, AL	1/20/2004
Lytle, Joanne	Tombstone, AZ	1/20/2004
Madigan, Thomas	Pittsburgh, PA	1/20/2004
Marer, Kimberly	Sarasota, FL	1/20/2004
Marsh, Freda	Martinsville, IN	1/20/2004
Martin, Bobbi	Tulsa, OK	1/20/2004
Martin, Penny	Little Rock, AR	1/20/2004
Mason, Anne	Cullman, AL	1/20/2004
Maynard, Rohnna	Georgeown, KY	1/20/2004
McCarthy, John	Denver, CO	1/20/2004
McNamee, Brian	Strongsville, OH	1/20/2004
Miksis, Mary	Mt Holly, NJ	1/20/2004
Miller, Thomas	Myrtle Beach, SC	1/20/2004
Miller, Tracy	Valrico, FL	1/20/2004
Molisky, Jon	Youngstown, OH	1/20/2004
Monroe, William	Pensacola, FL	1/20/2004
Montesano, Anna	Tucson, AZ	1/20/2004
Mort, Teresa	Middleburg, FL	1/20/2004
Nickoson, Cheryl	Houma, LA	1/20/2004
Norris, Linda	Florence, MS	1/20/2004
Nulf, Linda	Rockford, IL	1/20/2004
O'Connor, Kelly	Green Bay, WI	1/20/2004
O'Riordan, Patrick	Boynton Beach, FL	1/20/2004
Oben, Francis	Chicago, IL	1/20/2004
Owens, Angelia	New Port Richey, FL	1/20/2004
Pantelis, M	Cranberry Township, PA	1/20/2004
Payne, Beatrice	Phoenix, AZ	1/20/2004
Perea, Brenda	St Petersburg, FL	1/20/2004
Petty, Annmarie	Peoria, AZ	1/20/2004
Pickett, Cindy	Greensboro Bend, VT	1/20/2004
Pithoud, Brenda	Vancouver, WA	1/20/2004
Post, John	Lomita, CA	1/20/2004
Powell, Kaylene	Everett, WA	1/20/2004
Powell, Sharon	McGehee, AR	1/20/2004
Prine, Richard	Anchorage, AK	1/20/2004
Pruitt, Scotty	Machesney Park, IL	1/20/2004
Quinones, Henry	San Andreas, CA	1/20/2004

Subject name	Address	Effective date
Rausch, Jeffrey	Waterloo, IA	1/20/2004
Rayburn, Mildred	Gautier, MS	1/20/2004
Richardson, Jackie	Wilkesboro, NC	1/20/2004
Rodwell, Penny	Pacific, WA	1/20/2004
Romero, Yolanda	Baltimore, MD	1/20/2004
Ronan, John	Chicago, IL	1/20/2004
Ruch, David	Arlington Hgts, IL	1/20/2004
Rucker, Cassandra	Vandalia, MO	1/20/2004
Russo, Sharon	Trussville, AL	1/20/2004
Ruszczyk, Judy	Glendale, CO	1/20/2004
Sapp, Clark	Clearwater, FL	1/20/2004
Sayers, Rhonda	Harrison, AR	1/20/2004
Schmitz, Karla	Gulf Breeze, FL	1/20/2004
Sciamatore, Mary	Poughkeepsie, NY	1/20/2004
Scofield, April	Ashford, AL	1/20/2004
Shin, Thomas	Garden Grove, CA	1/20/2004
Smith, Dorothy	Mobile, AL	1/20/2004
Smith, Vanessa	Gulfport, MS	1/20/2004
Smith, William	Panama City, FL	1/20/2004
Sonnier, Glenda	Maurice, LA	1/20/2004
Standland, Roger	Greenwood, FL	1/20/2004
Stephenson, Carole	Meridian, MS	1/20/2004
Stone, Teresa	Milton, FL	1/20/2004
Terrell, Nancy	Gulfport, FL	1/20/2004
Thompson, Jodi	Lake Mary, FL	1/20/2004
Thompson, Shannon	Kailua-Kona, HI	1/20/2004
Tripi, Pamela	Phoenix, AZ	1/20/2004
Turner, Mary	Rockledge, FL	1/20/2004
Uluave, Peter	American Fork, UT	1/20/2004
Vails, Sharon	Stigler, OK	1/20/2004
Vandergrift, Ashlie	Albertville, AL	1/20/2004
Ventura, Leopoldina	Petaluma, CA	1/20/2004
Ward, Rita	Indianapolis, IN	1/20/2004
Watson, Deidre	Houston, TX	1/20/2004
Westmoreland, Rosetta	Salisbury, NC	1/20/2004
Whitten, Anne	Miami, FL	1/20/2004
Willey, Peter	Milton, VT	1/20/2004
Williams, Diane	Bloomington, MN	1/20/2004
Williams-Smith, Mary	Batesville, MS	1/20/2004
Woods, Teri	Springville, AL	1/20/2004
Young, Emanuel	Proctor, AR	1/20/2004
Younger, Dia	Gainesville, FL	1/20/2004
Zryd, Tonya	Elizabethtown, KY	1/20/2004
Federal/State Exclusion/Suspension:		
Martinez, Sylvia	Los Angeles, CA	1/20/2004
Fraud/Kickbacks:		
Hahn, Joan	Idaho Falls, ID	11/6/2003
Owned/Controlled By Convicted Entities:		
Aloha Osteopathic Professionals, Ltd	Honolulu, HI	1/20/2004
Confortec Dme, Inc	Miami, FL	1/20/2004
Highland Park Healthcare Center	Los Angeles, CA	1/20/2004
Pain Management Center Of Dayton, Inc	Dayton, OH	1/20/2004
Palm Canyon Dental	Palm Springs, CA	1/20/2004
Vein Institute @ Vail Holdings, Inc	Littleton, CO	1/20/2004
Default On Heal Loan:		
Gray, David	San Francisco, CA	1/20/2004
Hight, Gregory	Nevada City, CA	12/10/2003
Justice, Glenn	Las Vegas, NV	11/17/2003
Kinsey, Ronald	Columbia, SC	1/20/2004
Lui, Suk-Ching	St Louis, MO	1/20/2004
McKinnon, Laurie	San Francisco, CA	1/20/2004
Shapley, Kevin	Overland Park, KS	1/20/2004

Dated: January 6, 2004.

Katherine B. Petrowski,

Director, Exclusions Staff, Office Of Inspector General.

[FR Doc. 04–869 Filed 1–14–04; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting this information collection request to the Office of Management and Budget for review and renewal. The collection is: 25 CFR 151 Land Acquisitions, 1076–0100.

DATES: Comments must be received on or before February 17, 2004, to be assured of consideration.

ADDRESSES: Comments should be sent to the Desk Officer for the Department of the Interior at the Office of Management and Budget. You may submit comments either by telefacsimile at (202) 395–6566, or by e-mail to *OIRA_DOCKET@omb.eop.gov*. Please send a copy to Pearl Chanar, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4513–MIB, 1849 C Street, NW., Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain a copy of the information collection request without charge by contacting Pearl Chanar at (202) 219–6410.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. This collection covers 25 CFR 151 as presently approved. The request contains (1) Type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and record keeping requirements and (7) reason for response.

A **Federal Register** notice was published October 29, 2003 (68 FR 61690). No comments were received. However, based on our review during a revision to the rule that was later withdrawn, we recognize that our data should reflect that review. We have changed our numbers accordingly. The number of respondents has been reduced from 9,200 to 1,000. We have increased the burden hours per applicant to reflect the work that Tribes and individuals submit on NEPA in order to hasten the review of their requests. The burden hours remain 36,800.

25 CFR 151—Land Acquisitions

Type of review: Extension of a currently approved collection.

Title: 25 CFR 151, Acquisition of Title to Land in Trust.

Summary: The Secretary of the Interior has statutory authority to acquire lands in trust status for individual Indians and federally recognized Indian tribes. The Secretary requests information in order to identify the party(ies) involved and a description of the land in question. Respondents are Native American tribes or individuals who request acquisition of real property into trust status. The Secretary also requests additional information necessary to satisfy those pertinent factors listed in 25 CFR 151.10 or 151.11. The information is used to determine whether or not the Secretary will approve an applicant's request. No specific form is used, but respondents supply information and data, in accordance with 25 CFR 151, so that the Secretary may make an evaluation and determination in accordance with established Federal factors, rules and policies.

Frequency of Collection: One Time.

Description of Respondents: Native American Tribes and Individuals desiring acquisition of lands in trust status.

Total Respondents: 1,000.

Total Annual Responses: 1,000.

Total Annual Burden Hours: 36,800 hours.

Reason for response: Required to obtain or retain benefits.

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau'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. Any public comments will be addressed in the Bureau of Indian Affairs' submission of the information collection request to the Office of Management and Budget.

We will not sponsor nor conduct a request for information, and you need not respond to such a request unless there is a valid OMB Control Number.

Please note that comments are open to public review; if you wish to have your name and address withheld from the reviewing public, you must state so prominently at the beginning of your comments. We will honor your request to the limit of the appropriate laws. All comments from businesses or their representatives will be available for public review. We may decide to withhold information for other reasons.

The Office of Management and Budget has between 30 and 60 days to make a decision about this information collection request; therefore, comments received closer to 30 days have a better chance of being considered.

Dated: January 6, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–896 Filed 1–14–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–24 1A]

Notice of Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: On January 6, 2004, the Bureau of Land Management (BLM) published in the **Federal Register** (Vol. 69, 569–570) a Notice of Availability of the draft environmental impact statement (Draft EIS) for Proposed Regulatory Revisions to Grazing Regulations for the Public Lands and an announcement of public meetings. BLM originally planned to hold 5 public meetings to provide opportunities for the public to ask questions and provide comments about the issues and alternatives considered in the Draft EIS. Due to public interest BLM is announcing another meeting in Billings Montana.

DATES: The meeting will be held on Monday, February 2, 2004 at the Holiday Inn Grand Montana, 5500 Midland Road Billings, Montana. The meeting will begin at 6 p.m. and end at approximately 10 p.m. The public comment period will end on March 2, 2004.

FOR FURTHER INFORMATION CONTACT: Molly S. Brady, Project Coordinator, at

(202) 452–7714. For information about the Billings meeting location contact Mary Apple, (406) 896–5258.

SUPPLEMENTARY INFORMATION: The site for the public meeting is accessible to individuals with physical impairments. If you need a special accommodation to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in alternative format), please notify the contact person no later than (figure out the date two weeks prior to meeting). Although we will attempt to meet all requests received, the requested accommodations may not always be available.

If you plan to present a statement at the meeting, we will ask you to sign in before the meeting starts and identify yourself clearly for the record. Your allotted speaking time at the meeting will be determined before the meeting, based upon the number of persons wishing to speak and the approximate time available for the session. You will be provided at least three minutes to speak.

If you do not wish to speak at the meeting, but you have views, questions, and concerns about either the Draft EIS or the proposed regulations you may submit written statements for inclusion in the public record at the meeting. You may also submit written comments and suggestions regardless of whether you attend or speak at the public meeting.

Dated: January 9, 2004.

Thomas H. Dyer,

Deputy Assistant Director, Planning and Renewable Resources.

[FR Doc. 04–927 Filed 1–14–04; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Final) (Remand)]

Tin- and Chromium-Coated Steel Sheet From Japan; Notice and Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its final antidumping investigation No. 731–TA–860 (Final) (Remand).

EFFECTIVE DATE: January 12, 2004.

FOR FURTHER INFORMATION CONTACT: Laurent de Winter, Office of General Counsel, telephone 202–708–5452, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record in this investigation for the limited purpose of clarifying purchaser responses to pricing information. The Commission will provide the parties an opportunity to file comments on any new information received.

Participation in the Proceedings

Only those persons who participated in the appeal of the Commission's remand proceedings may participate in these remand proceedings.

Nature of the Remand Proceedings

On January 13, 2004, the Commission will make available to the parties who participated in the appeal of the remand investigation information that has been gathered by the Commission as part of these remand proceedings. Parties that are participating in the remand proceedings may file comments on or before January 23, 2004, on whether any new information affects the Commission's price effects findings in this investigation. Any material in the comments that does not address this limited issue will be stricken from the record or disregarded. No additional new factual information may be included in such comments. Comments shall be typewritten and submitted in a font no smaller than 11-point (Times New Roman) and shall not exceed 15 double-spaced pages (inclusive of any footnotes, tables, graphs, exhibits, appendices, etc.)

In addition, all written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission rules do not authorize filing submissions with the Secretary by facsimile or electronic means. Each document filed by a party participating in the remand investigation must be served on all other parties who may participate in the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service. Parties are also advised to consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to parties under the administrative protective order (APO) in effect in the original investigation. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the final investigation and this remand investigation available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of the Commission's notice of reopening the record on remand in the **Federal Register**. Applications must be filed for persons on the Judicial Protective Order in the related CIT case, but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: January 12, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–940 Filed 1–14–04; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on Rules of Appellate, Bankruptcy, and Criminal Procedure

AGENCY: Advisory Committees on Rules of Appellate, Bankruptcy, and Criminal Procedure; Judicial Conference of the United States.

ACTION: Notice of cancellation of two open hearings and rescheduling of two open hearings.

SUMMARY: The following public hearings on proposed rules amendments have been canceled:

• Criminal Rules in Atlanta, Georgia, on January 23, 2004; and

• Bankruptcy Rules in Washington, DC., on January 30, 2004.

• The two public hearings on proposed amendments to the Appellate Rules, originally scheduled for January 20, 2004, in Los Angeles, California, and for January 26, 2004, in Washington, DC., have both been rescheduled, for April 13, 2004, in Washington, DC. The hearing will be held at 8:30 a.m., in the Fourth Floor Agency Conference Room of the Thurgood Marshall Federal Judiciary building, One Columbus Circle, NW.

[Original notice of all four hearings appeared in the **Federal Register** of September 10, 2003.]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 12, 2004.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 04–911 Filed 1–14–04; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Resource Conservation and Recovery Act (RCRA), the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Emergency Planning and Community-Right-To-Know Act and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on October 17, 2003, a proposed settlement in *In Re National Steel Corp.,* No. 02–08713 was lodged with the United States Bankruptcy Court for the Northern District of Illinois.

In this action the United States sought civil penalties and injunctive relief arising from National Steel Corporation's violation of several environmental statutes, including the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act, the Emergency Planning and Community Right-to-Know Act, the Toxic Substances Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') at its three integrated steel mills in Granite City, Illinois, Ecorse, Michigan, and Portage, Indiana. The settlement agreement calls for the allowance of a general unsecured claim in the amount of $2.1 million in civil penalties for these violations. Payment of the penalty will be subject to procedures in National Steel Corporation's Chapter 11 Bankruptcy proceeding, *In Re: National Steel Corporation, et al.,* No. 02–08699 (Bankr. N.D. Ill., filed March 6, 2002).

In addition, the settlement agreement calls for the allowance of two general unsecured claims in the amounts of $115,565 and $5,200 for reimbursement of response costs incurred pursuant to CERCLA by EPA at the Abby Street/Hickory Woods Subdivision Superfund Site located in Buffalo, New York and the Rasmussen Dump Site located in Green Oak Township, Michigan, respectively. Payment of these response costs will also be subject to procedures in National Steel Corporation's Chapter 11 Bankruptcy proceeding.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In Re National Steel,* D.J. Ref. 90–11–3–07887.

The settlement agreement may be examined at the Office of the United States Attorney, Northern District of Illinois, 219 South Dearborn Street, Suite 300, Chicago, IL 60604 and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. During the public comment period, the settlement agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the settlement agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–843 Filed 1–14–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on December 22, 2003, a proposed Consent Decree was lodged with the United States District Court for the Western District of Michigan in the matter of *United States et al.* v. *Walnutdale Farms et al.*, Civil No. 4:00–CV–193.

At the request of the Environmental Protection Agency (''EPA''), the United States initiated an action in October of 2002 against Walnutdale Farms, Inc. and its owners, Ralph and Kevin Lettinga (collectively ''Defendants'') seeking injunctive relief and civil penalties under Sections 309 (b) and (d) of the Clean Water Act (CWA), 33 U.S.C. §§ 1319 (b) and (d). The complaint alleged that the Defendants violated Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, by discharging, without a permit, wastewater from the Walnutdale facility, which is a concentrated animal feeding operation (CAFO). Further, the complaint alleged that the Defendants violated the CWA by failing to apply for an NPDES permit, and by failing to comply with an administrative order issued by EPA in February 2001. On November 4, 2002, the Court consolidated this action with a previously filed action brought by the Sierra Club.

Under the proposed Consent Decree, the Defendants will implement specified remedial measures to assure compliance with requirements of the CWA and applicable regulations. Among other things, the Consent Decree requires the Defendants to design, construct and operate a storm water retention pond with the ability to capture and store all process wastewater generated by the production area of the facility, including the runoff and direct precipitation from a 25-year/24-hour rainfall event. Further, the proposed Consent Decree requires the Defendants to prepare and submit for approval to EPA and the Michigan Department of Environmental Quality a Comprehensive Nutrient Management Plan for the management and utilization of all wastes produced at the facility and at specific satellite facilities. Finally, the Consent Decree requires the Defendants to undertake a number of other compliance measures with respect to the operation and maintenance of waste storage devices and the land application of farm wastes. In addition to these compliance requirements, the proposed Consent Decree provides for the Defendants to pay $100,000 plus

interest over a four-year period, with half of this amount being paid to the United States as a civil penalty and the other half to Sierra Club in partial reimbursement of litigation costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *Walnutdale Farms et al.*, D.J. Ref. 90–5–1–1–07515.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 2nd Floor Federal Courthouse 315 W. Allegan, Room 252, Lansing, MI 48933, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree library, please enclose a check in the amount of $15 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–844 Filed 1–14–04; 8:45 am]

BILLING CODE 4410–15–M

MARINE MAMMAL COMMISSION

Meeting of Advisory Committee on Acoustic Impacts on Marine Mammals

AGENCY: Marine Mammal Commission.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Marine Mammal Commission (Commission) is pleased to announce the first meeting of the Advisory Committee on Acoustic Impacts on Marine Mammals (Committee) in Bethesda, MD.

DATES: This public meeting will be held Tuesday, February 3, from 9 a.m. to 5:30 p.m.; Wednesday, February 4, from 9 a.m. to 5 p.m.; and Thursday, February 5, from 8 a.m. to 4:30 p.m., 2004. These times and the agenda topics described below are subject to change. Please refer to the Commission's webpage for the most up-to-date meeting information. The Committee's second public meeting is tentatively scheduled for April 28–30, 2004, in the Washington, DC, metropolitan area. Further information on that meeting will be published in the **Federal Register** and posted on the Commission's Web site.

ADDRESSES: The February 3–5 meeting will be held at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814, (301) 897–9400, *http://marriott.com/property/propertyPage/WASBT.*

FOR FURTHER INFORMATION CONTACT: Erin Vos, Sound Project Manager, Marine Mammal Commission, 4340 East-West Hwy., Rm. 905, Bethesda, MD 20814, e-mail: *evos@mmc.gov,* tel.: (301) 504–0087, fax: (301) 504–0099; or visit the Commission Web site at *www.mmc.gov.*

SUPPLEMENTARY INFORMATION: This meeting is to be held pursuant to the directive in the Omnibus Appropriations Act of 2003 (Pub. L. 108–7) that the Commission convene a conference or series of conferences to ''share findings, survey acoustic 'threats' to marine mammals, and develop means of reducing those threats while maintaining the oceans as a global highway of international commerce.'' The meeting agenda will include presentations and panel discussions on (1) the basics of sound in the ocean, (2) sound sources of interest or concern for marine mammals, (3) the uses and characteristics anthropogenic sound in the marine environment, (4) the impacts of sound on marine mammals, and (5) the relevant U.S. governmental authorities. The agenda will also include two public comment sessions and one set of facilitated small-group discussions. Guidelines for making public comments, background documents, and the meeting agenda, including the specific times of public comment periods, will be posted on the Commission's Web site prior to the meeting. Written comments can be submitted at the meeting.

Dated: January 9, 2004.

David Cottingham,

Executive Director.

[FR Doc. 04–865 Filed 1–14–04; 8:45 am]

BILLING CODE 6820–31–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–002]

Revolutionize Aviation Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a forthcoming meeting of the Revolutionize Aviation Subcommittee (RAS).

DATES: Wednesday, February 4, 2004, 9 a.m. to 4 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 7H46A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Bernice Lynch, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202/358–4594.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the Revolutionize Aviation Subcommittee (RAS) meeting are as follows:

— Review Agenda, & Logistics
— Aeronautics Technology Subcommittee Charter and Membership
— Opening Remarks by Associate Administrator for Aerospace Technology
— Aeronautics Technology Update
— An Assessment of NASA's Aeronautics Technology Programs by the Aeronautics and Space Engineering Board of the National Research Council
— Analysis & Strategic Planning
— Next Steps/Action Summary

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Bernice Lynch via email at *bernice.e.lynch@nasa.gov* or by telephone at (202) 358–4594. Persons with disabilities who require assistance should indicate this.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participant.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 04–842 Filed 1–14–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–004)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Bigelow Development Aerospace Division, LLC, having offices in Las Vegas, Nevada, has applied for an exclusive license to practice the inventions described and claimed in Patent No. 5,610,363 entitled ''Enhanced Whipple Shield''; Patent No. 6,647,855 entitled ''Method for Deploying a Hypervelocity Shield''; pending U.S. patent application entitled ''Flexible Multi-Shock Shielding,'' Case No. MSC–23314–1; and pending U.S. patent application entitled ''Shielding Apparatus and Method of Use,'' Case No. MSC–22330–1. Each of the above-listed patents and patent applications are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATE(S): Responses to this notice must be received by January 30, 2004.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: January 8, 2004.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 04–840 Filed 1–14–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–005]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Every Little Bit, Incorporated, of 1611 South Utica #316, Tulsa, Oklahoma 74104, has applied for an exclusive license to practice the invention disclosed in NASA Case No. LAR 16324–1 entitled ''Self-Activating System and Method for Alerting When an Object or a Person Is Left Unattended,'' for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Langley Research Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATE(S): Responses to this notice must be received by January 30, 2004.

FOR FURTHER INFORMATION CONTACT: Kurt G. Hammerle, Patent Attorney, Mail Stop 212, NASA Langley Research Center, Hampton, VA 23681–2199. Telephone (757) 864–2470; Fax (757) 864–9190.

Dated: January 8, 2004.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 04–839 Filed 1–14–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–003]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Nivis LLC has applied for an exclusive patent license to practice the invention described and claimed in KSC–12386 entitled ''Wireless Instrumentation System and Power Management Scheme Therefore,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

DATE(S): Responses to this Notice must be received by January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 8677214.

Dated: January 8, 2004.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 04–841 Filed 1–14–04; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* State Agreements Program, as authorized by Section 274(b) of the Atomic Energy Act.

2. *Current OMB approval number:* 3150–0029.

3. *How often the collection is required:* One time or as needed.

4. *Who is required or asked to report:* Thirty-three Agreement States whose governors have signed Section 274(b) Agreements with NRC.

5. *The number of annual respondents:* 33.

6. *The number of hours needed annually to complete the requirement or request:* 1,035 (7.5 hours per response).

7. *Abstract:* Agreement States are asked on a one-time or as-needed basis, *e.g.*, to respond to a specific incident, to gather information on licensing and inspection practices and other technical statistical information. The results of such information requests, which are

authorized under Section 274(b) of the Atomic Energy Act, are utilized in part by NRC in preparing responses to Congressional inquiries. Agreement State comments are also solicited in the areas of proposed procedure and policy development.

Submit, by March 15, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 9th day of January 2004.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–868 Filed 1–14–04; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

The PBGC notes that the provisions of the Job Creation and Worker Assistance Act of 2002 that temporarily increased the required interest rate to be used to determine the PBGC's variable-rate premium to 100% (from 85%) of the annual yield on 30-year Treasury securities expired at the end of 2003. Thus, the required interest rate announced in this notice for plan years beginning in January 2004 has been determined under prior law, and represents a significant decrease from the rate for plan years beginning in December 2003. Legislation has been proposed that would further change the rules for determining the required interest rate. If such legislation is adopted, and the change affects the required interest rate for plan years beginning in January 2004, the PBGC will promptly publish a **Federal Register** notice with the new required interest rate and post the change on the PBGC's Web site.

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in January 2004. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in February 2004. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the first quarter (January through March) of 2004.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.) The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in January 2004 is 4.31 percent (*i.e.*, 85 percent of the 5.07 percent yield figure for December 2003).

The PBGC notes that the provisions of the Job Creation and Worker Assistance Act of 2002 that temporarily increased the required interest rate to be used to determine the PBGC's variable-rate premium to 100% (from 85%) of the annual yield on 30-year Treasury securities expired at the end of 2003. Thus, the required interest rate announced in this notice for plan years beginning in January 2004 has been determined under prior law, and represents a significant decrease from the rate for plan years beginning in December 2003. Legislation has been proposed that would further change the rules for determining the required interest rate. If such legislation is adopted, and the change affects the required interest rate for plan years beginning in January 2004, the PBGC will promptly publish a **Federal Register** notice with the new required interest rate and post the change on the PBGC's Web site.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between February 2003 and January 2004.

For premium payment years beginning in:	The required interest rate is:
February 2003	4.94
March 2003	4.81
April 2003	4.80
May 2003	4.90
June 2003	4.53
July 2003	4.37
August 2003	4.93
September 2003	5.31
October 2003	5.14
November 2003	5.16
December 2003	5.12
January 2004	4.31

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the first quarter (January through March) of 2004, as announced by the IRS, is 4 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	9/30/03	5
10/1/03	3/31/04	4

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the first quarter (January through March) of 2004 (*i.e.*, the rate reported for December 15, 2003) is 4.00 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	9/30/03	4.25
10/1/03	3/31/04	4.00

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in February 2004 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 12th day of January, 2004.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 04–874 Filed 1–14–04; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Public Service Pension Questionnaires; OMB 3220–0136. Public Law 95–216 amended the Social Security Act of 1977 by providing, in part, that spouse or survivor benefits may be reduced when the beneficiary is in receipt of a pension based on employment with a Federal, State, or local governmental unit. Initially, the reduction was equal to the full amount of the government pension. Public Law 98–21, changed the reduction to two-thirds of the amount of the government pension. Sections 4(a)(1) and 4(f)(1) of the Railroad Retirement Act (RRA) provides that a spouse or survivor annuity should be equal in amount to what the annuitant would receive if entitled to a like benefit from the Social Security Administration. Therefore, the public service pension (PSP) reduction provision applies to RRA annuities.

Regulations pertaining to the collection of evidence relating to public service pensions or worker's compensation paid to spouse or survivor applicants or annuitants are found in 20 CFR 219.64c.

The RRB utilizes Form G–208, Public Service Pension Questionnaire, and Form G–212, Public Service Monitoring Questionnaire, to obtain information used to determine whether an annuity reduction is in order. The RRB proposes a minor non-burden impacting editorial change to Form G–208. Form G–212 is being revised to add additional questions needed to accurately adjust an annuitant's monthly benefit. The new questions are intended to eliminate the

need for follow-up contact with an annuitant.

Completion of the forms is voluntary. However, failure to complete the forms could result in the nonpayment of benefits. One response is requested of each respondent. The completion time for the G–208 and the G–212 is estimated at 15 minutes. The RRB estimates that approximately 70 Form G–208's and 1,100 Form G–212's are completed annually.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Ronald. J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–870 Filed 1–14–04; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Withholding Certificate for Railroad Retirement Monthly Annuity Payments; OMB 3220–0149.

The Internal Revenue Code requires all payers of tax liable private pensions to U.S. citizens to: (1) Notify each recipient at least concurrent with initial withholding that the payer is, in fact, withholding benefits for tax liability and that the recipient has the option of electing not to have the payer withhold, or to withhold at a specific rate; (2) withhold benefits for tax purposes (in the absence of the recipient's election not to withhold benefits); and (3) notify all beneficiaries, at least annually, that they have the option of changing their withholding status or elect not to have benefits withheld.

The Railroad Retirement Board provides Form RRB W–4P, Withholding Certificate for Railroad Retirement Payments, to its annuitants to exercise their withholding options. Completion of the form is required to obtain or retain a benefit. One response is requested of each respondent.

No changes are being proposed to the current version of Form RRB W–4P used by the RRB. The RRB estimates that 20,000 annuitants utilize Form RRB W–4P annually. The completion time for Form RRB W–4P varies depending on individual circumstances. The average completion time for Form RRB W–4P is estimated at 40 minutes for recordkeeping, 25 minutes for learning about the law or the form, and 59 minutes for preparing the form.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 or send e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–871 Filed 1–14–04; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27792]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

January 9, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 2, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 2, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

C&T Enterprises, Inc., et al. (70–10185)

C&T Enterprises, Inc. (''C&T''), a holding company exempt by order under section 3(a)(1) of the Act from all provisions of the Act except section 9(a)(2),[1] 1775 Industrial Boulevard, Lewisburg, Pennsylvania 17837, and its parent companies Claverack Rural Electric Cooperative, Inc. (''Claverack''), RR 2 Box 17, Wysox, Pennsylvania 18854, and Tri-County Rural Electric Cooperative, Inc. (''Tri-County'' and collectively, ''Applicants''), 22 North Main Street, Mansfield, Pennsylvania 16933, both Pennsylvania rural electric cooperatives and holding companies exempt by order under section 3(a)(1) of the Act from all provisions of the Act except section 9(a)(2),[2] have filed an application with the Commission under sections 3(a)(1) and 9(a)(2) of the Act.

I. Applicants

Claverack, a Pennsylvania corporation and an exempt holding company, is a rural electric cooperative. As of December 31, 2002, it rendered service to approximately 17,200 customers in an eight-county region in north central and northeastern Pennsylvania. Its service territory is approximately 1,820 square miles and is limited primarily to

[1] *See C&T Enterprises,* HCAR No. 27590 (October 31, 2002).

[2] *See id.*

the Commonwealth of Pennsylvania.[3] Claverack is not subject to utility regulation by any state or federal agency. Its operations are overseen by the United States Department of Agriculture's Rural Utilities Services' Division. For the year ended December 31, 2002, Claverack's operating electric revenues were approximately $21.1 million (on a non-consolidated basis). Its assets at December 31, 2002 were approximately $57 million, consisting of approximately $44 million in identifiable electric utility property, plant and equipment and approximately $13 million in other corporate assets. Claverack's net income for the year ended December 31, 2002 was $1,569,554. Claverack and Tri-County each hold a 50% ownership interest in C&T, another exempt holding company described further below.

Tri-County is a rural electric cooperative rendering retail electric service predominantly to the residents of Pennsylvania's Northern Tier.[4] As of December 31, 2002, Tri-County provided retail electric service to approximately 17,900 customers, in an area encompassing 4,484 square miles in the following Pennsylvania counties: Bradford, Cameron, Clinton, Lycoming, McKean, Potter and Tioga. For the year ended December 31, 2002, Tri-County had electric operating revenues of approximately $19.1 million (on a non-consolidated basis). The assets of Tri-County were approximately $43 million in identifiable electric utility property, plant and equipment and approximately $16 million in other corporate assets. Tri-County's net income for the year ending December 31, 2002 was $365,994. Tri-County is not subject to utility-style regulation by any state or federal agency. Like Claverack, Tri-County's operations are overseen by the United States Department of Agriculture's Rural Utilities Services' Division.

Wilderness, a Pennsylvania corporation and an exempt holding company, is a wholly owned subsidiary of Tri-County. For the year ending December 31, 2002, Wilderness' net income was -$365,005, its operating revenue was $150,607, and its assets were valued at $14,189,045 (on a non-consolidated basis). Wilderness has one subsidiary, which it wholly owns: Wellsboro (''Wellsboro''), another Pennsylvania corporation.

Wellsboro provides retail electricity service in parts of Tioga County in north central Pennsylvania, serving approximately 5,700 customers in a 266 square mile territory. For the year ended December 31, 2002, Wellsboro: (1) Earned approximately $7.3 million in electric operating revenues; (2) owned assets were approximately $8.1 million, consisting of approximately $6.2 million in identifiable electric utility property, plant and equipment and approximately $1.9 million in other corporate assets; and (3) had net income of $72,766. The Pennsylvania Public Utility Commission (''Pa PUC'') regulates Wellsboro's retail electricity rates, as well as the terms and conditions of its service.

C&T, a Pennsylvania corporation, is an exempt holding company. It holds all of the common stock of Citizens Electric Company (''Citizens'') and Valley Energy (''Valley''), both public-utility companies, and Susquehanna Energy Plus, Inc. (''SEP''), a nonutility company. For the year ended December 31, 2002, C&T's net income was $319,595, its operating revenues were $430,031, and it owned assets worth $30,893,256.

Citizens, a Pennsylvania corporation, provides retail electricity service to approximately 6,500 customers within a fifty-five square mile service area that includes parts of Union and Northumberland Counties in central Pennsylvania. For the year ended December 31, 2002, Citizens: (1) Earned approximately $11.7 million in electric operating revenues; (2) owned assets worth approximately $13.2 million, consisting of approximately $5.9 million in identifiable electric utility property, plant and equipment and approximately $7.3 million in other corporate assets; and (3) earned $402,505 in net income. Citizens is regulated as a public utility by the Pa PUC, which establishes its retail rates and other terms of its service.

Valley, a Pennsylvania corporation, is engaged in the business of selling and distributing natural gas to approximately 6,300 retail customers in a 104 square mile territory that includes in parts of Bradford County, which is in north-central Pennsylvania, and Chemung and Tioga Counties, which are in south-central New York.[5] As of December 31, 2002, Valley's assets were valued at approximately $18 million, consisting of identifiable natural gas utility property, plant and equipment, net of depreciation. As mentioned above, the Commission authorized C&T to acquire Valley on October 31, 2002. During the two months that Valley was a subsidiary C&T, the utility earned approximately $2,038,841 in total utility revenues and $82,465 in net income. Valley is subject to the jurisdiction of the Pa PUC and the New York Public Service Commission, which regulate the company's retail rates, terms and conditions of service, accounting, issuance of securities, transactions with affiliated companies and other matters.

II. Reorganization

Tri-County and Claverack intend to consolidate the operations of all utility-related subsidiaries under C&T. This would be accomplished through two transfers (collectively, ''Reorganization''): Tri-County would transfer all of the common stock of Wilderness to C&T and, simultaneously, Wilderness would transfer all of the common stock of Wellsboro to C&T. After the Reorganization, Wilderness would be an inactive company and would no longer be a holding company within the meaning of the Act.

To ensure that Claverack is making a contribution equivalent to the one that Tri-County is making by the transfer of Wilderness/Wellsboro, Claverack has already transferred its ownership of SEP to C&T. Upon obtaining regulatory approval,[6] Wilderness would transfer to C&T up to $5.4 million in long-term debt that Wellsboro currently owes to Wilderness.[7] Wilderness would refinance with C&T its $13.2 million of debt owed to the National Rural Cooperative Finance Corporation, consisting of the $5.4 million incurred by Wellsboro and approximately $9 million in acquisition debt incurred when Wilderness purchased Wellsboro. Finally, C&T would finance the $13.2 million with the National Cooperative Services Corporation.

After the Reorganization, the two rural electric cooperatives would continue to be the sole shareholders of the common stock of C&T, C&T would continue to be a subsidiary of both Tri-County and Claverack, and C&T would hold directly all of the common stock of three public-utility companies: Citizens, Valley, and Wellsboro.

III. Proposals

Applicants request authority for Claverack and C&T to acquire all of the common stock of Wellsboro through their proposed acquisition of its parent

[3] Claverack also serves a small percentage of customers in bordering counties of New York. Its New York sales are all a result of four metering points where electricity is sold to New York State Electric & Gas Co. for resale to New York consumers near the Pennsylvania/New York border.

[4] Tri-County also serves a very small percentage of customers in bordering counties of New York.

[5] Approximately 5,000 customers are located in Pennsylvania, and the remaining 1,300 customers are located in New York.

[6] Applicants state that the Pa PUC has already approved the transfer of long-term debt from Wilderness to C&T.

[7] Wellsboro used the proceeds from the sales of this long-term debt to fund capital projects.

company, Wilderness. Additionally, an order is requested from the Commission continuing the exemptions under section 3(a)(1) of Claverack, Tri-County, and C&T from all provisions of the Act, except section 9(a)(2).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–878 Filed 1–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49041; File No. SR–Amex–2003–97]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Amendment of Exchange Rule 590

January 8, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to add three existing reports to the list of reports submitted to the Financial Regulation Department (''FRD'') that may be subject to a fine under Amex's Minor Rule Violation Fine Plan (''Plan'').

The text of the proposed rule change is below. Additions are italicized; deletions are in brackets.[3]

* * * * *

Rule 590. Minor Rule Violation Fine System

Part 1 General Rule Violations No change

Part 2 Floor Decorum Violations No change

Part 3 Reporting Violations

(a) Notwithstanding Article V, Section 1(b) of the Constitution, the Exchange may, subject to the requirements set forth herein, impose a fine of $50 a day on any member or member organization for the late filing of those reports listed in Paragraph (g) of Part 3 of this Rule required to be filed pursuant to Rule 30.

(b) In any action taken by the Exchange pursuant to Part 3 of this Rule, any person against whom a fine is imposed shall be served with a written statement, signed by an authorized officer of the Exchange Department or Division responsible for receiving the delinquent report, setting forth (i) the name of the delinquent report (ii) the fine imposed for such violation, and (iii) the date by which such determination becomes final and such fine becomes due and payable to the Exchange, or such determination must be contested as provided below, such date to be not less than 20 days after the date of service of the written statement.

(c) If the person against whom a fine is imposed pays the fine, such payment will be deemed to be a waiver of such person's right to a hearing before an Exchange Disciplinary Panel and to an appeal to the Amex Adjudicatory Council.

(d) Any person against whom a fine is imposed pursuant to Part 3 of this Rule may contest the Exchange's determination by notifying the Secretary of the Exchange not later than the date by which such determination must be contested, at which point the matter shall become subject to the provisions of Article V, Section l(b) of the Constitution. In any such formal disciplinary proceeding, if the Disciplinary Panel determines that the person charged is guilty of the reporting violation, the Panel shall be free to impose any one or more of the disciplinary sanctions authorized by the Exchange's Constitution and rules.

(e) The Exchange shall issue an information circular to the membership from time to time listing the reports (listed below in Paragraph (g)) as to which the Exchange may impose fines as provided in Part 3 of this Rule.

(f) A request for an extension of time to file a report must be submitted to the Exchange prior to the filing deadline. Any report containing material inaccuracies shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

(g) The following is a list of the reports required to be filed with the Exchange as to which the Exchange may impose fines for late filing pursuant to Part 3 of this Rule.

Report	Required to be filed by	Frequency/due date
A. EXAMINATIONS		
• [Exam 12 (Report of financial condition)]	[(1)(6)]	[Monthly—17th business day following month-end].
• Equity Computation *	[(3)(4)(6) and other orgs. not subject to SEC Rule 15c3–1] *Sole members and member organizations designated to the Amex NOT subject to SEC Rule 15c3–1 that are engaged solely in the business of acting as registered traders*.	Monthly—17th business day following month-end.
• Net Capital Computation [(Regulatory financial report of individual members not associated with member orgs., and member orgs. which do not transact business with the public)].	[(1)(2)(3)(4) doing no business with public but] *Sole members and member organizations designated to the Amex* subject to *SEC Rule* 15c3–1.	Monthly—17th business day following month-end.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] With the Exchange's consent, the Commission made a technical correction to the text of the proposed rule change. Telephone conversation between Bill Floyd-Jones, Associate General Counsel, Amex, and Ian K. Patel, Attorney, Division of Market Regulation, Commission, on January 7, 2004.

Report	Required to be filed by	Frequency/due date
• X–17A–5 Part II ** (FOCUS Report)	[(3)(4)(5) carrying customers (subject to 15c3–1)] *Sole members and member organizations designated to the Amex that self-clear or carry customer accounts that are subject to SEC Rule 15c3–1*.	Quarterly—17th business day following quarter-end.
• X–17A–5 Part I ** (FOCUS Report)	[(3)(4)(5) carrying customers (subject to 15c3–1)] *Sole members and member organizations designated to the Amex that self-clear or carry customer accounts that are subject to SEC Rule 15c3–1*.	Monthly—(Interim to quarterly filings above) 17th business day following interim month-end.
• X–17A–5 Part IIA (FOCUS Report)	[Non-clearing (3)(4)(5) not carrying customers (subject to 15c3–1)] *Sole members and member organizations designated to the Amex that are subject to SEC Rule 15c3–1 but do NOT file FOCUS Parts I or II*.	Quarterly—17th business day following quarter-end.
• X–17A–5 Part IIA (Short Form) (FOCUS Report).	[(1)(2)(3)(4) not normally filing FOCUS reports] *Sole members and member organizations that do not file one of the FOCUS reports listed above*.	[Annually—17th business day following calendar year-end] *Quarterly—17th business day following quarter-end.*
• Form 171 (Self-Clearing Specialist financial form).	(6)	Daily—Next business day.
• MO 14 and MO 15 (Specialist financial reports).	(6)	Quarterly.
• *Written Responses to Financial Regulation Examination Deficiency Letters*.	*Members and Member Organizations*	*Two weeks from the date on the Deficiency Letter.*
• *ITSFEA Forms I & II*	*Sole members and member organizations designated to the Amex*.	*Annually—17th business day following calendar year end.*
• *Annual Audited Financial Statements*	*Sole members and member organizations designated to the Amex*.	*Annually—60 calendar days following the date of the financial statement.*
B. TRADING ANALYSIS		
• 191 Report (Specialist principal trading)	(6)	Daily—Next business day.
• Form 958–C (ROT and Specialist Report of orders entered in underlying securities related to Amex options).	(2)(6)(7)	Daily—Next business day.
• 114A Report (Registered Equity Market Maker trading.	(8)	Daily—Next business day.
• 114B Report (Report of situations when Registered Equity Market Maker was asked to bid and/or offer.	(Floor Official/Floor Broker)	Daily—Next business day.
• Equity Floor Broker Questionnaire	Designated Equity Floor Brokers	Quarterly—By the date specified by the Exchange.
• Option Floor Broker Questionnaire	Designated Options Floor Brokers	Semi-Annual—By the date specified by the Exchange.
C. MARKET SURVEILLANCE		
• Form 50 (Short Position)	(3)(5)	Monthly—Varies (usually around the 17th day of each month).
• 1–RA (Exchange transactions initiated from off-floor).	(1)(3)(5)	Weekly—Friday following close of the week covered in the Report.
• 1–S (Round lot short sales transactions)	Clearing Firms	Weekly—Thursday following close of the week covered in the report.
D. MEMBERSHIP SERVICES		
• Form U–5	Members and Member Organizations	10 days following termination of a clerk.

* No prescribed form
** Also applies to self-clearing firms
(1) Regular Member
(2) Option Principal Member
(3) Regular Member Organization
(4) Option Principal Organization
(5) Assoc. Member Organization
(6) Specialist
(7) Registered Option Trader

Commentary:

.01 Nothing in this Rule shall require the Exchange to impose a fine pursuant to this Rule with respect to any violation covered by the Rule, and the Exchange shall be free to proceed under Article V, Section 1(b) of the Constitution or Rule 345 rather than under this Rule.

.02 Fines imposed pursuant to this Rule will generally not be subject to Exchange publicity under Rule 12 of the Rules of Procedure Applicable to Exchange Disciplinary Proceedings. However, except for uncontested floor decorum violations, they will be reported to the SEC as required by SEC Rule 19d1.

.03 Any person that contests a fine imposed under Rule 590 will be required to pay a $100 fee to contest such fine. This fine will be assessed at the conclusion of any Disciplinary hearing if the person is found guilty of the alleged rule violation. It will not be

assessed if the person is found not guilty of the charge.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has had a Plan since 1976 that provides a simplified procedure for the resolution of minor rule violations. Codified in Amex Rule 590, the Plan has three distinct sections: Part 1 (General Rule Violations), which covers more substantive matters that, nonetheless, are deemed ''minor'' by the Commission and the Amex; Part 2 (Floor Decorum), which covers floor decorum and operational matters; and Part 3 (Reporting Violations) which covers the late submission of routine reports.

Part 3 of Amex Rule 590 allows the specified departments of the Exchange that routinely receive regulatory reports from members and member organizations to issue abbreviated ''written statements'' to persons who may have violated the specified reporting rules. These statements identify the rules violated, the act or omission constituting the violation, and the amount of the fine. The fines are $50 per day for each day the report is late. The issuance of a written statement does not constitute a finding of guilt. Persons receiving a written statement may plead ''no contest'' and return the statement to the Exchange with the specified fine. In the alternative, persons who are charged under the Plan may contest the fine and receive a hearing before an Exchange Disciplinary Panel.

The Exchange is proposing to add three existing reports to the list of reports submitted to the FRD that may subject to a fine under Amex Rule 590. These are: (i) ITSFEA Forms 1 and 2;[4] (ii) responses to FRD Deficiency Letters; and (iii) annual audited financial statements. The Exchange believes that adding these reports to the list of reports that are subject to a fine for late filing will help ensure the timely submission of these materials. The Exchange is also proposing to revise the text of the schedule to Part 3 of Amex Rule 590 to: (1) Eliminate an obsolete report (Form 12 has been replaced by the FOCUS Report), (2) clarify the obligations of sole members and member organizations designated to the Amex for financial responsibility oversight to file FOCUS and other reports, and (3) provide that sole members and member organizations designated to the Amex for financial responsibility oversight that are not subject to the Commission's Net Capital Rule must file the Short Form FOCUS Report with the Exchange quarterly rather than annually.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(1),[5] 6(b)(6),[6] and 6(b)(7)[7] of the Act in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and will provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2003–97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–Amex–2003–97 and should be submitted by February 5, 2004.

[4] ITSFEA Form I is a certification that the member or member organization has implemented procedures to detect insider trading. ITSEFEA Form II is a list of securities accounts maintained by persons associated with the member or member organization.

[5] 15 U.S.C. 78f(b)(1).

[6] 15 U.S.C. 78f(b)(6).

[7] 15 U.S.C. 78f(b)(7).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–879 Filed 1–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49042; File No. SR–Amex–2003–84]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Amend Sections 132(c), 623, and 624 of the Amex *Company Guide* To Update the Requirements for Dissemination of Interim Reports by Listed Companies

January 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 29, 2003, the Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 132(c), 623, and 624 of the Amex *Company Guide* to update the requirements for dissemination of interim reports by listed companies.

Below is the text of the proposed rule change, as amended.[4] Proposed new language is *italicized*; proposed deleted language is [bracketed].

* * * * *

American Stock Exchange LLC Company Guide

* * * * *

Section 132. Listing Agreements

* * * * *

(a) and (b)—No change.

(c) Accounting, Annual and [Quarterly] *Interim* Reports— Furnish shareholders with annual reports and release [quarterly sales] *interim* [and] earnings *and operating results* (Sections 603–624). [(Companies not having common stock listed on the Amex or NYSE are required to send annual and quarterly reports to security holders)];

(d) and (e)—No change.

* * * * *

Sec. 623. Dissemination

[Interim statements (unaudited) are not required to be sent to security holders by any company whose common stock is listed on a national securities exchange. (Any company may, and many companies, in response to requests by their shareholders and the recommendation of the Exchange, now do send such statements.)]

[Companies whose common stock is not listed on a national securities exchange must send interim statements (unaudited) to holders of its securities which are listed on the Exchange.]

(*a*) *Each issuer whose securities are listed pursuant to Section 101(a)—(e) must disseminate (in the form of a press release or other public announcement in accordance with the requirements and procedures set forth in Sections 401–403) statements of earnings and operating results prior to or as soon as practicable following the date the company files its interim reports on an annual, quarterly or other basis with the Commission or other applicable regulatory agency. The* [Interim] statement[s] of [sales and] earnings *and operating results* must be on the *same* basis of [the same degree of] consolidation as the annual report *and*[. Such statements should] disclose, *at a minimum*, any substantial items of unusual or nonrecurrent nature and [will show] net income before and after federal income taxes *or net income and the amount of federal income taxes. Three copies must be sent to the Exchange.*

(*b*) *Interim statements are not required to be sent to security holders.* As a matter of fairness, corporations [which] *that choose to* distribute interim reports to shareholders [should distribute] *must send* such reports to both registered and beneficial shareholders.

[In all cases, such information (whether or not furnished to security holders) must be disseminated in the form of a press release to one or more newspapers of general circulation in New York regularly publishing financial news and to one or more of the national news-wire services. Three copies must be sent to the Exchange.]

[Further information on the handling of press releases is set forth in §§ 401–405.]

* * * * *

Sec. 624. Exceptions

Exceptions to the [Exchange's] requirements *set forth in Section 623 will be made* [that quarterly results be distributed in the form of a press release is made] only in cases where conditions peculiar to the type of company, or to the particular company itself, would make such [a release] *dissemination* impracticable or misleading, as in the case of companies dependent upon long-term contracts, [or companies] dependent upon the growth and sale of a crop in an annual cycle, or [companies] operating under conditions which make such releases virtually impossible or misleading.

When the Exchange is convinced that the release of quarterly *(or other applicable interim)* results is impracticable, or could be misleading, it may require an agreement to release a semi-annual statement of sales and earnings, or an interim statement of certain operating statistics which will serve to indicate the trend of the company's business during the period between annual reports. Only when the Exchange is convinced that any type of interim release is either impracticable, or misleading, will an agreement calling merely for publication of annual statements be accepted.

A request for an exception should be in the form of a letter directed to the Exchange.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 22, 2003 (''Amendment No. 1''). Amendment No. 1 makes a technical clarification to the proposed rule language of Section 623 of the Amex *Company Guide.*

[4] The Commission has made minor formatting corrections to the proposal that are technical in nature at the Amex's request. Telephone conversation between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Sapna C. Patel, Special Counsel, Division, Commission, on January 7, 2004.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 623 of the Amex *Company Guide* requires listed companies to disseminate statements of earnings and operating results in the form of a press release.[5] Under Section 623, listed companies whose common stock is listed on the Amex or another national securities exchange are not required to send these reports to shareholders. However, a company which lists a non-equity security on the Amex (*e.g.*, bonds or preferred stock) and does not have common stock listed on a national securities exchange is required to send interim reports to holders of its Amex listed securities.

The requirement to send interim reports to security holders has been in existence for many years, and, according to the Amex, appears to have been intended to address concerns that companies that did not have listed common stock received little or no media attention. However, with the advent of the Internet and EDGAR, investors have ready access to all issuer press releases and SEC filings. The Amex represents that neither the New York Stock Exchange, Inc. nor The Nasdaq Stock Market, Inc. require that interim reports be sent to security holders, whether or not the issuer has listed common stock. Additionally, the Amex represents that some issuers impacted by this requirement have complained that it is unnecessarily costly to send interim reports to security holders.

Accordingly, the Exchange is proposing that the requirement to send interim reports to security holders be eliminated.[6] Other non-substantive and stylistic revisions have also been made to Sections 132, 623, and 624 of the Amex *Company Guide* to make these sections less confusing.

2. Statutory Basis

The Amex believes that the proposed rule change, as amended, is consistent with Section 6(b)[7] of the Act in general and furthers the objectives of Section 6(b)(5)[8] of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2003–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Amex–2003–84 and should be submitted by February 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–880 Filed 1–14–04; 8:45 am]

BILLING CODE 8010–01–P

[5] The Amex represents that Section 624 of the *Company Guide* sets forth certain limited exceptions to this requirement, primarily for companies that are dependent upon long-term contracts that make release of quarterly results impracticable or misleading. The Amex further represents that exceptions are virtually never requested.

[6] The Commission notes, however, that if companies choose to mail interim reports to shareholders, they should be sent to both registered and beneficial shareholders. Nothing in this proposal will change this requirement. *See* Amex Section 623; *see also* Securities Exchange Act Release No. 36541 (November 20, 1995), 60 FR 62921 (December 7, 1995).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49044; File No. SR–DTC–2003–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Filing of Service Guides

January 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 1, 2003, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change updates DTC's Services Guide.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In January 2001, DTC filed File No. SR–DTC–2001–01[3] with the Commission which constituted a restatement of certain sections of the Participant Operating Procedures (''POP'') and Participant Terminal System (''PTS'') Manual of DTC. Both the POP and the PTS Manual are hardcopy, multi-volume manuals that, among other things, provide participants with procedures and information pertaining to a number of DTC services and describe and document functions and applications of DTC systems.

In that rule filing DTC explained that both POP and the PTS Manual would better serve participants and other authorized users if they were restated together utilizing modern electronic media. As a result, DTC developed Services Guides to replace POP and PTS Manual documentation. DTC has filed Services Guides for the following DTC services: Custody, Deposits, Dividend, Reorganization, Settlement, and Underwriting. In this filing, the Participant Inquiry Notification System (''PINS'') function of the Services Guides is being updated to include the End of Month Confirmation Procedures, which previously were included in DTC's POP and PTS Manual, and the fines that are imposed for failure to confirm the month end position statement in a timely manner. No substantive changes are being made to the procedures of DTC.

The Services Guide update will be implemented upon filing and will be available to participants and other authorized users via CD–ROM and the Internet at DTC's Web site.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because it will contribute to the ease of use of DTC's services and PTS. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the proposed rule change enhances the utilization of DTC's existing services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

File No. SR–DTC–2001–01 dealt with the original Services Guides which were developed through discussions with a number of participants. Because this rule filing deals with an update to the existing Services Guides, written comments from participants or others have not been solicited or received on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] promulgated thereunder because the proposal effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–DTC–2003–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and DTC's Web site at *www.dtc.org/impNtc/mor/index.html.* All submissions should refer to File No. SR–DTC–2003–14 and should be submitted by February 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–853 Filed 1–14–04; 8:45 am]

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[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Securities Exchange Act Release No. 44719, 66 FR 44656 (August 24, 2001).

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49048; File No. SR–FICC–2003–09]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish a Comprehensive Standard of Care and Limit the Mortgage-Backed Securities Division's Liability to Its Participants

January 9, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 19, 2003, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to establish a comprehensive standard of care and limitation of liability with respect to participants of the Mortgage-Backed Securities Division (''MBSD'').[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

FICC is seeking to establish a comprehensive standard of care and limitation of liability for the participants of MBSD that is identical to that of FICC's Government Securities Division (''GSD'').[4] Historically, the Commission has left to user-governed clearing agencies the question of how to allocate losses associated with, among other things, clearing agency functions.[5] The Commission has reviewed clearing agency services on a case-by-case basis and in determining the appropriate standard of care has balanced the need for a high degree of clearing agency care with the effect the resulting liabilities may have on clearing agency operations, costs, and safekeeping of securities and funds.[6] Because standards of care represent an allocation of rights and liabilities between a clearing agency and its participants, which are sophisticated financial entities, the Commission has refrained from establishing a unique federal standard of care and has allowed clearing agencies and other self-regulatory organizations and their participants to establish their own standard of care.[7]

MBSD rules already provide for a standard of care similar to that now provided for in the GSD rules. The proposed rule changes make this provision identical to that of the GSD. Thus, in addition to being responsible to participants for gross negligence and willful misconduct, the proposed rule changes provide that MBSD will be liable for direct losses caused by its violation of Federal securities laws for which there is a private right of action. Also, MBSD will not be liable for the acts or omissions of third parties unless MBSD was grossly negligent, engaged in willful misconduct, or in violation of Federal securities laws for which there is a private right of action in selecting such third party. Moreover, the proposed changes will relieve MBSD of any liability for consequential and other indirect damages. By making these changes to MBSD rules, both GSD and MBSD rules will be identical, lending consistency to FICC's approach to these issues.

FICC believes that adopting a uniform rule[8] limiting FICC's liability to its members to direct losses caused by FICC's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action: (a) Memorializes an appropriate commercial standard of care that will protect FICC from undue liability; (b) permits the resources of FICC to be appropriately utilized for promoting the accurate clearance and settlement of securities; and (c) is consistent with similar rules adopted by other self-regulatory organizations and approved by the Commission.[9]

FICC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[10] and the rules and regulations thereunder applicable to FICC because it will permit the resources of FICC to be appropriately utilized for promoting the accurate clearance and settlement of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] On January 1, 2003, MBS Clearing Corporation (''MBSCC'') was merged into the Government Securities Clearing Corporation (''GSCC'') and GSCC was renamed FICC. The functions previously performed by GSCC are now performed by the Government Securities Division (''GSD'') of FICC, and the functions previously performed by MBSCC are now performed by MBSD of FICC. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 [File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01].

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] The Commission approved identical rule language for GSD establishing a comprehensive standard of care and limitation of liability to its members. Securities Exchange Act Release No. 48201 (July 21, 2003), 68 FR 44128 [File No. SR–GSCC–2002–10].

[5] Securities Exchange Act Release Nos. 20221 (September 23, 1983), 48 FR 45167 and 22940 (February 24, 1986), 51 FR 7169.

[6] *Id.*

[7] *Id.*

[8] The proposed rule language for MBSD Clearing Rules Article V, Rule 6, Sections 1(a) and (b) and for MBSD EPN Rulebook Article X, Rule 6, Sections 1(a) and (b) is as follows:

(a) The Corporation will not be liable for any action taken, or any delay or failure to take any action, hereunder or otherwise to fulfill the Corporation's obligations to its Participants [EPN users and Participants], other than for losses caused directly by the Corporation's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action. Under no circumstances will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency, of any third party, including, without limitation, any depository, custodian, sub-custodian, clearing or settlement system, transfer agent, registrar, data communication service or delivery service (''Third Party''), unless the Corporation was grossly negligent, engaged in willful misconduct, or in violation of Federal securities laws for which there is a private right of action in selecting such Third Party; and

(b) Under no circumstances will the Corporation be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damage (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) howsoever suffered or incurred, regardless of whether the Corporation has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.

[9] *See, e.g.*, Securities Exchange Act Release Nos. 37421 (July 11, 1996), 61 FR 37513 [SR–CBOE–96–02] and 37563 (August 14, 1996), 61 FR 43285 [SR–PSE–96–21].

[10] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–FICC–2003–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com.*

All submissions should refer to File No. SR–FICC–2003–09 and should be submitted by February 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–877 Filed 1–14–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49043; File No. SR–OCC–2003–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Confidential Treatment of Certain Information

January 8, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 3, 2003, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends as set forth in a policy statement OCC's obligation with regard to the confidential treatment of certain information provided to OCC by markets to which OCC provides clearing and settlement services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC has recently entered into clearing agreements with Nasdaq LIFFE Markets, LLC (''NqLX'')[3] and with Island Futures Exchange, LLC (''IFX'')[4] in connection with security futures and in the case of NqLX, with futures and futures options on broad-based indexes traded on these participant markets. These agreements include confidentiality provisions protecting confidential information provided by one party from unauthorized use or disclosure by the other party. OCC has also entered into a clearing agreement with OneChicago, LLC (''OCX'')[5] which does not contain confidentiality provisions. Similarly, there are no confidentiality provisions in the restated participant exchange agreement among OCC and the various options markets. OCC is currently discussing a clearing agreement with CBOE Futures Exchange, LLC, and CBOE has requested that confidentiality provisions be included.

In order to assure that all participant markets have the same rights protecting confidential information disclosed to OCC and to avoid the need to negotiate the terms of confidentiality agreements with current and future participant markets on a case by case basis, OCC proposes to publish a policy statement with regard to confidential information disclosed to it by participant markets (''Policy Statement''). The Policy Statement will not be incorporated into the by-laws. OCC intends that the Policy Statement be enforceable against OCC by the participant markets.

The Policy Statement reflects OCC's longstanding practice and express understanding with the various markets using its clearing services. OCC has always protected the confidentiality of new product information and other information provided to it by the markets, and the Policy Statement merely provides a uniform statement of that policy for the benefit of all markets. OCC's confidentiality obligations under the Policy Statement are substantially

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 46722 (October 25, 2002), 67 FR 67230 (November 4, 2002) [File No. SR–OCC–2002–13].

[4] Securities Exchange Act Release No. 46058 (June 10, 2002), 67 FR 41287 (June 17, 2002) [File No. SR–OCC–2002–08].

[5] Securities Exchange Act Release No. 46653 (October 11, 2002), 67 FR 64689 (October 21, 2002) [File No. SR–OCC–2002–07].

the same as its confidentiality obligations under its clearing agreements with NqLX and IFX.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and will remove impediments to and perfect the mechanism of a national system for the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any material burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(4)[7] promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–OCC–2003–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC and OCC's Web site at *http://www.theocc.com*. All submissions should refer to the File No. SR–OCC–2003–02 and should be submitted by February 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–854 Filed 1–14–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49045; File No. SR–OCC–2003–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exercise-by-Exception Policies

January 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 23, 2003, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OCC is proposing to modify certain of its practices and policies with respect to exercise by exception processing of expiring equity options. Specifically, OCC is (1) modifying its methodology for extracting closing prices for underlying securities and (2) making explicit certain circumstances under which OCC will remove options on an underlying security from exercise by exception processing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would modify OCC's practices and policies with respect to exercise by exception processing of expiring equity options.

Exercise by Exception Processing

Rule 805 sets forth OCC's procedures for processing expiring equity and index options. It provides for the use of ''exercise by exception'' processing [3] to expedite the exercise of such expiring options by clearing members. Under that procedure, expiring options that are in-the-money by a specified amount are exercised unless a clearing member instructs otherwise. Equity options are determined to be in-the-money based on the difference between the exercise price and the closing price of the underlying security on the last trading

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] ''Exercise by exception'' processing is a procedural convenience extended to clearing members to relieve them of the operational burden of entering individual exercise instructions for every option contract to be exercised. It is not intended to obviate the need for customers to communicate exercise instructions to their brokers. OCC Rule 805, Interpretation & Policy .02.

day before expiration.[4] To be exercised under the exercise by exception procedure, equity options must be in the money by at least ¾ of a point per share if carried in a customers' account and at least ¼ of a point per share if carried in a firm or market maker account.

Closing Price Selection Methodology

Until recently, OCC obtained closing prices for underlying securities in the following sequence: first from the New York Stock Exchange, then from the American Stock Exchange, and finally from the Nasdaq Stock Market. This method presumed that underlying equity securities were traded on only one of these markets. However, underlying equity securities are now being cross-listed on certain of these markets.

This caused OCC to reassess its methodology for selecting closing prices. OCC's Board of Directors considered the matter at its November 2002 meeting and approved an interim modification to OCC's selection methodology pending further study. Under the modified methodology, OCC selects a closing price for a multiply traded underlying security from the exchange that originally listed that security. (OCC determines a security's original listing market based on the trading symbol.) This interim approach was announced via an information memorandum.[5]

To determine a long-term solution, OCC consulted with a broad cross-section of its membership. The consensus of the membership was that OCC should use a composite closing price, which is a price readily available to all market participants.[6] An OCC staff analysis also concluded that a composite closing price addressed almost all known expiration pricing issues. At its March 2003 regular meeting, the Board of Directors approved the use of composite closing prices for exercise by exception processing. After completing a clearing member awareness program, composite closing prices will be used in exercise by exception processing beginning with the June 2003 expiration.

Determination Not To Apply Exercise by Exception Processing

Rule 805 currently provides that if an underlying security is not traded on the last trading day before expiration, OCC may either:

(i) Fix a closing price on such basis as it deems appropriate in the circumstances (including using the last sales price from the most recent trading day for which a last sales price is available); or

(ii) Determine not to fix a closing price for that security, in which case clearing members may exercise only by giving OCC affirmative instructions.

Clearing members have strongly preferred that OCC set a closing price for an underlying security so that it would be subject to exercise by exception processing. (Many clearing members have provisions in their agreements with options customers providing that unless the customer instructs otherwise, the clearing member is authorized to exercise options that are in the money by OCC's threshold amount and not to exercise options that are not.) OCC's practice has been to honor clearing members' preferences and to fix a closing price based on the last reported trade even if a stock has not traded for an extended period. In those cases, OCC publishes an information memorandum shortly before each expiration informing market participants of the price it intends to use for exercise by exception processing, including the date on which the price was obtained. Such memoranda remind readers that OCC's exercise thresholds are an operational convenience, do not dictate which options should or should not be exercised, and strongly urge firms to contact customers with expiring long positions.

Despite these precautions, there is a risk that using stale closing prices for exercise by exception processing can contribute to unintended exercises or non-exercises. OCC has therefore reassessed its policy on fixing closing prices for underlying securities in which trading has been halted. After consulting with its clearing members, OCC has determined to establish the following policy:

- If OCC becomes aware at any time on or before the Monday before expiration that trading in an underlying security has been halted and if trading does not resume before expiration, OCC will suspend the exercise by exception procedure with respect to options on that security.[7]
- If OCC does not become aware until the Tuesday before expiration or thereafter that trading in an underlying security has been halted and if trading does not resume before expiration, the exercise by exception procedure will apply, and OCC will fix a closing price on such basis as it deems appropriate in the circumstances (including, without limitation, using the last sale price during regular trading hours on the most recent trading day for which a last sale price is available).
- If OCC becomes aware before the close of trading on expiration Friday that trading in a previously halted underlying security has resumed, the exercise by exception procedure will apply, and OCC will fix a closing price for that security in the normal manner.

If trading in an underlying stock is halted on or before Monday of expiration week, firms should have sufficient time to contact most customers for exercise instructions. If trading is not halted until after expiration Monday, firms may not have enough time to obtain such instructions. Continuing to apply the exercise by exception procedure in this limited situation will preserve for firms that have no specific exercise instructions from a customer the option of relying on the provisions in their customer agreements authorizing them to base exercise decisions on OCC's exercise thresholds. Firms would, of course, remain free to solicit specific exercise instructions as they deem necessary or appropriate. This policy change also is scheduled to go in effect with the June 2003 expiration.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it removes impediments to and perfects the mechanism of a national system for the clearance and settlement of securities transactions and protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

[4] Rule 805(i) defines the term closing price to mean the last reported sale price for the underlying security during regular trading hours as determined by OCC on the trading day immediately preceding the expiration date on a national securities exchange or other domestic securities market as determined by OCC.

[5] That information memorandum is available on OCC's Web site at *http://www.optionsclearing.com/market/infomemos/ nov_02/18537.htm.*

[6] A composite closing price for an underlying security is defined by OCC's price vendors to mean the last reported sale price from any eligible trade source (*i.e.*, primary listing market or participating regional market). It is not an average price.

[7] Under OCC's previous clearing system, exercise by exception was suspended with respect to an underlying security by not fixing a closing price for that security. Rule 805(j) reflects that procedure. OCC's current system uses a different process to suspend exercise by exception and generates closing prices for all underlying securities, including those for which exercise by exception has been suspended. A technical modification is being made to Rule 805(j) to reflect this change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(4)[9] promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–OCC–2003–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC and OCC's Web site at *http://www.theocc.com.* All submissions should refer to the File No. SR–OCC–2003–01 and should be submitted by January 30, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–855 Filed 1–14–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49040; File No. SR–Phlx–2003–87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Equity Charges for Specialists Utilizing PACE on the Equity Floor of the Exchange

January 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. Phlx filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder, in that the proposed rule change establishes or changes a due, fee, or other charge, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend its schedule of dues, fees and charges to eliminate the $.20 charge for Phlx equity specialists' trades against Phlx Automated Communication and Execution System (''PACE'') executions,[5] for trades settling on or after January 2, 2004.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the PACE specialist charge which was reevaluated by Phlx and deemed to be unnecessary at this time. In addition, the proposed rule change will simplify the equity specialists' billing structure.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members, because specialists' trades against PACE executions will no longer be charged a transaction fee, like PACE trades generally.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] PACE is the Exchange's automated order entry, routing and execution system. *See* Phlx Rules 229 and 229A.

[6] Phlx previously implemented the $.20 PACE specialist charge on June 1, 2000. *See* Securities Exchange Act Release No. 42802 (May 19, 2000), 65 FR 34244 (May 26, 2000).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder, which renders the proposal effective upon receipt of this filing by the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Phlx–2003–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–2003–87 and should be submitted by February 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–856 Filed 1–14–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR.240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4536]

United States International Telecommunication Advisory Committee Meeting—Radiocommunication Sector (ITAC–R)

The Department of State announces a meeting of the ITAC–R. The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC–R will meet to discuss matters related to the preparations for ITU–R study group meetings taking place in 2004. The ITAC–R meeting will be convened on January 29, 2004 from 2 to 4 pm, at The Boeing Company, the Harry C. Stonecipher Conference Center, 1200 Wilson Boulevard, Arlington, Virginia 22209.

Members of the public will be admitted and may join in the discussion subject to instructions of the Chair. Further information may be obtained by calling the director of the ITAC–R at 202–647–0051 or emailing to *holidaycc@state.gov*.

Dated: January 7, 2004.

Cecily C. Holiday,

Director, ITAC–R, International Telecommunications and Information Policy, Department of State.

[FR Doc. 04–885 Filed 1–14–04; 8:45 am]

BILLING CODE 4710–45–R

DEPARTMENT OF STATE

[Public Notice 4583]

Notice of Meetings of the United States International Telecommunication Advisory Committee To Prepare for Various Telecommunication Standardization Meetings First Half of 2004

The Department of State announces various meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the International Telecommunication Union (ITU). The ITAC will meet periodically throughout the first half of 2004 to prepare for various ITU Telecommunication Standardization Study Group meetings, ITU Development meetings, ITU Radiocommunication meetings, and CITEL. Times and locations of these meetings will be announced via the e-mail reflectors (list servers) identified below. People may join these reflectors by sending a message identifying the reflector they wish to join to *EnnisJG@state.gov,* unless another contact point is provided below for the meeting in question.

TSAG preparations: The ITAC will meet January 21, February 19, March 25, April 29, May 20, and June 23, and possibly on June 2, to prepare for the July 12–16 meeting of the ITU–T Telecommunication Sector Advisory Group (TSAG). Location and times for these meetings will be announced on the appropriate reflector list, *e.g., itac-t@EBLIST.state.gov.*

ITU–T Study Group 2 preparations: The ITAC will meet April 28, 2004 in the Washington, D.C. area to prepare for the next ITU–T Study Group 2 meeting, which is to be held from May 18–28, 2004. Location and time for this ITAC meeting will be announced on the reflector list *sganumberingadhoc@EBLIST.state.gov.*

ITU–T Study Group 3 preparations: The ITAC will meet on January 29, February 25, March 10, April 28, and possibly on May 12. 2004, to prepare for the next ITU–T Study Group 3 meeting, which is to be held from May 31–June 4, 2004. Location and time for these ITAC meetings will be announced on the appropriate reflector list, *e.g., sga@EBLIST.state.gov.*

ITU–T Study Group 4 preparations: The ITAC will meet on April 1 to prepare for the next ITU–T Study Group 4 meeting, which is to be held from April 26–May 7, 2004. Location and time for this ITAC meeting will be announced on the appropriate reflector list, *e.g., sga@EBLIST.state.gov.*

ITU–T Study Group 9 preparations: The ITAC will meet beginning April 14, 2004 via e-mail on the appropriate reflector list, *e.g., sgd@EBLIST.state.gov* to prepare for the ITU–T Study Group 9 meeting, which is to be held from May 10–14, 2004. Originators must post their contributions to the reflector by April 14; comments on the documents must be posted to the same address by April 19; originators' responses must be

posted by April 21, and final action will be posted by the Department of State no later than April 23. If necessary, these dates may be modified, or this meeting may be continued through a later date via e-mail or conference call, as announced on the reflector.

ITU–T Study Groups 13 and 11 preparations: The ITAC will meet on January 23, 2004 to consider delayed contributions to, and otherwise prepare for, the ITU–T Study Group 13 meeting to be held on February 3–12, 2004 and the ITU–T Study Group 11 meeting to be held on March 1–12, 2004. This ITAC meeting will begin 30 minutes after closure of the T1A1/T1S1 Plenaries at Radisson Riverwalk Hotel, 1515 Prudential Drive, Jacksonville, FL 32207. Further information may be announced on the e-mail reflector (list server) *SGB@EBLIST.state.gov.* People may join this reflector by sending a message to Marcie Geissinger at *marciegeissinger@msn.com* or 303–499–2145 saying they wish to join.

ITU–T Study Group 15 preparations: The ITAC will meet from February 11 to 17, 2004 via e-mail on the reflector list *SGB@EBLIST.state.gov* to consider normal (white) contributions to the ITU–T Study Group 15 meeting to be held April 19–30, 2004, Geneva. If necessary, this meeting may be continued through a later date via e-mail or conference call, as announced on the reflector. If you wish to participate in this meeting, please inform Marcie Geissinger at *marciegeissinger@msn.com* or 303–499–2145.

The ITAC will meet on April 1 to consider delayed contributions to the ITU–T Study Group 15 meeting. Further information regarding the place and time for this meeting will be announced on the e-mail reflector (list server) *SGB@EBLIST.state.gov.* People may join this reflector by sending a message to Marcie Geissinger at *marciegeissinger@msn.com* or 303–499–2145 saying they wish to join.

ITU–T Study Group 17 preparations: The ITAC will meet beginning February 18 via e-mail on the appropriate reflector list , *e.g., sgd@EBLIST.state.gov* to prepare for the ITU–T Study Group 17 meeting to be held from March 10–19. Originators must post their contributions to the reflector by February 18, 2004; comments on the documents must be posted to the same address by February 23; originators' responses must be posted February 24, and final action will be posted by the Department of State no later than February 25, 2004. If necessary, this meeting may be continued through a later date via e-mail or conference call, as announced on the reflector.

ITU–T Special Study Group preparations: The ITAC will meet beginning March 26, 2004 via e-mail on the reflector list *sgd-ssg@EBLIST.state.gov* to prepare for the ITU–T Special Study Group (IMT2000 and beyond) meeting to be held from April 19–22, 2004. Originators must post their documents to the reflector by March 26, 2004; comments on the documents must be posted to the same address by March 31; originators' responses must be posted by April 3, and final action will be posted by the Department of State no later than April 6, 2004. If necessary, this meeting may be continued through a later date via e-mail or conference call, as announced on the reflector.

CITEL PCC II and COMCITEL Group Preparations: The ITAC will meet on January 28 to debrief on COMCITEL (December 16–19, 2003), and on February 11 and March 3, 2004 to prepare for the next CITEL PCC I meeting (March 15–19). Location and times for these meetings will be announced on the appropriate reflector list, *e.g., PCCI-CITEL@EBLIST.state.gov.* PCC II will meet on January 27, February 17, March 2, and 16, 2004 to prepare for the next PCC II meeting (March 30–April 2). Location and time for these meetings will be announced on the reflector. To be added to the reflector send and e-mail to *holidaycc@state.gov.*

ITAC–D for ITU Telecommunication Development Advisory Group: The ITAC will meet on January 13 in preparation for the Ninth Meeting of the ITU Telecommunication Development Advisory Group (January 21–23, 2004). Further information may be obtained by calling the ITAC–D Director at 202 647–0201 or e-mailing to *mcgirrdf@state.gov.*

ITAC–R Study Groups: ITAC–R will meet to discuss matters related to the preparations for ITU–R Study Groups taking place in 2004 on January 29, 2004. Further information may be obtained by calling the ITAC–R Director at 202 647–0051 or e-mailing to *holidaycc@state.gov.*

Members of the public will be admitted to the meetings to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Entrance to the Department of State is controlled; people intending to attend a meeting at the Department of State should send their clearance data by fax to (202) 647–7407 or e-mail to *EnnisJG@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location may be obtained by requesting it by e-mail from *EnnisJG@State.gov.*

Dated: January 8, 2004.

Marian Gordon,

Director, Telecommunication and Information Standardization, Department of State.

[FR Doc. 04–886 Filed 1–14–04; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Premium War Risk Insurance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of extension of aviation insurance.

SUMMARY: This notice contains the text of a memorandum from the Secretary of Transportation to the President regarding the extension of the provision of aviation insurance coverage for U.S. flag commercial air carrier service in domestic and international operations.

DATES: Dates of extension from December 11, 2003 to February 8, 2004.

FOR FURTHER INFORMATION CONTACT: Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst, APO–3, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone (202) 267–9943 or (202) 267–3090. Or online at FAA Insurance Web site: *http://insurance.faa.gov.*

SUPPLEMENTARY INFORMATION: On December 9, 2003, the Secretary of Transportation authorized a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

Memorandum to the President

''Pursuant to the authority delegated to me by the President in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, and the direction of Section 1202 of the Homeland Security Act of 2002, I hereby extend that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. Flag commercial air carrier service in domestic and international operations for an additional 60 days. Pursuant to section 44306(b) of Chapter 443 of 49 U.S.C., Aviation Insurance, the period for provision of insurance shall be extended from December 11, 2003, through February 8, 2004.''

/s/Norman Y. Mineta

Affected Public: Air Carriers who currently have Premium War-Risk Insurance with the Federal Aviation Administration.

Issued in Washington, DC, on January 9, 2004.

John M. Rodgers,

Director, Office of Aviation Policy and Plans.

[FR Doc. 04–922 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–06–C–GFK To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Grand Forks International Airport, Grand Forks, North Dakota.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grand Forks International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations 914 CFR part 158).

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Mary Jo Crystal of the Grand Forks Regional Airport Authority at the following address: 2787 Airports Drive, Grand Forks, North Dakota 58203.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Grand Forks Regional Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas T. Schauer, Program Manager, Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota 58504, (701) 323–7380. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grand Forks International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 16, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Grand Forks Regional Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 18, 2004.

The following is a brief overview of the application.

Proposed charge effective date: February 1, 2004.

Proposed charge expiration date: April 30, 2008.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $1,486,521.

Brief description of proposed projects: (1) Ecological Study, (2) Rehabilitate ''C'' Apron Phase 1 and 2, (3) Rehabilitate Runway 17R/35L and Improve Runway Safety Area, (4) Master Plan Update, (5) Security Fencing Phase 1 and 2, (6) Acquire Land for runway protection zone (RPZ), (7) Reconstruct T-Hangar Taxiway, (8) Reconstruct ''B'' Apron, (9) Runway 35L/17R Rejuvenation, (10) Passenger Terminal Area Study, (11) Reconstruct ''A'' Apron, (12) Rehabilitate Entrance Road, (13) Reconstruct ''U'' Taxiway, (14) Acquire Aircraft Rescue and Fire Fighting Vehicle, (15) Snow Removal Equipment, (16) Construct Rotary Wing Aircraft Parking Apron, (17) Rehabilitate Runway 35R/17L and Taxiway ''C''. Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Grand Forks Regional Airport Authority.

Issued in Des Plaines, Illinois on January 8, 2004.

Barbara Jordan,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 04–921 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Multiple South and East Texas Counties, State of Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier One Environmental Impact Statement (EIS) will be prepared for the proposed extension of Interstate Highway 69 (I–69) from near Laredo and the Lower Rio Grande Valley. The proposed I–69 facility is being evaluated as an element of the National High Priority Corridor 18 and Corridor 20 systems. In addition, I–69 is being evaluated as an element of the Trans-Texas System as outlined in the Trans-Texas Corridor Plan (TTCP). As currently envisioned, the proposed Trans-Texas System could include lanes for passenger vehicles, separate lanes for trucks, rail lines and a utility corridor.

FHWA is using a tiered approach for evaluating this proposal. Tier One will study the broader level decision to determine the location of an I–69/Trans-Texas Corridor. After the Tier One decision has been made, FHWA will proceed with the I–69 highway component by performing project level studies in a Tier Two decision process. Other Federal, State and/or Local agencies would pursue project decisions for the non-highway modes after the Tier One decision.

FOR FURTHER INFORMATION CONTACT: John Mack, P.E., District Engineer, Federal Highway Administration, 300 E. 8th Street, Room 826, Austin, Texas 78701, by telephone at (512) 536–5960.

SUPPLEMENTARY INFORMATION: Please refer to the previous Announcement of I–69 Status published as Federal Register Notice, Volume 65, No. 237, Friday, December 8, 2000.

Using a tiered approach to study I–69 in Texas, the FHWA, in cooperation with the Texas Department of Transportation (TxDOT), intends to prepare a Tier One EIS on a proposal to identify a corridor for ultimate construction of I–69 as a controlled access, multimodal transportation facility. This project responds to the need for a strategic, high priority highway serving the east-central United States, as outlined in the national High Priority Corridors 18 and 20 studies defined by Congress in the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), as extended in 1993 and 1995, and the 1998

Transportation Equity Act for the 21st Century (TEA–21). I–69 is planned to be a continuous north-south corridor linking Canada, the United States, and Mexico. The proposed facility would also serve as a high priority element of the statewide Trans-Texas System as outlined in the June 2002 report published by TxDOT entitled ''Crossroads of the Americas: Trans Texas Corridor Plan.''

As currently envisioned, Trans-Texas would potentially include highway lanes for passenger vehicles; separate lanes for trucks; and six rail lines (one in each direction serving freight, commuter and high speed passenger traffic). The width of the proposed facility would be approximately 1,000 to 1,200 feet including a 200-foot wide utility zone that could ultimately accommodate lines for water, petroleum, natural gas, electricity, data, and other commodities. The overall length of the corridor is approximately 1,000 miles but the final length is dependent upon the location decision.

FHWA and TxDOT anticipate utilizing a combination of traditional and innovative financing options to fund construction of the proposal facility. These options include state and federal transportation sources, public/private partnerships, and tolling.

The Tier One EIS will focus on broad issues and generally address the national, regional and area-wide implications of the major alternatives. The Tier One study will not authorize construction of any element of the proposed facility. Anticipated decisions to be made during the Tier One study include evaluation of the ''no action'' alternative; identification of a preferred corridor location where the I–69 highway element and the remaining modal elements of the Trans-Texas Corridor can be coincidal and where they will be separated; refinement of modal concepts; identification of segments of independent utility (to be studied further in subsequent tiers); identification of areas that may warrant corridor preservation; and development of a plan for further action. Documents prepared during subsequent tiers would rely upon and utilize the environmental analysis in the Tier One. As a priority element of a national I–69 corridor initiative, the proposed facility would address interstate and international transportation needs, goals and objectives.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local authorities as well as private organizations, individuals and stakeholders who have previously expressed or are known to have an interest in this proposal. Public meetings and public hearings will be held during appropriate phases of the project development process. Public notices will be given of the date, time, and location of each.

A second high priority Trans-Texas Corridor, the IH 35 High Priority Corridor, is also under development and a Tier One Corridor EIS is being considered for that facility. A separate Notice of Intent will be published by the FHWA for that EIS.

Although the I–69 and IH–35 Corridor facilities are separate and distinct actions, with each having logical termini and independent utility, each of the proposed facilities share the need to terminate along the Texas-Mexico International Border (or Texas Gulf Coast) resulting in overlap of study areas. In the overlapping areas, care will be taken to closely coordinate the development of the two separate facilities in order to minimize duplication of effort and inconvenience to the public, resource agencies, and other stakeholders. Both projects will be considered in the cumulative impacts analysis for each of the facilities.

To ensure that the full range of issues related to this proposed action is addressed and all significant concerns are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Tier One EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 6, 2004.

John Mack,

District Engineer, Austin, Texas.

[FR Doc. 04–866 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: South Kohala, Hawaii

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION:

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in South Kohala, Hawaii.

FOR FURTHER INFORMATION CONTACT: Mr. Abraham Wong, Hawaii Division Administrator, Federal Highway Administration, Office Address: 300 Ala Moana Blvd., Room 3–306, Honolulu, Hawaii 96813, Mailing Address: Box 50206, Honolulu, Hawaii 96850, Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Hawaii, Department of Transportation, Highways Division, will prepare an Environmental Impact Statement (EIS) to realign and/or widen an existing highway in South Kohala, on the island of Hawai'i. The proposed highway improvements begin near the intersection of Mud Lane and the Hawai'i Belt Road (State Route 19) and terminate along Mamalahoa Highway (State Route 190) near the Waimea-Kohala Airport. The total length of this project is approximately 6.3 miles. A 1.7-mile spur, which would connect with Lindsey Road, will also be analyzed as part of the realignment proposal.

The purpose of this project is to improve highway safety and reduce congestion, while preserving the character and ambience of the historic Waimea village. In addition to various alternative highway alignments, project alternatives will include: (1) Taking no action; and (2) using Travel Demand Management/Transportation Systems Management (TDM/TSM) and/or mass transit.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and individuals, who have expressed an interest in this project. A series of public meetings will be held in the vicinity of Waimea. In addition, a public hearing will be held after publication of the draft EIS. Public notices will be issued, which will specify the date, time, and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting is not planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the above address.

(Catalog of Federal Domestic Assistant Program Number 20.205, Highway Planning and Construction. The regulations

implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: Issued on: January 8, 2004.

Abraham Wong,

Division Administrator, Honolulu.

[FR Doc. 04–867 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–16888]

Notice of Receipt of Petition for Decision that Nonconforming 2003–2004 Mercedes Benz E Class (211) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003–2004 Mercedes Benz E Class (211) passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003–2004 Mercedes Benz E Class (211) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 17, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Automobile Concepts, Inc. of North Miami, Florida (''AMC'') (Registered Importer 01–278) has petitioned NHTSA to decide whether 2003–2004 Mercedes Benz E Class (211) passenger cars are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 2003–2004 Mercedes Benz E Class (211) passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003–2004 Mercedes Benz E Class (211) passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2003–2004 Mercedes Benz E Class (211) passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003–2004 Mercedes Benz E Class (211) passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* and 302 *Flammability of Interior Materials.*

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word ''brake'' on the instrument cluster in place of the international ECE warning symbol; (b) modification of the speedometer to read in miles per hour by downloading U.S. version information, or replacement of the speedometer with one that reads in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model headlamps, tail lamps, and front and rear sidemarkers.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Inscription of the required warning statement on the passenger side rearview mirror's face.

Standard No. 114 *Theft Protection:* Reprogramming of the vehicle's computer to activate the key warning system.

Standard No. *118 Power Window Systems:* Reprogramming of the vehicle's computer so that the power windows will not operate with the ignition switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Activation of the seat belt warning buzzer by reprogramming the vehicle's instrument cluster; (b) inspection of all vehicles and

replacement of the driver's and passenger's air bags and knee bolsters, and all seat belts with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the vehicles should be equipped in the front and rear outboard seating positions with combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and replacement of any noncompliant seat belts with U.S.-model components.

Standard No. 210 *Seat Belt Assembly Anchorages:* Inspection of all vehicles and replacement of any noncompliant seat belt anchorages with U.S.-model components.

Standard No. 301 *Fuel System Integrity:* Replacement of all non-U.S. model fuel system components with U.S.-model components.

Standard No. 401 *Interior Trunk Release:* Installation of a U.S.-model switch that will enable the trunk lid to be released from inside the trunk.

The petitioner states that all vehicles must be inspected to ensure that they are equipped with an anti-theft device that meets the requirements of the Theft Prevention Standard found in 49 CFR part 541, and that such devices will be installed in any vehicles that are not already so equipped.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565. In addition, the petitioner states that a certification label must be affixed to the driver's doorjamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 12, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–925 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16612]

Extension of Comment Period on Whether Nonconforming 2002 Ferrari 360 Spider and Coupe Passenger Cars Manufactured From September 1, 2002 Through December 31, 2002 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This document announces the extension of the comment period on a petition for NHTSA to decide that 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States.

DATES: The closing date for comments on the petition is January 26, 2004.

ADDRESSES: Comments are to be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the document (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–787) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION: On December 11, 2003, NHTSA published a notice (at 68 FR 69125) that it had received a petition to decide that nonconforming 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 are eligible for importation into the United States. The notice solicited public comments on the petition and stated that the closing date for comments is January 12, 2004.

This is to notify the public that NHTSA is extending the comment period until January 26, 2004. This extension is based on a request from Ferrari North America, Inc. (FNA), the U.S. representative of the vehicle's manufacturer, Ferrari, SpA. FNA requested a 30-day extension of the comment period. The company stated that this extension was needed ''because a portion of the comment period was lost due to the holidays, and because of the complexity of the technical analysis necessary to evaluate the petition, particularly with regard to [Federal Motor Vehicle Safety Standard] No. 208 conformance.'' Standard No. 208 establishes minimum performance requirements for motor vehicle systems that provide occupant crash protection. FNA contended that the requested 30-day extension ''will not prejudice the parties or unduly delay the proceeding and will afford FNA and Ferrari SpA personnel the opportunity to fully evaluate the petition in order to determine the appropriate scope and content of FNA's comments.''

NHTSA has considered FNA's request, and concluded that the full 30-day extension requested by the company is not warranted in this circumstance. The 30-day comment period provided in the notice of petition should have afforded FNA a sufficient opportunity to evaluate the petition and determine the scope and content of its comments. The agency notes, in this regard, that FNA has already had an opportunity to comment on a previous petition seeking import eligibility for 2002 Ferrari 360 passenger cars manufactured before September 1, 2002. The conformity differences between those vehicles and the ones that are the subject of the instant petition should not be so great as to require a 30-day extension in the comment period. However, the agency is willing to provide some extension of the comment period in light of the fact that employee absences over the holiday period may have interfered with FNA's ability to fully evaluate the petition. NHTSA has consequently decided to extend the comment period for an additional two weeks.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 12, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–926 Filed 1–14–04; 8:45 am]

BILLING CODE 4310–84–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–03–15122; Notice 2]

Pipeline Safety: Petition for Waiver; Duke Energy Gas Transmission Company

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

ACTION: Notice of intent to consider waiver.

SUMMARY: Duke Energy Gas Transmission Company (DEGT) petitioned the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) for a waiver of compliance with provisions of 49 CFR 192.611, which requires pipeline operators to confirm or revise the maximum allowable operating pressure (MAOP) of their pipelines after a class location change. DEGT proposes an alternative set of risk control activities in lieu of a reduction in pressure or pressure testing of selected pipeline segments in Pennsylvania that have changed from Class 1 to Class 2.

DATES: Persons interested in submitting written comments on the waiver proposed in this notice must do so by February 17, 2004. Late-filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov.*

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov,* click on ''Comment/Submissions.'' You can also read comments and other material in the docket at *http://dms.dot.gov.* General information about our pipeline safety program is available at *http://ops.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by phone at (202) 366–2786, by fax at (202) 366–4566, by mail at U.S. DOT, Research and Special Programs Administration, Office of Pipeline Safety, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *james.reynolds@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

DEGT petitioned RSPA/OPS for a waiver from compliance with 49 CFR 192.611 for selected gas transmission pipeline segments in Pennsylvania. DEGT is asking for a waiver from the requirement to revise the MAOP or upgrade pipeline segments after a class location change. DEGT asserts that these alternative risk control activities will provide an equal or higher level of safety than that currently provided by the pipeline safety regulations.

The Federal pipeline safety regulations at § 192.609 require a gas pipeline operator to complete a class location change study whenever it believes an increase in population density may have caused a change in class location as defined in § 192.5. If a new class location is confirmed, the operator is required to either reduce pressure or replace the pipe to lower pipe wall stress in compliance with § 192.611.

Section 192.5(a)(1) defines a ''class location unit'' as an onshore area extending 220 yards (200 meters) on either side of the centerline of any continuous one-mile length of pipeline. The Class Location for any class location unit is determined according to the following criteria in § 192.5(b):

Class 1—10 or fewer buildings intended for human occupancy;

Class 2—more than 10 but less than 46 buildings intended for human occupancy;

Class 3—46 or more buildings intended for human occupancy, or areas where a pipeline lies within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period;

Class 4—buildings with four or more stories above ground are prevalent (*e.g.*, large office buildings).

The pipeline safety regulations impose more stringent design and operation requirements as the class location increases. When a class location changes to a higher class (*e.g.*, from Class 1 to Class 2) and the hoop stress corresponding to the established MAOP of the segment is not commensurate with the present class location, the MAOP must be confirmed by pressure test or revised using one of the options specified in § 192.611(a). An operator may avoid reducing the pressure, in some cases, if a previous pressure test is adequate to support operation at the existing pressure in the new class location—this is providing that the corresponding hoop stress does not exceed 72 percent Specified Maximum Yield Strength (SMYS) of the pipe in Class 2 locations, 60 percent SMYS in Class 3 locations, or 50 percent SMYS in Class 4 locations. Alternatively, the operator may need to reduce the pressure or replace the pipe with new pipe.

2. DEGT's Proposed Waiver

DEGT's request for a waiver of the requirements of § 192.611 is specific to four pipeline segments on Line 12 and Line 19, which are part of its Texas Eastern Pipeline System in the state of Pennsylvania. These segments are located in the towns of Entriken, Perulack, Bernville, and Bechtelsville. The pipelines are 24-inch and 30-inch in diameter and the class locations have changed from Class 1 to Class 2. If this waiver is granted, DEGT intends to apply the alternative set of risk reduction strategies to any future sites changing from Class 1 to Class 2 on Lines 12 and Lines 19 of these four compressor station discharges, provided the pipelines satisfy the technical conditions presented in this petition for waiver.

When these pipelines were built between 1954 through 1963, they were hydrotested to at least 100% of the pipe's SMYS with the exception of 10 feet of pipe on the Bechtelsville

discharge line, which was tested to 90% SMYS.

DEGT has internally inspected each of these pipelines. DEGT first inspected the pipelines in 1986 using Tuboscope's conventional magnetic flux leakage (MFL) tool. Between 1996 and 2002, DEGT performed a second inspection of these lines using Tuboscope's conventional MFL tool and Tuboscope's high resolution MFL tool.

During the same years, DEGT also inspected and evaluated the condition of the coal tar enamel pipeline coatings and evaluated the cathodic protection current demands on each of the pipelines. DEGT reported that the coatings were in good condition and that the cathodic protection systems were not experiencing excessive current demands.

All of the proposed DEGT waiver segments have changed from Class 1 to Class 2 due to the construction of additional buildings intended for human occupancy. DEGT has stated that to provide reliable natural gas service to its customers, it cannot operate the proposed waiver segments at reduced pressure. Consequently, to comply with the pipeline safety regulation, DEGT would be required to replace the pipe in the waiver segments in compliance with § 192.611. By replacing the existing pipe with new pipe, DEGT will eliminate the possibility that defects or corrosion in the original material was a contributing factor to the cause of failure of their pipeline.

3. DEGT Proposed Alternative

In lieu of compliance with § 192.611, DEGT proposes to conduct the following activities to ensure the integrity of the pipeline segments in this proposed waiver. DEGT has proposed the following criteria for inclusion under this waiver of the current class location sites and any future sites changing from Class 1 to Class 2 on the four compressor station discharges:

1. All site(s) covered by this waiver have been in-line inspected at least twice between 1986 and 2002 using a MFL tool capable of detecting corrosion anomalies in the pipeline section;

2. All actionable anomalies within the site(s) have either been remediated or are scheduled to be investigated, and subsequently remediated, if necessary, as defined in ASME B31.8S and DEGT Pipeline Repair procedures. A schedule of remedial measures to be performed on future waiver sites will be submitted to OPS headquarters and OPS regional offices;

3. For future sites covered by this waiver, DEGT will use tools and techniques developed through the activities described in the waiver request for the identification, classification and possible remediation of dents;

4. The site(s) must pass a hydrostatic test to a pressure of at least 125% of the MAOP of the pipeline. DEGT will make available to RSPA/OPS a report of all hydrostatic test failures experienced at this test pressure;

5. Subsequent in-line inspection for the site(s) is scheduled in accordance with re-inspection criteria (developed under calendar year 2004 #5 below);

6. The site(s) must be in compliance with ASME B31.8S criteria for Stress Corrosion Cracking (SCC) site identification and site investigation/testing (including any additional criteria developed in conjunction with SCC activities under calendar year 2004 #7 below).

DEGT has already satisfied the above criteria for the current pipeline segments proposed in this waiver request. DEGT commits to provide the OPS' Eastern Region with sufficient notice to enable RSPA/OPS staff to attend and participate in all risk assessment activities. DEGT has proposed the following schedule of near-term and long-term activities to help maintain pipeline integrity on the proposed waiver segments.

In 2003—

1. Begin a close interval survey on the pipeline at Perulack to support development of confirmatory direct assessment protocols (complete as weather allows by Spring 2004);

2. Begin a direct current voltage gradient (DCVG) survey on one line at Perulack (same line as #1 above) to support external corrosion direct assessment (ECDA) validations (complete as weather allows by Spring 2004);

In 2004—

3. Conduct a high resolution MFL tool run for Bechtelsville Line 12;

4. Conduct high resolution geometry tool runs on Entriken Line 19, Perulack Line 19 and Bechtelsville Line 12;

5. Develop criteria and a decision tree for determination of in-line inspection (ILI) re-inspection interval in accordance with gas integrity management program procedures;

6. Develop calibration and validation methodology and decision tree for ILI that incorporates API 1163 (currently under development);

7. Develop an SCC management plan consistent with ASME B31.8S that includes hydrostatic test criteria, site selection criteria, and SCC excavation criteria;

8. Develop an investigation strategy for topside dents and best practice responses to topside dents caused by third party damage;

9. Provide site and operating support for the Pipeline Research Council International, Inc. (PRCI) Compendium of Best Practices and Emerging Technologies for the Prevention and Detection of Outside Damage to Pipelines with P-PIC that will develop a ''User Guide'' for outside force damage technologies;

10. Develop a Web site for RSPA/OPS access on waiver-related sites and data. Provide public access to website as needed to support application of API RP 1162;

11. Deploy acoustic monitoring technology in conjunction with GTI/Battelle research project at a site to be determined with Battelle for a data gathering test period of one year;

In 2005—

12. Overlay the high resolution MFL run data with the high resolution geometry tool data on the Entriken Line 19, Perulack Line 19, and Bechtelsville Line 12 pipeline sections. Overlay available hydrostatic test data from Bechtelsville Line 12 and Line 19 with identified dents. Overlays will be used in an effort to refine dent remediation criteria;

13. Develop criteria for safe in service investigation of dents.

4. RSPA/OPS Consideration of Waiver

To allow adequate time for full development of the waiver proposal, DEGT petitioned RSPA/OPS on February 28, 2003 for a 12-month extension to comply with the provisions of § 192.611(d), which requires an operator to confirm or revise the MAOP within 18 months after a class location change. On June 11, 2003, RSPA/OPS published a notice seeking comment on this petition for an extension of time for DEGT to propose technical alternatives to compliance with the regulation. RSPA/OPS did not receive comments on this notice. DEGT presented its waiver proposal to RSPA/OPS staff during several meetings in April, June, July, August, and September 2003. On October 7, 2003, DEGT presented its alternative technical proposal in support of the proposed waiver of § 192.611.

As part of granting this waiver request, RSPA/OPS will consider the cause(s) and contributing factor(s) leading up to the pipeline failure on Duke's 30 -inch, Line 15, which extends from Danville, Kentucky to Owingsville, Kentucky in Bath County. Line 15 is an interstate, natural gas transmission line. It is part of the Kosciusko system that transports natural gas from northeast Mississippi across the northeastern

corner of Alabama into Tennessee. The pipeline continues in a northeasterly direction through eastern Kentucky passing through Danville and Owingsville, Kentucky into southwest Ohio; the pipeline terminates in southeastern Pennsylvania, near Uniontown.

This notice provides an opportunity for public comment on the DEGT waiver proposal. RPSA/OPS is evaluating the DEGT proposal and will consider all comments received by the deadline. RSPA/OPS will publish a subsequent notice granting or denying DEGT's proposed waiver of § 192.611. If DEGT's proposal is determined to yield an equal or higher level of safety, RSPA/OPS will grant the waiver. If the waiver is not granted, DEGT will be required to fully comply with § 192.611 by September 2004.

Authority: 49 App. U.S.C. 60118(c) and 2015; and 49 CFR 1.53

Issued in Washington, DC on January 9, 2004.

Richard D. Huriaux,

Manager, Regulations, Office of Pipeline Safety.

[FR Doc. 04–923 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34446]

Bay Colony Railroad Corporation—Acquisition and Operation Exemption—CSX Transportation, Inc., as Operator for New York Central Lines, LLC

Bay Colony Railroad Corporation (BCLR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.* to acquire from CSX Transportation, Inc., as operator for New York Central Lines, LLC (CSXT), and operate approximately 5.92 miles of rail line between milepost QND 0.08 and milepost QND 6.00, in Bristol County, MA.[1]

BCLR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. BCLR further certifies that its total annual revenues after the transaction will not exceed $5 million. BCLR expected to commence operation of the line on or about January 1, 2004.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34446, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: January 12, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–981 Filed 1–14–04; 8:45 am]

BILLING CODE 4915–00–P

[1] BCLR is purchasing the assets comprising the line, and is leasing the underlying real property from CSXT.

DEPARTMENT OF THE TREASURY

Office of the Secretary

Notice of Call for Redemption: 9⅛ Percent Treasury Bonds of 2004–09

January 15, 2004.

1. Public notice is hereby given that all outstanding 9⅛ percent Treasury Bonds of 2004–09 (CUSIP No. 912810 CG 1) dated May 15, 1979, due May 15, 2009, are hereby called for redemption at par on May 15, 2004, on which date interest on such bonds will cease.

2. Full information regarding the presentation and surrender of such bonds held in coupon and registered form for redemption under this call will be found in Department of the Treasury Circular No. 300 dated March 4, 1973, as amended (31 CFR part 306), and from the Definitives Section of the Bureau of the Public Debt, (telephone (304) 480–7936), and on the Bureau of the Public Debt's Web site, *www.publicdebt.treas.gov*.

3. Redemption payments for such bonds held in book-entry form, whether on the books of the Federal Reserve Banks or in Treasury-Direct accounts, will be made automatically on May 15, 2004.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 04–745 Filed 1–14–04; 8:45 am]

BILLING CODE 4810–40–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Application and Renewal Fees Imposed on Surety Companies and Reinsuring Companies; Increase in Fees Imposed

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Application and renewal fees imposed on surety companies and reinsuring companies; increase in fees imposed.

SUMMARY: Effective December 31, 2003, The Department of the Treasury, Financial Management Service, is increasing the fees it imposes on and collects from surety companies and reinsuring companies.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: The fees imposed and collected, as referred to in 31 CFR 223.22, cover the costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business. These fees are determined in accordance with the Office of Management and Budget Circular A–25, as amended. The change in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

The new fee rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$5,650.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$3,310.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$2,000.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$1,410.

Questions concerning this notice should be directed to the Surety Bond Branch, Financial Accounting and Services Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782, Telephone (202) 874–6850.

Dated: December 31, 2003.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 04–838 Filed 1–14–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–120200–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–120200–97 (TD 8775), Election Not to Apply Look-Back Method in De Minimis Cases (§ 1.460–6).

DATES: Written comments should be received on or before March 15, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election Not to Apply Look-Back Method in De Minimis Cases.

OMB Number: 1545–1572.

Regulation Project Number: Reg–120200–97.

Abstract: Under Internal Revenue Code section 460(b)(6), a taxpayer may elect not to apply the look-back method to long-term contracts in de minimis cases. The taxpayer is required under the regulation to notify the IRS of its election.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 12 min.

Estimated Total Annual Burden Hours: 4,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 9, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–928 Filed 1–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–9

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–9, Form 940 e-file Program.

DATES: Written comments should be received on or before March 15, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 940 e-file Program.

OMB Number: 1545–1710.

Revenue Procedure Number: Revenue Procedure 2001–9.

Abstract: Revenue Procedure 2001–9 provides guidance and the requirements for participating in the Form 940 e-file Program.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 390,685.

Estimated Time Per Respondent: 32 minutes.

Estimated Total Annual Burden Hours: 207,125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–929 Filed 1–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2001–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2001–1, Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

DATES: Written comments should be received on or before March 15, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

OMB Number: 1545–1716.

Notice Number: Notice 2001–1.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or recordkeepers: 20.

Estimated Average Time Per Respondent/Recordkeeper: 44 hours.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 870 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–930 Filed 1–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Rate Determination Agreement (TRDA) for Most Industries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Tip Rate Determination Agreement (TRDA) for Most Industries.

DATES: Written comments should be received on or before March 15, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of information collection should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tip Rate Determination Agreement (TRDA) for Most Industries.

OMB Number: 1545–1717.

Abstract: Information is required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeeping: 100.

Estimated Average Time Per Respondent/Recordkeeper: 18 hr., 58 min.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 1,897.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–931 Filed 1–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–114998–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–114998–99 (TD 8941), Obligations of States and Political Subdivisions (§ 1.142(f)(4)–1).

DATES: Written comments should be received on or before March 15, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Obligations of States and Political Subdivisions.

OMB Number: 1545–1730.

Regulation Project Number: REG–114998–99.

Abstract: Section 142(f)(4) of the Internal Revenue Code of 1986 permits a person engaged in the local furnishing of electric energy or gas that uses facilities financed with exempt facility bonds under section 142(a)(8), and that expands its service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f) to make an election to ensure that those bonds will continue to be treated as tax-exempt bonds. The final regulations (1.142(f)–1) set forth the required time and manner of making this statutory election.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and state, local or tribal governments.

Estimated Number of Respondents: 15.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 15.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–932 Filed 1–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Reporting Alternative Commitment (Hairstyling Industry)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Tip Reporting Alternative Commitment (Hairstyling Industry).

DATES: Written comments should be received on or before March 15, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of information collection should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tip Reporting Alternative Commitment (Hairstyling Industry).

OMB Number: 1545–1529.

Abstract: Information is required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeeping: 4,600.

Estimated Average Time Per Respondent/Recordkeeper: 9 hr., 22 min.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 43,073.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 9, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–933 Filed 1–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Reporting Alternative Commitment (TRAC) For Most Industries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Tip Reporting Alternative Commitment (TRAC) For Most Industries.

DATES: Written comments should be received on or before March 15, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tip Reporting Alternative Commitment (TRAC) For Most Industries.

OMB Number: 1545–1714.

Abstract: Information is required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeeping: 300.

Estimated Average Time Per Respondent/Recordkeeper: 16 hr., 16 min.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 4,877.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 9, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–934 Filed 1–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Rate Determination Agreement (for Use by Employers in the Food and Beverage Industry)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Tip Rate Determination Agreement (for use by employers in the food and beverage industry).

DATES: Written comments should be received on or before March 15, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of information collection should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tip Rate Determination Agreement (for Use by Employers in the Food and Beverage Industry).

OMB Number: 1545–1715.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Average Time Per Respondent: 11 hours.

Estimated Total Annual Burden Hours: 1,737.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 9, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–935 Filed 1–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Reporting Alternative Commitment (TRAC) for Use in the Food and Beverage Industry

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Tip Reporting Alternative Commitment (TRAC) for Use in the Food and Beverage Industry.

DATES: Written comments should be received on or before March 15, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: For Tip Reporting Alternative Commitment (TRAC) for Use in the Food and Beverage Industry.

OMB Number: 1545–1549.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeepers: 41,800.

Estimated Average Time Per Respondent/Recordkeeper: 7 hours, 6 minutes.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 296,916.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2004.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 04–936 Filed 1–14–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veteran's Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veteran's Advisory Committee on Environmental Hazards will be held on Wednesday and Thursday, February 11–12, 2004, from 9 a.m. to 5 p.m. each day. The meeting will be held at the Department of Veterans Affairs (Lafayette Building), 811 Vermont Avenue, NW., Room 819, Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on adverse health effects that may be associated with exposure to ionizing radiation and to make recommendations on proposed standards and guidelines regarding VA benefit claims based upon exposure to ionizing radiation.

The major items on the agenda for both days will be discussions and analyses of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of those analyses and discussions, the Committee may make recommendations to the Secretary concerning diseases that are the result of exposure to ionizing radiation. The agenda for the second day will include planning future Committee activities and assignment of tasks among the members.

Those who wish to attend should contact Ms. Bernice Green, of the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 273–7210, or by fax at (202) 275–1728, prior to February 9, 2004. Members of the public may submit written questions or prepared statements for review by the Committee in advance of the meeting. Statements must be received at least five (5) days prior to the meeting and should be sent to Ms. Bernice Green's attention at the address given above. Those who submit material may be asked to clarify it prior to its consideration by the Committee. An open forum for verbal statements from the public will also be available for 20 minutes during the morning and 20 minutes in the afternoon for each day. Each person who wishes to make a verbal statement before the Committee will be accommodated on a first come, first serve basis and will be provided three minutes to present the statement.

Dated: January 8, 2004.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–857 Filed 1–14–04; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 69, No. 10

Thursday, January 15, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for a Proposed Water Treatment Residuals Management Process for the Washington Aqueduct, Washington, DC

Correction

In notice document 04–441 beginning on page 1698 in the issue of Monday, January 12, 2004, make the following corrections:

1. On page 1699, in the first column, under the heading **3. Objectives of Proposed Action**, in the first bulleted paragraph, in the third line, the permit number should read, ''DC0000019.''

2. On the same page, in the second column, under the heading **5. Scoping Process**, in the 12th through 14th lines, the Web site address should read, ''*http://washingtonaqueduct.nab.usace.army.mil*.''

[FR Doc. C4–441 Filed 1–14–04; 8:45 am]

BILLING CODE 1505–01–P

Federal Register

Thursday,
January 15, 2004

Part II

Environmental Protection Agency

40 CFR Parts 9, 86, 90, and 1051
Control of Emissions From Highway Motorcycles; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 86, 90, and 1051

[AMS–FRL–7604–8]

RIN 2060–AJ90

Control of Emissions From Highway Motorcycles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action we are adopting revised exhaust emission standards for currently regulated highway motorcycles. We are also adopting new exhaust emissions standards for motorcycles of less than 50 cubic centimeters in displacement, which had not previously been subject to EPA regulations. Finally, we are adopting new permeation evaporative emission standards for all classes of highway motorcycles. Highway motorcycles contribute to ozone and particulate matter (PM) nonattainment, as well as other types of pollution impacting human health and welfare.

We expect that manufacturers will be able to maintain or even improve the performance of their products without compromising safety when producing highway motorcycles in compliance with these standards. In fact, we estimate that the fuel costs savings associated with these regulations will offset about one fourth of the program's cost by the time the standards are fully phased in (2030). There are also several provisions to address the unique limitations of small volume manufacturers.

EFFECTIVE DATE: This final rule is effective March 15, 2004.

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket Numbers A–2000–01 and A–2000–02 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 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, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

For further information on electronic availability of this action, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division hotline, (734) 214–4636, *asdinfo@epa.gov.* Carol Connell, (734) 214–4636; *connell.carol@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

This action will affect companies that manufacture or introduce into commerce highway motorcycles subject to the standards. This includes motorcycles with engines with a displacement of less than 50 cubic centimeters (cc) provided the vehicle otherwise meets the regulatory definition of a highway motorcycle. Regulated categories and entities include:

Category	NAICS Codes [a]	SIC Codes [b]	Examples of potentially regulated entities
Industry	336991		Motorcycle manufacturers.
Industry	421110		Independent Commercial Importers of Vehicles and Parts.

Notes:
[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether this action regulates particular activities, you should carefully examine the regulations. You may direct questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT.**

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

Docket. EPA has established an official public docket for this action under Docket ID Nos. OAR–2002–0024, A–2000–01, and A–2000–02. The official 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 Air 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 Air Docket is (202) 566–1742.

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 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 above under the heading ''Docket.'' Once in the system, select ''search,'' then key in the appropriate docket identification number.

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I. Introduction

A. Background

Air pollution is a serious threat to the health and well-being of millions of Americans and imposes a large burden on the U.S. economy. Ground-level ozone, carbon monoxide, and particulate matter are linked to potentially serious respiratory health problems, especially respiratory effects and environmental degradation, including visibility impairment in our national parks.

This rule addresses these air pollution concerns by adopting national emission standards for highway motorcycles, including a category of motorcycle that is currently unregulated. These new standards are a continuation of the process of establishing emission standards for on-highway engines and vehicles under Clean Air Act section 202(a). We are adopting new exhaust emission standards and new standards for permeation emissions from highway motorcycles.

Over the past quarter century, state and federal governments have established emission-control programs that significantly reduce emissions from numerous types of sources. Many of these sources now pollute at only a small fraction of their pre-control rates. In contrast, today's rule revises EPA standards for on-highway motorcycles for the first time since 1977.[1] These final standards for motorcycles reflect the development of emission-control technology that has occurred since we last set standards for these engines which took effect in 1978. A review of current motorcycle certification results clearly indicates that the emissions performance of a majority of current motorcycles surpasses levels required by current federal regulations. The standards established in this rule will further lower emissions in the next 3–7 years.

Nationwide, highway motorcycles are significant contributors to mobile-source air pollution, currently accounting for 0.6 percent of mobile-source hydrocarbon (HC) emissions, 0.1 percent of mobile-source oxides of nitrogen (NO_X) emissions, and less than 0.1 percent of mobile-source particulate matter (PM) emissions.[2] Without these further regulations, highway motorcycles would account for 2.2 percent of mobile source HC, 0.3 percent of mobile source NO_X, and 0.1 percent of mobile-source particulate matter (PM) emissions by 2020. These standards will reduce exposure to these emissions and help avoid a range of adverse health effects associated with ambient ozone and PM levels, especially in terms of respiratory impairment and related illnesses. In addition, the standards will help reduce acute exposure to air toxics and PM for persons who operate or who work with or are otherwise active in close proximity to these sources. They will also help address other environmental problems associated with these sources, such as visibility impairment in our national parks and other wilderness areas.

This final rule follows several EPA notices: An Advance Notice of Proposed Rulemaking (ANPRM) published on December 7, 2000 (65 FR 76797); a Notice of Proposed Rulemaking (NPRM) published on August 14, 2002 (67 FR 53050), and an additional notice dated October 30, 2002 (67 FR 66097). In the NPRM we proposed new exhaust emission standards for highway motorcycles, including motorcycles of less than 50 cubic centimeters (cc) in displacement, and requested comment on promulgating standards controlling emissions from fuel tank and hose permeation from highway motorcycles.[3] We received comments on the NPRM from a wide variety of stakeholders, including the motorcycle manufacturing industry, motorcycle user groups, various governmental bodies, environmental groups, and the general public. These comments are available for public viewing in Docket A–2000–02. Our responses to these comments are detailed in the Summary and Analysis of Comments, which is available in the docket and on our Web site.

B. How Is This Document Organized?

This final rule covers highway motorcycles, which vary in size from small scooters with engines of less than 50cc displacement to large touring models with engines that approach the size of small automobile engines (over 1000cc). In general the text is often organized by EPA's definitions of motorcycle classes, which are based on the size of the engine and are used to distinguish motorcycles for the purposes of applying emission standards.

Section I describes the general provisions that we are finalizing and provides some background and context for the final rule.

Section II describes the air quality needs that cause us to publish this final rule, as well as describing how highway motorcycles contribute to air pollution.

Section III describes specifically which vehicles are covered by the final rule.

[1] *See* 42 FR 1122, Jan. 5, 1977.

[2] While we characterize emissions of hydrocarbons, this can be used as a surrogate for volatile organic compounds (VOC), which comprises a very similar, but slightly different, set of compounds. Hydrocarbons are generally easier to test for, and therefore, are easier to regulate.

[3] The NPRM also proposed provisions for controlling evaporative emissions from marine vessels that use spark-ignition engines. These provisions are not a part of this action; a final rule addressing these provisions is being developed and will be published in a separate future action.

Section IV describes the new exhaust emission standards and related provisions that we are finalizing.

Section V describes our findings regarding the technological feasibility of the exhaust emission standards for highway motorcycles.

Section VI describes the permeation evaporative emission standards and related provisions that we are finalizing. It also describes the permeation testing requirements and our findings regarding the technological feasibility of the permeation requirements.

Section VII summarizes the projected environmental impacts and costs of this rule. We expect the costs of this emission control program to be about $27 million (including fuel savings) annually by the time the program is fully implemented. The emission benefits of this program are projected to be approximately 55,000 tons of $HC+NO_X$ annually by the time the program is fully implemented.

Finally, Sections VIII and IX contain information about public participation and various administrative requirements.

The remainder of this section summarizes the new requirements and provides some background and context for the final rule.

C. What Requirements Are We Adopting?

In general, we are harmonizing the federal motorcycle exhaust emission standards with those of the state of California, but on a delayed schedule relative to implementation in California and with some additional provisions that provide additional flexibility in meeting the standards. The process by which motorcycle manufacturers certify their motorcycles to the exhaust emission standards, including the test procedures, the driving cycle, and other elements of the federal program, are generally unchanged. We are also adopting exhaust emission standards for previously unregulated motorcycles with engines that are less than 50cc in displacement. In addition, we are adopting standards that will require the use of low permeability fuel tanks and fuel hoses on all motorcycles.

1. Class I and II Motorcycles

We are adopting a new exhaust emission standard for Class I and Class II motorcycles of 1.0 g/km HC, to replace the current federal HC standard of 5.0 g/km. This standard will become effective starting with the 2006 model year. Class I and II motorcycles have been meeting a standard of 1.0 g/km HC in California since 1982, and by 2006 the European versions of these motorcycles will be meeting HC and NO_X standards that when combined are below 1.0 g/km.[4] We are also finalizing an optional $HC+NO_X$ standard of 1.4 g/km, which will be required for manufacturers who decide to take advantage of provisions that allow the transfer of emission credits and averaging of Class I and II engine families. Class I and II motorcycles represent about 5–10 percent of annual U.S. motorcycle sales. Class I and II motorcycles will also have to meet new requirements regarding low permeation fuel tanks and fuel hoses.

We are also adopting a new definition of a Class I motorcycle which includes motorcycles with engine displacements of less than 50cc. These motorcycles—which are powered mostly by two-stroke engines currently—have not been subject to EPA emission regulations until now. We are finalizing a useful life for the under 50cc category of 5 years or 6,000 km, whichever first occurs. We are also revising the test procedure for this unique category of Class I motorcycles to ensure that these small motorcycles are tested appropriately.

2. Class III Motorcycles

We are adopting new exhaust emission standards for Class III motorcycles. Class III motorcycles represent more than 90 percent of annual U.S. sales. These standards, which can be met on a corporate-average basis, are identical to the standards of the California program. Specifically, we are adopting a ''Tier-1'' standard of 1.4 g/km $HC+NO_X$ starting in the 2006 model year, and a ''Tier-2'' standard of 0.8 g/km starting in the 2010 model year. Because both HC and NO_X are ozone precursors, this new standard will better reduce ozone than an HC-only standard. Implementation on a nationwide basis will take place starting two model years after implementation of identical exhaust emission standards in California, ensuring that manufacturers have adequate lead time to plan for these new standards and to have full product lines available for sale. The federal CO standard of 12.0 g/km is unchanged by this final rule. The process by which manufacturers certify their motorcycles, the test procedures, the driving cycle, and other elements of the federal program remain unchanged. Class III motorcycles will also have to meet new requirements regarding low permeation fuel tanks and fuel hoses.

D. Putting This Action Into Perspective

Federal standards for highway motorcycles were first established in the 1978 model year (see 42 FR 1126, Jan. 5, 1977). Interim standards were effective for the 1978 and 1979 model years, and final standards took effect with the 1980 model year. The interim standards ranged from 5.0 to 14.0 g/km HC depending on engine displacement, while the interim CO standard of 17.0 g/km applied to all motorcycles. The standards and requirements effective for 1980 and later model year motorcycles, which do not include NO_X emission standards, currently remain unchanged from when they were established 25 years ago. Crankcase emissions from motorcycles have also been prohibited since 1980. The level of technology required to meet these standards is widely considered to be comparable to the pre-catalyst technology in the automobile. These standards, which resulted in the phase-out of two-stroke engines for highway motorcycles above 50cc displacement, achieved significant reductions in emissions. There are no current federal standards for evaporative emissions from motorcycles. The current federal exhaust emission standards are shown in Table I.D–1.

[4] California standards are met using a test procedure identical to EPA's, whereas compliance with European standards is determined using a different test procedure.

TABLE I.D–1.—CURRENT FEDERAL EXHAUST EMISSION STANDARDS FOR MOTORCYCLES

Class	Engine size	HC (g/km)	CO (g/km)	Useful life (km)[a]
I	50–169	5.0	12.0	12,000
II	170–279	5.0	12.0	18,000
III	>279	5.0	12.0	30,000

Notes:
[a] "Useful life" is the period over which the manufacturer must demonstrate compliance with emission standards. It is unrelated to how long a consumer can keep or ride a motorcycle.

However, it is clear that the impact of the current federal standards on motorcycle emission control was fully realized by the end of the 1980's, and that international and other efforts have been the driving factor in more recent technology development for motorcycle emissions control. In the past two decades, other actions in Europe, Asia, and California have caused motorcycle emission controls to continue to advance, despite the static U.S. emission standards in that same time period. In fact, most manufacturers elect to certify many of their motorcycles to the California standards (described below in section I.D.2) and market them nationwide. This practice has resulted in the average certification levels shown in Table I.D–2.

TABLE I.D–2.—AVERAGE CERTIFICATION LEVELS FOR 2003 MODEL YEAR MOTORCYCLES

Class	Engine size	HC (g/km)	CO (g/km)
I	50–169	1.3	7.2
II	170–279	0.9	7.2
III	>279	0.9	6.7

Note: Manufacturers typically certify at levels that provide them with sufficient "headroom" between the actual certification level and the standard. This "headroom" is often 30–50% of the standard, as can be seen in the CO levels in this table which compare to a standard of 12 g/km.

1. New Federal Emission Standards for Recreational Vehicles

On November 8, 2002, we adopted new standards for all-terrain vehicles (ATVs), snowmobiles, and off-highway motorcycles.[5] These standards resulted from requirements in the Clean Air Act regarding all nonroad vehicles. In light of the requirements in the Act and our subsequent action to control emissions from off-road motorcycle and ATV emissions, we felt it both necessary and a matter of common sense to initiate an action to review and update the two-decade-old highway motorcycle emission standards. Table I.D–3 shows the emission standards that apply to recreational vehicles.

Compliance with the off-highway motorcycle and ATV standards will be determined using the same test cycle that is currently used for highway motorcycles. Therefore the standards are directly comparable. The current federal highway motorcycle HC standard of 5.0 g/km appears even more misaligned with the current state of emission control technology when compared to the standards that their off-highway cousins will be meeting in the next few years. Today's action rectifies this imbalance in motorcycle and ATV emission standards.

TABLE I.D–3.—RECREATIONAL VEHICLE EXHAUST EMISSION STANDARDS

Vehicle	Model year	Emission standards		Phase-in
		HC g/kW-hr	CO g/kW-hr	
Snowmobile	2006	100	275	50%
	2007 through 2009	100	275	100%
	2010 -option 1	75	200	
	2010 -option 2	45	275	
		$HC+NO_X$ g/km	CO g/km	
Off-highway Motorcycle	2006	2.0	25.0	50%
	2007 and later	2.0	25.0	100%
ATV	2006	1.5	35.0	50%
	2007 and later	1.5	35.0	100%

2. California Emission Standards for Highway Motorcycles

Motorcycle exhaust emission standards in California were originally identical to the federal standards that took effect in 1980. The definitions of motorcycle classes used by California ARB continue to be identical to the federal definitions. However, California ARB has revised its standards several times in bringing them to their current levels (see Table I.D–4). In the 1982

[5] See 67 FR 68241 (November 8, 2002). The final rule also contained new standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment and recreational marine diesel engines.

model year the standards were modified to tighten the HC standard from 5.0 g/km to 1.0 or 1.4 g/km, depending on engine displacement. California adopted an evaporative emission standard of 2.0 g/test for all three motorcycle classes for 1983 and later model year motorcycles. California later amended the regulations for 1988 and later model year motorcycles to further lower emissions and to make the compliance program more flexible for manufacturers. The 1988 and later standards could be met on a corporate-average basis, and the Class III motorcycles were split into two separate categories: 280 cc to 699 cc and 700 cc and greater. These are the standards that apply in California now. Like the federal standards, there are currently no limits on NO_X emissions for highway motorcycles in California. Under the corporate-average scheme, no individual engine family is allowed to exceed a cap of 2.5 g/km HC. Like the federal program, California also prohibits crankcase emissions. Current California exhaust emission standards are shown in Table I.D–4.

TABLE I.D–4.—CURRENT CALIFORNIA HIGHWAY MOTORCYCLE EXHAUST EMISSION STANDARDS

Class	Engine size (cc)	HC (g/km)	CO (g/km)
I & II	50–279	1.0	12.0
III	280–699	1.0	12.0
III	700 and above	1.4	12.0

In November 1999, the California ARB adopted new exhaust emission standards for Class III motorcycles that would take effect in two phases—Tier 1 standards starting with the 2004 model year, followed by Tier 2 standards starting with the 2008 model year (see Table I.D–5). Existing California standards for Class I and Class II motorcycles (see Table I.D–4), which have been in place since 1982, remain unchanged, as does their evaporative emissions standard. As with the current standards in California, manufacturers will be able to meet the requirements on a corporate-average basis. Perhaps most significantly, California ARB's Tier 1 and Tier 2 standards control NO_X emissions for the first time by establishing a combined $HC+NO_X$ standard. California ARB made no changes to the CO emission standard, which remains at 12.0 g/km, equivalent to the existing federal standard. In addition, California ARB is providing an incentive program to encourage the introduction of Tier 2 motorcycles before the 2008 model year. This incentive program allows the accumulation of emission credits that manufacturers can use to meet the 2008 standards. Like the federal program, these standards will also apply to dual-sport motorcycles.

TABLE I.D–5.—TIER 1 AND TIER 2 CALIFORNIA CLASS III HIGHWAY MOTORCYCLE EXHAUST EMISSION STANDARDS

Model year	Engine displacement	$HC + NO_X$ (g/km)	CO (g/km)
2004 through 2007 (Tier 1)	280 cc and greater	1.4	12.0
2008 and subsequent (Tier 2)	280 cc and greater	0.8	12.0

California ARB also adopted a new definition of small-volume manufacturer that will take effect with the 2008 model year. Currently and through the 2003 model year, all manufacturers must meet the standards, regardless of production volume. Small-volume manufacturers, defined in California ARB's recent action as a manufacturer with California sales of combined Class I, Class II, and Class III motorcycles not greater than 300 units annually, do not have to meet the new standards until the 2008 model year, at which point the Tier 1 standard applies.

3. European Union and Other International Actions

The European Union (EU) has established a new phase of motorcycle standards, which took effect in 2003, and has recently finalized a second phase that will start in 2006. The 2003 European standards are more stringent than the existing federal standards, and, with the exception of the CO standard, are roughly comparable to the California Tier 1 standards taking effect in 2004. The 2003 standards would require emissions to be below the values shown in Table I.D–6, as measured over the European ECE–40 test cycle.[6] The standards in Table I.D–6 apply to motorcycles of less than 50cc (*e.g.*, scooters and mopeds) only if the motorcycle can exceed 45 kilometers per hour (28 miles per hour). Starting in 2002 motorcycles of less than 50cc that cannot exceed 45 kilometers per hour (28 miles per hour) are subject to a new $HC+NO_X$ standard of 1.2 grams per kilometer and a CO standard of 1.0 gram per kilometer.

[6] The ECE–40 cycle is used by several countries around the world for motorcycle emission testing. It has its origins in passenger car driving, being derived from the European ECE–15 passenger car cycle. The speed-time trace is simply a combination of straight lines, resulting in a ''modal'' cycle, rather than the transient nature of the U.S. Federal Test Procedure (FTP).

TABLE I.D–6.—EUROPEAN UNION 2003 MOTORCYCLE EXHAUST EMISSION STANDARDS FOR MOTORCYCLES >150CC

HC (g/km)	CO (g/km)	NO_X (g/km)
1.0	5.5	0.3

New standards that would apply starting in 2006, along with a revised test cycle (as an interim cycle to bridge between the current EU cycle and a possible WMTC cycle in the future) have been recently finalized by the EU. Setting aside the difference in test cycles, the 2006 EU HC and NO_X standards are roughly comparable to and perhaps somewhat more stringent than the California Tier 2 motorcycle standards effective in 2008. The 2006 EU standards are shown in Table I.D–7.

TABLE I.D–7.—EUROPEAN UNION 2006 MOTORCYCLE EXHAUST EMISSION STANDARDS FOR MOTORCYCLES >150CC

HC (g/km)	CO (g/km)	NO_X (g/km)
0.3	2.0	0.15

Many other nations around the world, particularly in South Asia where two-stroke small displacement motorcycles can be a majority of the vehicle population, have also recently improved their emission standards or are planning to do so in the next several years. For example, Taiwan has adopted an $HC+NO_X$ standard of 1.0 gram per kilometer for all two-strokes starting in 2003 (as tested on the European ECE–40 test cycle). (Four-stroke motorcycle engines will have to meet at standard of 2.0 grams per kilometer.) India has proposed a standard for all motorcycles of 1.3 grams per kilometer $HC+NO_X$ in 2003 and 1.0 grams per kilometer $HC+NO_X$ in 2005 (as tested on the Indian Drive Cycle, or IDC).[7] China has adopted the 2003 European standards described above, implementing them in 2004, a year later than Europe.

E. Statutory Authority

Section 202(a)(1) and (2) of the Clean Air Act authorizes EPA to promulgate, and from time to time revise, standards applicable to emissions of any air pollutant from any class or classes of new motor vehicles that, in the Administrator's judgment cause or contribute to air pollution which in EPA's judgment may reasonably be anticipated to endanger public health or welfare. Such regulations shall apply for the useful life of the vehicle and ''shall take effect after such period as the Administrator finds is necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.''

In particular, section 202(a)(3)(E) states that motorcycles shall be treated as heavy-duty vehicles unless ''the Administrator promulgates regulations under subsection (a) of this section applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.''

EPA's initial standards regulating motorcycles were promulgated on December 23, 1976 (42 FR 1122). In that final rule EPA made the finding that highway motorcycles were a contributor to air pollution and that control of their emissions is necessary to meet the National Ambient Air Quality Standards. The air quality analyses conducted for this final rule (see the Final Regulatory Support Document) continue to support this conclusion. The standards promulgated in the 1976 rule and in this final rule treat motorcycles as a separate class of motor vehicle, and thus are governed by the language in section 202(a)(1) and (2) and 202(a)(3)(E). In promulgating these standards, EPA has considered the need to achieve equivalency in emission reduction between motorcycles and other motor vehicles (see Section 4.1 of the Final Regulatory Support Document).

F. Modification, Customization and Personalization of Motorcycles

Many motorcycle owners personalize their motorcycles in a variety of ways. This is one of the aspects of motorcycle ownership that is appealing to a large number of motorcycle owners, and they take their freedom to customize their bikes very seriously. However, there are some forms of customization that are not legal under the provisions of Clean Air Act section 203(a), which states that it is illegal:

> for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser or * * * after such sale and delivery to the ultimate purchaser.* * *
>
> or
>
> for any person to manufacture or sell * * * or install, any part or component intended for use with * * * any motor vehicle * * * where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle * * * in compliance with regulations under this title, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use. * * *

In other words, under current law, owners of motor vehicles [8] cannot legally make modifications that remove, bypass, or disable emission-control devices installed by the manufacturer.[9] It is also illegal for part manufacturers and dealers to manufacture, sell or install a part or component that the manufacturer or dealer knows or should know will be sold or used in a manner that defeats the emissions control system.

We use the term ''tampering'' to refer specifically to actions that are illegal under Clean Air Act section 203; the term, and the prohibition, do not apply generally to the wide range of actions that a motorcycle enthusiast can take to personalize his or her motorcycle, but only to actions that remove or disable emission control devices or cause the emissions to exceed the standards. We know, from anecdotal reports and from some data collected from in-use motorcycles, that a portion of the motorcycle riding population has removed, replaced, or modified the original equipment on their motorcycles. This customization can include changes that can be detrimental (or, in some cases, possibly beneficial) to the motorcycle's emission levels. The NPRM sought comments and data that could better help us understand the nature of the issue, such that our final rule decisions could be made with the best understanding possible of current consumer practices. We did not propose to revise the existing tampering restrictions or to prohibit many of the things that motorcycle owners are now doing legally.

The new emission standards that we are adopting do not change this ''tampering'' prohibition, which has been in the Clean Air Act for more than 20 years. Part manufacturers are still free to make parts, dealers are free to sell and install parts, and owners are free to customize their motorcycles in any way, as long as they do not disable emission controls or cause the motorcycle to exceed the emission standards. Owners are also free to perform routine maintenance on their motorcycles to restore or maintain the motorcycle engine and related components in their original condition and configuration.

[7] The IDC, although not a transient cycle like the FTP, appears to be the only cycle currently in use that is based on actual measurements of motorcycles in use. Although the FTP is based on real-world driving of passenger cars and not motorcycles, it is reasonable to argue that the two types of vehicles are driven similarly.

[8] A motorcycle is a ''motor vehicle'' as defined under section 216 of the Clean Air Act, which states that ''[t]he term ''motor vehicle'' means any self-propelled vehicle designed for transporting persons or property on a street or highway.''

[9] *See* Mobile Source Enforcement Memorandum No. 1A, Interim Tampering Enforcement Policy, Office of Enforcement and General Council, June 25, 1974 (Docket A–2000–01; document IV–A–27). (*http://www.epa.gov/oeca/ore/aed/comp/hcomp.html*)

G. Future Actions

1. 2006 Technology Progress Review

The California ARB has indicated plans for a technology progress review, to take place in 2006, to evaluate manufacturers' progress in meeting the Tier 2 standards. Specifically, California ARB documents state that the purpose of the 2006 review would be to "* * * evaluate the success, cost, and consumer acceptance of engine modifications employed to meet Tier-1 * * *" and to " * * * review and discuss manufacturers' efforts to meet Tier-2 * * * "[10] As part of that review, the California ARB has suggested they may reevaluate whether the Tier 2 standard should be applied to small-volume manufacturers in the future.[11] We plan to participate in that review and work with the California ARB and others. We would intend to make any appropriate adjustments to the Tier 2 standards or implementation schedule if our review leads to the conclusion that changes are warranted.

In the context of the 2006 progress review we will evaluate and possibly propose regulatory revisions with regard to a number of issues that are discussed in this final rule. In particular, we intend to pursue development of a program that would apply emission standards to motorcycle engine manufacturers. Small-volume manufacturers may be the primary consumers of motorcycle engines built by others, since they generally do not have the physical or technical resources to develop, test, and manufacture their own engines. Although these small manufacturers are provided with a substantial level of flexibility in the current program, some additional flexibility may be warranted in the future, especially with regard to very small manufacturers producing fewer than 100 motorcycles per year. In evaluating any potential future actions, we intend to carefully consider the potential impacts on the small segment of the motorcycle industry represented by the smallest manufacturers.

It is our view that a program could be structured such that small volume motorcycle manufacturers could purchase certified engines directly from an engine manufacturer. We believe that such a program could be structured such that it is both fair to the engine manufacturers and beneficial to small volume motorcycle manufacturers. Under one possible approach, small volume motorcycle manufacturers could choose to use certified engines and to accept the calibration or configuration of a certified engine that they purchase for use in their motorcycles. Small volume manufacturers would not be required to use certified engines, but if they chose either to use uncertified engines or to change the calibration or configuration of the certified engines they use, then they would have to independently certify their motorcycles to the applicable emission standards.

In the context of the 2006 review we may also evaluate additional evaporative emission requirements, more stringent CO standards, an $HC+NO_X$ standard for Class I and II motorcycles, and revisions to the useful life definitions. Further action on these or any other items would depend on an evaluation of appropriate criteria, including but not necessarily limited to costs and feasibility. These items, including the engine program, could be proposed with the world harmonized motorcycle test cycle discussed below if the timing is appropriate, or in an independent action if the timing is not appropriate.

2. Globally Harmonized Motorcycle Test Cycle

In the NPRM we noted the effort underway under the auspices of the United Nations/Economic Commission for Europe (UN/ECE) to develop a global harmonized world motorcycle test cycle (WMTC), and requested comment on adopting such a test cycle in the future. The United States is also a participating member of UN/ECE. The objective of the WMTC project is to develop a scientifically supported test cycle that accurately represents the in-use driving characteristics of highway motorcycles, and that could ultimately be integrated into the requirements of nations around the world. The advantages of such a test cycle are numerous. First, the industry could have a single test cycle to meet emission standards in many countries (the process recognizes that nations will have differing emission standards due the varying air-pollution concerns). Second, the test cycle could potentially be better than the existing FTP in that it is expected to better represent how a wide range of riders drive their motorcycles, which could ultimately result in further emission reductions.

At this time we are not adopting any modifications to the highway motorcycle test cycle. We continue to be involved in the WMTC process and are hopeful that a test cycle meeting the stated objectives can be agreed on by the international participants, including the United States. Although a draft test cycle has been developed, some issues remain unresolved and it will likely be some time before a new cycle can be issued as a global technical regulation under the process established by a 1998 international agreement. Under that process, if a test cycle is brought to a vote and the United States votes in the affirmative, we will then be committed to initiating a rulemaking that may lead to an action to adopt the new test cycle. If the timing is appropriate this action could include proposals relating to the 2006 technology review discussed above.

II. Why Is EPA Taking This Action?

This final rule establishes revised standards for highway motorcycles. The current emission standards for these vehicles were set in 1978 and are based on 1970-era emission control technology. We are adopting new HC and NO_X standards that reflect the application of more advanced emission control technology. These standards are harmonized with California's highway motorcycle emission standards, but on a delayed schedule relative to implementation in California and with some additional provisions that provide additional flexibility in meeting the standards. We are also finalizing new federal emission standards for highway motorcycles under 50cc that are currently uncontrolled. Finally, we are adopting standards to control permeation evaporative emissions from the fuel tanks and fuel hoses on highway motorcycles.

As described below and in the Final Regulatory Support Document, these standards will help address the contribution of these engines to air pollution that causes public health and welfare problems. HC and NO_X emissions from highway motorcycles contribute to ambient concentrations of ozone. They also add to fine particle levels and contribute to visibility impairment. The standards we are adopting, which are expected to result in about a 60 percent reduction in HC and NO_X emissions in 2020, will help reduce these harmful emissions. They will also reduce personal exposure for people who operate, who work with, or are otherwise in close proximity to these vehicles. This is important because, in addition to the health effects associated with exposure to ozone and fine PM, many types of hydrocarbons are also air toxics.

Based on the most recent data available for this rule (1999–2001),

[10] State of California Air Resources Board, October 23, 1998 "Proposed Amendments to the California On-Road Motorcycle Regulation" Staff Report: Initial Statement of Reasons (Docket A–2000–01; document II–D–12).

[11] State of California Air Resources Board, "Final Statement of Reasons for Rulemaking: Proposed Amendments to the California On-Road Motorcycle Regulation."

ozone and PM air quality problems are widespread in the United States. There are about 111 million people living in counties with monitored concentrations exceeding the 8-hour ozone NAAQS, and over 65 million people living in counties with monitored $PM_{2.5}$ levels exceeding the $PM_{2.5}$ NAAQS. This emission control program is another component of the effort by federal, state and local governments to reduce the health related impacts of air pollution and to reach attainment of the National Ambient Air Quality Standard (NAAQS) for ozone and particulate matter as well as to improve other environmental conditions such as atmospheric visibility.

A. What Are The Health and Welfare Effects of Highway Motorcycle Emissions?

Highway motorcycles generate emissions that contribute to ozone formation and ambient levels of PM and air toxics. This section summarizes the general health effects of these pollutants. National inventory estimates are set out in Section II.B, and estimates of the expected impact of these programs are described in Section VII. Interested readers are encouraged to refer to the Regulatory Support Document for this rule for more in-depth discussions.

1. Health and Welfare Effects Associated With Ground Level Ozone and Its Precursors

a. Health and Welfare Effects

Highway motorcycles contribute to ambient ozone levels through their HC and NO_X emissions. Volatile organic compounds (VOC) and NO_X are precursors in the photochemical reaction which forms tropospheric ozone. Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of VOCs and NO_X in the presence of heat and sunlight. Hydrocarbons are a set of compounds that are very similar to, but slightly different from, VOCs, and to reduce mobile-source VOC levels we set maximum limits for HC emissions.[12]

Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest.[13 14] Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. In addition, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are of particular concern with respect to ozone exposures include children and adults who are active outdoors. Others particularly susceptible to ozone effects are people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone, and children. Beyond its human health effects, ozone has been shown to injure plants, which has the effect of reducing crop yields and reducing productivity in forest ecosystems.[15 16]

The 8-hour ozone standard, established by EPA in 1997, is based on well-documented science demonstrating that more people are experiencing adverse health effects at lower levels of exertion, over longer periods, and at lower ozone concentrations than addressed by the one-hour ozone standard.[17] The 8-hour standard addresses ozone exposures of concern for the general population and populations most at risk, including children active outdoors, outdoor workers, and individuals with pre-existing respiratory disease, such as asthma.

There has been new research that suggests additional serious health effects beyond those that were known when the 8-hour ozone health standard was set. Since 1997, over 1,700 new health and welfare studies relating to ozone have been published in peer-reviewed journals.[18] Many of these studies investigate the impact of ozone exposure on such health effects as changes in lung structure and biochemistry, inflammation of the lungs, exacerbation and causation of asthma, respiratory illness-related school absence, hospital and emergency room visits for asthma and other respiratory causes, and premature mortality. EPA is currently in the process of evaluating these and other studies as part of the ongoing review of the air quality criteria and NAAQS for ozone. A revised Air Quality Criteria Document for Ozone and Other Photochemical Oxidants will be prepared in consultation with EPA's Clean Air Science Advisory Committee (CASAC). Key new health information falls into four general areas: development of new-onset asthma, hospital admissions for young children, school absence rate, and premature mortality. In all, the new studies that have become available since the 8-hour ozone standard was adopted in 1997 continue to demonstrate the harmful effects of ozone on public health and the need for areas with high ozone levels to attain and maintain the NAAQS.

In addition to these health effects, HC emissions contain several air toxics that can also have adverse impacts on human health. The health effects of air toxics are briefly described below and discussed in more detail in the final Regulatory Support Document for this rule.

Ozone and its precursors also have welfare effects. Ozone has been shown to injure plants, which has the effect of reducing crop yields, reducing productivity in forests and other ecosystems. Ozone also attacks certain materials such as rubbers and plastics. Other environmental effects, such as acid deposition and eutrophication, are related to ozone precursors, such as NO_X. Acid deposition, or acid rain as it is commonly known, occurs when SO2 and NO_X react in the atmosphere with water, oxygen, and oxidants to form various acidic compounds that later fall to earth in the form of precipitation or dry deposition of acidic particles.[19] Acid rain contributes to damage of trees at high elevations and in extreme cases

[12] For more information about VOC and HC, *see* U.S. EPA (1997), Conversion Factors for Hydrocarbon Emission Components, Report No. NR–002. A copy of this document is available in Docket A–2000–02, Document IV–A–26.

[13] U.S. EPA (1996). Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF. Docket No. A–99–06. Document Nos. II-A–15 to 17. More information on health effects of ozone is also available at *http:/www.epa.gov/ttn/naaqs/standards/ozone/s.03.index.html.*

[14] U.S. EPA. (1996). Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–96–007. Docket No. A–99–06. Document No. II–A–22.

[15] U.S. EPA (1996). Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF. Docket No. A–99–06. Document Nos. II–A–15 to 17. More information on health effects of ozone is also available at *http:/www.epa.gov/ttn/naaqs/standards/ozone/s.03.index.html.*

[16] U.S. EPA. (1996). Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–96–007. Docket No. A–99–06. Document No. II–A–22.

[17] See, *e.g.*, 62 FR 38861–62, July 18, 1997.

[18] New Ozone Health and Environmental Effects References, Published Since Completion of the Previous Ozone AQCD, National Center for Environmental Assessment, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (7/2002) Docket No. A–2001–28, Document II–A–79.

[19] Much of the information in this subsection was excerpted from the EPA document, Human Health Benefits from Sulfate Reduction, written under Title IV of the 1990 Clean Air Act Amendments, U.S. EPA, Office of Air and Radiation, Acid Rain Division, Washington, DC 20460, November 1995. Available in Docket A–2000–01, Document No. II–A–32.

may cause lakes and streams to become so acidic that they cannot support aquatic life. In addition, acid deposition accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. To reduce damage to automotive paint caused by acid rain and acidic dry deposition, some manufacturers use acid-resistant paints, at an average cost of $5 per vehicle—a total of $80–85 million per year when applied to all new cars and trucks sold in the U.S.

Eutrophication is the accelerated production of organic matter, particularly algae, in a water body. This increased growth can cause numerous adverse ecological effects and economic impacts, including nuisance algal blooms, dieback of underwater plants due to reduced light penetration, and toxic plankton blooms. Algal and plankton blooms can also reduce the level of dissolved oxygen, which can also adversely affect fish and shellfish populations. Deposition of nitrogen from on-highway motorcycle engines contributes to elevated nitrogen levels in waterbodies.

b. Current and Projected Ozone Levels

Ground level ozone today remains a pervasive pollution problem in the United States. In 2003, 114 million people (2000 census) lived in 53 areas designated nonattainment under the 1-hour ozone NAAQS.[20] This sharp decline from the 101 nonattainment areas originally identified under the Clean Air Act Amendments of 1990 demonstrates the effectiveness of the last decade's worth of emission-control programs. However, elevated ozone concentrations remain a serious public health concern throughout the nation. Unhealthy ozone concentrations exceeding the level of the 8-hour standard (*i.e.*, not requisite to protect the public health with an adequate margin of safety) occur over wide geographic areas, including most of the nation's major population centers. These monitored areas include much of the eastern half of the U.S. and large areas of California.

According to data from 1999 to 2001, there are 291 counties where 111 million people live that measured values that violate the 8-hour ozone NAAQS.[21] An additional 37 million people live in 155 counties that have air quality measurements within 10 percent of the level of the standard. These areas, though currently not violating the standard, will also benefit from the additional emission reductions from this rule.

Based on our air quality modeling performed for our recent Notice of Proposed Rulemaking proposing more stringent emission standards for nonroad diesel engines and the diesel fuel used in those engines (68 FR 28328, May 23, 2003), we anticipate that without emission reductions beyond those already required under promulgated regulations and approved SIPs, ozone nonattainment will likely persist into the future. With reductions from programs already in place, the number of counties violating the ozone 8-hour standard is expected to decrease in 2020 to 30 counties where 43 million people are projected to live. Thereafter, exposure to unhealthy levels of ozone is expected to begin to increase again. In 2030 the number of counties violating the ozone 8-hour NAAQS is projected to increase to 32 counties where 47 million people are projected to live. In addition, in 2030, 82 counties where 44 million people are projected to live will be within 10 percent of violating the ozone 8-hour NAAQS.

EPA is still developing the implementation process for bringing the nation's air into attainment with the ozone 8-hour NAAQS (*see* proposal, 68 FR 32702, June 2, 2003). The Act contains two sets of requirements for State plans implementing the national ozone air quality standards in nonattainment areas. Under subpart 1 of Title I, Part D, a State must demonstrate that nonattainment areas will attain the ozone 8-hour standard as expeditiously as practicable but no later than five years from the date that the area was designated nonattainment. However, based on the severity of the air quality problem and the availability and feasibility of control measures, the Administrator may extend the attainment date ''for a period of no greater than 10 years from the date of designation as nonattainment.'' Based on these provisions, we expect that most or all areas covered under subpart 1 will attain the ozone standard in the 2007 to 2014 time period. For areas covered under subpart 2, the maximum attainment dates provided under the Act range from 3 to 20 years after designation, depending on an area's classification. We anticipate that areas covered by subpart 2 will attain in the 2007 to 2024 time period.[22]

Since the HC and NO_X emission reductions expected from this final rule will go into effect during the period when areas will need to attain the 8-hour ozone NAAQS, the projected reductions in highway motorcycle emissions are expected to assist States in their effort to meet and maintain that standard.

2. Health and Welfare Effects Associated With Particulate Matter

a. Health and Welfare Effects

Highway motorcycles contribute to ambient particulate matter in two ways. First, they contribute through direct emissions of particulate matter in the exhaust. Second, they contribute through the indirect formation of PM (namely ammonium nitrate and organic carbonaceous $PM_{2.5}$) in the atmosphere through their NO_X and organic carbon emissions, especially HC. Carbonaceous $PM_{2.5}$ is a major portion of ambient $PM_{2.5}$, especially in populous urban areas. The relative contribution of various chemical components to $PM_{2.5}$ varies by region of the country.

Particulate matter represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. All particles equal to and less than 10 microns are called PM_{10} Fine particles can be generally defined as those particles with an aerodynamic diameter of 2.5 microns or less (also known as $PM_{2.5}$), and coarse fraction particles are those particles with an aerodynamic diameter greater than 2.5 microns, but equal to or less than a nominal 10 microns. Fine particles can remain in the atmosphere for days to weeks and travel through the atmosphere hundreds to thousands of kilometers, while coarse particles deposit to the earth within minutes to

[20] ''One-hour Ozone and PM 10 Nonattainment Status and Air Quality Data Update,'' Memorandum from Patricia Koman to Docket A–2000–2, August 11, 2003, Docket A–2000–02, Document IV–B–07. See also National Air Quality and Emissions Trends Report, 1999, EPA, 2001, at Table A–19. This document is available at *http://www.epa.gov/oar/aqtrnd99/*. The data from the Trends report are the most recent EPA air quality data that have been quality assured. A copy of this table can also be found in Docket No. A–2000–01, Document No. II–A–64.

[21] Additional counties may have levels above the NAAQS but do not currently have monitors. See U.S. EPA OAQPS Air Quality Data Analysis 1999–2001 Technical Support Document for Regulatory Actions (Docket A–2001–28; No. II–A–196).

[22] EPA has proposed that States submit SIPs that address how areas will attain the 8-hour ozone standard within 3 years after nonattainment designation for moderate and above areas classified under subpart 2 and for some areas classified under subpart 1. EPA is also proposing that marginal areas and some areas designated under subpart 1 (*i.e.*, those with early attainment dates) will not be required to submit attainment demonstrations for the 8-hour ozone standard. We therefore anticipate that States will submit their attainment demonstration SIPs by April 2007.

hours and within tens of kilometers from the emission source.

Scientific studies show ambient PM (which is attributable to a number of sources, including highway motorcycles) is associated with a series of adverse health effects. These health effects are discussed in detail in the EPA Criteria Document for PM as well as the draft updates of this document released in the past year. [23] [24]

As described in these documents, health effects associated ambient PM have been indicated by epidemiologic studies showing associations between short-term exposure and increased hospital admissions for ischemic heart disease, heart failure, respiratory disease, including chronic obstructive pulmonary disease (COPD) and pneumonia. Short-term elevations in ambient PM have also been associated with increased cough, lower respiratory symptoms, and decrements in lung function. Short-term variations in ambient PM have also been associated with increases in total and cardiorespiratory daily mortality. Studies examining populations exposed to different levels of air pollution over a number of years, including the Harvard Six Cities Study and the American Cancer Society Study suggest an association between exposure to ambient $PM_{2.5}$ and premature mortality. [25] [26] Two studies further analyzing the Harvard Six Cities Study's air quality data have also established a specific influence of mobile source-related $PM_{2.5}$ on daily mortality [27] and a concentration-response function for mobile source-associated $PM_{2.5}$ and daily mortality.[28] Another recent study in 14 U.S. cities examining the effect of PM_{10} on daily hospital admissions for cardiovascular disease found that the effect of PM_{10} was significantly greater in areas with a larger proportion of PM_{10} coming from motor vehicles, indicating that PM_{10} from these sources may have a greater effect on the toxicity of ambient PM_{10} when compared with other sources.[29] Additional studies have associated changes in heart rate and/or heart rhythm in addition to changes in blood characteristics with exposure to ambient PM. [30] [31] For additional information on health effects, see the Regulatory Support Document for this rule.

The health effects of PM_{10} are similar to those of $PM_{2.5}$, since PM_{10} includes all of $PM_{2.5}$ plus the coarse fraction from 2.5 to 10 micrometers in size. EPA also evaluates the health effects of PM between 2.5 and 10 micrometers in the draft revised Criteria Document. As discussed in the Diesel HAD and other studies, most diesel PM is smaller than 2.5 micrometers.[32] Both fine and coarse fraction particles can enter and deposit in the respiratory system.

PM also causes adverse impacts to the environment. Fine PM is the major cause of reduced visibility in parts of the United States, including many of our national parks. Other environmental impacts occur when particles deposit onto soils, plants, water or materials. For example, particles containing nitrogen and sulphur that deposit on to land or water bodies may change the nutrient balance and acidity of those environments. Finally, PM causes soiling and erosion damage to materials, including culturally important objects such as carved monuments and statues. It promotes and accelerates the corrosion of metals, degrades paints, and deteriorates building materials such as concrete and limestone.

b. Current and Projected Levels

There are NAAQS for both PM_{10} and $PM_{2.5}$. Violations of the annual $PM_{2.5}$ standard are much more widespread than are violations of the PM_{10} standards. Each of these are discussed below.

i. PM_{10} Levels. The current NAAQS for PM_{10} were established in 1987. The primary (health-based) and secondary (public welfare based) standards for PM_{10} include both short- and long-term NAAQS. The short-term (24 hour) standard of 150 ug/m^3 is not to be exceeded more than once per year on average over three years. The long-term standard specifies an expected annual arithmetic mean not to exceed 50 ug/m^3 averaged over three years.

Currently, 29 million people live in PM_{10} nonattainment areas. There are currently 56 moderate PM_{10} nonattainment areas with a total population of 6.6 million.[33] The attainment date for the initial moderate PM_{10} nonattainment areas, designated by law on November 15, 1990, was December 31, 1994. Several additional PM_{10} nonattainment areas were designated on January 21, 1994, and the attainment date for these areas was December 31, 2000. There are an additional 8 serious PM_{10} nonattainment areas with a total affected population of 22.7 million. According to the Act, serious PM_{10} nonattainment areas must attain the standards no later than 10 years after designation. The initial serious PM_{10} nonattainment areas were designated January 18, 1994 and had an attainment date set by the Act of December 31, 2001. The Act provides that EPA may grant extensions of the serious area attainment dates of up to 5 years, provided that the area requesting the extension meets the requirements of Section 188(e) of the Act. Four serious PM_{10} nonattainment areas (Phoenix, Arizona; Coachella Valley, South Coast (Los Angeles), and Owens Valley, California) have received extensions of the December 31, 2001 attainment date and thus have new attainment dates of December 31, 2006.[34]

While all of these areas are expected to be in attainment before any significant emission reductions from this rule are expected to occur, these reductions will help these areas in maintaining the standards.

ii. $PM_{2.5}$ Levels. The NAAQS for $PM_{2.5}$ were established by EPA in 1997 (62 Fed. Reg., 38651, July 18, 1997). The short term (24-hour) standard is set at a level of 65 μg/m^3 based on the 98th percentile concentration averaged over three years. (This air quality statistic

[23] U.S. EPA (1996). Air Quality Criteria for Particulate Matter—Volumes I, II, and III, EPA, Office of Research and Development. Report No. EPA/600/P–95/001a–cF. This material is available in Docket A–99–06, Documents IV–A–30 to 32. It is also available electronically at *http://www.epa.gov/ttn/oarpg/ticd.html.*

[24] U.S. EPA (2002). Air Quality Criteria for Particulate Matter—Volumes I and II (Third External Review Draft) This material is available in Docket A–2001–28, Documents II–A–98 and II–A–71. It is also available electronically at *http://cfpub.epa.gov/ncea/cfm/partmatt.cfm.*

[25] Dockery, DW; Pope, CA, III; Xu, X; *et al.* (1993). An association between air pollution and mortality in six U.S. cities. N Engl J Med 329:1753–1759.

[26] Pope, CA, III; Thun, MJ; Namboordiri, MM; *et al.* (1995). Particulate air pollution as a predictor of mortality in a prospective study of U.S. adults. Am J Respir Crit Care Med 151:669–674.

[27] Laden F; Neas LM; Dockery DW; *et al.* (2000). Association of fine particulate matter from different sources with daily mortality in six U.S. cities. Environ Health Perspect 108(10):941–947.

[28] Schwartz J; Laden F; Zanobetti A. (2002). The concentration-response relation between PM(2.5) and daily deaths. Environ Health Perspect 110(10): 1025–1029.

[29] Janssen NA; Schwartz J; Zanobetti A.; *et al.* (2002). Air conditioning and source-specific particles as modifiers of the effect of PM_{10} on hospital admissions for heart and lung disease. Environ Health Perspect 110(1):43–49.

[30] Pope CA III, Verrier RL, Lovett EG; *et al.* (1999). Heart rate variability associated with particulate air pollution. Am Heart J 138(5 Pt 1):890–899.

[31] Magari SR, Hauser R, Schwartz J; *et al.* (2001). Association of heart rate variability with occupational and environmental exposure to particulate air pollution. Circulation 104(9):986–991.

[32] U.S. EPA (1985). Size specific total particulate emission factor for mobile sources. EPA 460/3–85–005. Office of Mobile Sources, Ann Arbor, MI. A copy of this document is available in Docket A–2001–28, Document II–A–35.

[33] ''One-hour Ozone and PM_{10} Nonattainment Status and Air Quality Data Update,'' Memorandum from Patricia Koman to Docket A–2000–2, August 11, 2003, Docket A–2000–02, Document IV–B–07.

[34] EPA has also proposed to grant Las Vegas, Nevada, an extension until December 31, 2006.

compared to the standard is referred to as the ''design value.'') The long-term standard specifies an expected annual arithmetic mean not to exceed 15 ug/m^3 averaged over three years.

High ambient levels of $PM_{2.5}$ are widespread throughout the country. Current $PM_{2.5}$ monitored values for 1999–2001, which cover counties having about 75 percent of the country's population, indicate that at least 65 million people in 129 counties live in areas where annual design values of ambient fine PM violate the $PM_{2.5}$ NAAQS. There are an additional 9 million people in 20 counties where levels above the NAAQS are being measured, although there are insufficient data at this time to calculate a design value in accordance with the standard and thus determine whether these areas are violating the $PM_{2.5}$ NAAQS. In total, this represents 37 percent of the counties and 64 percent of the population in the areas with monitors with levels above the NAAQS. Furthermore, an additional 11 million people live in 41 counties that have air quality measurements within 10 percent of the level of the standard, with complete data. These areas, although not currently violating the standard, will also benefit from the additional HC and NO_X reductions from these motorcycle emission standards.

The air quality modeling performed for our recent Notice of Proposed Rulemaking proposing more stringent emission standards for nonroad diesel engines and the diesel fuel used in those engines (68 FR 28328, May 23, 2003) suggests that similar conditions are likely to continue to exist in the future in the absence of additional measures to reduce these emissions. For example, in 2020 based on emission controls currently adopted, we project that 66 million people will live in 79 counties with average $PM_{2.5}$ levels above 15 ug/m^3. In 2030, the number of people projected to live in areas exceeding the $PM_{2.5}$ standard is expected to increase to 85 million in 107 counties. An additional 24 million people are projected to live in counties within 10 percent of the standard in 2020, which will decrease to 17 million people in 2030.

By reducing HC and NO_X emissions from highway motorcycles, the standards we are finalizing will assist States as they implement local controls to reduce $PM_{2.5}$ levels and help ensure long term maintenance with the NAAQS.

3. Health Effects Associated With Air Toxics

In addition to the human health and welfare impacts described above, emissions from the engines covered by this rule also contain several Mobile Source Air Toxics, including benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein.[35] The health effects of these air toxics are described in more detail in the Regulatory Support Document for this rule. Additional information can also be found in the Technical Support Document for our final Mobile Source Air Toxics rule.[36]

The hydrocarbon controls contained in this rule are expected to reduce exposure to air toxics and therefore may help reduce the impact of these engines on cancer and noncancer health effects.

B. What Is the Emission Inventory Contribution From Highway Motorcycles?

The highway motorcycles subject to the standards finalized today contribute to the national inventories of pollutants that are associated with the health and public welfare effects described in Section II.A. Emission estimates for highway motorcycles were developed using information on the certification levels of current motorcycles and information on motorcycle use provided by the motorcycle industry. A more detailed description of the highway motorcycle modeling and our estimation methodology can be found in the Chapter 6 of the Draft Regulatory Support Document.

In order to determine the relative contribution of highway motorcycles to overall emissions, we estimated the emissions from all sources. Overall emission inventory estimates for the years 1996 and 2020 are summarized in Tables II.B–1 through II.B–3 for VOC, NO_X, and PM emissions, respectively.[37] The estimates shown for highway motorcycles are baseline estimates and do not account for the impact of the standards adopted today. These tables show the relative contributions of the different mobile-source categories to the overall national mobile-source inventory. Of the total emissions from mobile sources, highway motorcycles contribute about 0.6 percent, 0.1 percent, and less than 0.1 percent of VOC, NO_X, and PM emissions, respectively, in the year 1996. The projections for 2020 for the highway motorcycles subject to the standards adopted today show that emissions from these categories are expected to increase over time if left uncontrolled. Projections indicate that motorcycles are expected to contribute 2.3 percent, 0.3 percent, and 0.1 percent of mobile source VOC, NO_X, and PM emissions in the year 2020 if left uncontrolled. Population growth and the effects of other regulatory control programs are factored into these projections.

TABLE II.B–1.—ANNUAL VOC BASELINE EMISSION LEVELS FOR MOBILE

Category	1996			2020		
	VOC short tons	% of mobile source	% of total	VOC short tons	% of mobile source	% of total
Highway Motorcycles	47,368	0.6	0.3	86,520	2.2	0.6
Highway Light-duty	4,635,410	55.8	25.0	1,755,119	45.4	13.0
Highway Heavy-duty	608,607	7.3	3.3	226,641	5.9	1.7
Land-based Nonroad Diesel	221,403	2.7	1.2	96,855	2.5	0.7
Recreational Marine Diesel ≤50 hp	128	0.0	0.0	108	0.0	0.0
Recreational Marine Diesel >50 hp	1,199	0.0	0.0	1,531	0.0	0.0
Recreational Marine SI	804,488	9.7	4.3	380,891	9.9	2.8

[35] EPA recently finalized a list of 21 Mobile Source Air Toxics, including VOCs, metals, and diesel particulate matter and diesel exhaust organic gases (collectively DPM+DEOG). 66 FR 17230, March 29, 2001. This material is available in Docket No. A–2000–01, Documents Nos. II–A–42 and II–A–30.

[36] See our Mobile Source Air Toxics final rulemaking, 66 FR 17230, March 29, 2001, and the Technical Support Document for that rulemaking. Copies of these documents are available in Docket No. A–2000–01, Documents Nos. II–A–42 and II–A–30.

[37] The inventories cited in Tables II.B–1 through II.B–3 were developed for the Nonroad Diesel Rulemaking. See 68 FR 28328, May 23, 2003. The inventories for recreational marine engines greater than 50 horsepower, nonroad spark-ignition engines greater than 25 horsepower, and recreation spark-ignition engines have been updated using the latest version of EPA's NONROAD model to account for the new standards adopted by EPA in late 2002. See 67 FR 68242, November 8, 2002.

TABLE II.B–1.—ANNUAL VOC BASELINE EMISSION LEVELS FOR MOBILE CONTINUED

Category	1996			2020		
	VOC short tons	% of mobile source	% of total	VOC short tons	% of mobile source	% of total
Nonroad SI ≤25 hp	1,330,229	16.0	7.2	650,158	16.8	4.8
Nonroad SI >25hp	85,701	1.0	0.5	12,265	0.3	0.1
Recreational SI	308,285	3.7	1.7	339,098	8.8	2.5
Commercial Marine Diesel	31,545	0.4	0.2	37,290	1.0	0.3
Commercial Marine SI	960	0.0	0.0	998	0.0	0.0
Locomotive	48,381	0.6	0.3	36,546	0.9	0.3
Aircraft	176,394	2.1	1.0	239,654	6.2	1.8
Total Nonroad	3,008,713	36	16	1,795,394	46	13
Total Highway	5,291,385	64	29	2,068,280	54	15
Total Mobile Sources	8,300,098	100	45	3,863,674	100	29
Stationary Point and Area Sources	10,249,136	.....	55	9,648,376	.....	71
Total Man-Made Sources	18,549,234	.....	.....	13,512,050	.....	.....
Mobile Source Percent of Total	45	.....	.....	29	.....	.....

Notes:
[a] These are 48-state inventories. They do not include Alaska and Hawaii.
[b] The mobile source estimates include both exhaust and evaporative emissions.
[c] Hydrocarbons (HC) are a set of compounds that are very similar to, but slightly different from, VOCs, and to reduce mobile source VOC levels we set maximum limits for HC emissions.

TABLE II.B–2.—ANNUAL NO_X BASELINE EMISSION LEVELS FOR MOBILE AND OTHER SOURCE CATEGORIES [a]

Category	1996			2020		
	NO_X short tons	% of mobile source	% of total	NO_X short tons	% of mobile source	% of total
Highway Motorcycles	7,284	0.1	0.0	14,059	0.3	0.1
Highway Light-duty	4,427,634	33.8	18.0	1,264,342	25.0	8.4
Highway Heavy-duty	4,626,004	35.3	18.8	696,911	13.8	4.6
Land-based Nonroad Diesel	1,583,664	12.1	6.4	1,140,727	22.6	7.6
Recreational Marine Diesel ≤50 hp	523	0.0	0.0	682	0.0	0.0
Recreational Marine Diesel >50 hp	33,468	0.3	0.1	47,675	0.9	0.3
Recreational Marine SI	33,304	0.3	0.1	61,749	1.2	0.4
Nonroad SI ≤25 hp	63,584	0.5	0.3	100,119	2.0	0.7
Nonroad SI >25hp	273,099	2.1	1.1	43,322	0.9	0.3
Recreational SI	4,297	0.0	0.0	17,129	0.3	0.1
Commercial Marine Diesel	959,704	7.3	3.9	819,201	16.2	5.4
Commercial Marine SI	6,428	0.0	0.0	4,551	0.1	0.0
Locomotive	921,556	7.0	3.8	612,722	12.1	4.1
Aircraft	165,018	1.3	0.7	228,851	4.5	1.5
Total Nonroad	4,044,645	31	16	3,076,728	61	20
Total Highway	9,060,922	69	37	1,975,312	39	13
Total Mobile Sources	13,105,567	100	53	5,052,040	100	33
Stationary Point and Area Sources	11,449,752	.....	47	10,050,213	.....	67
Total Man-Made Sources	24,555,319	.....	.....	15,102,253	.....	.....
Mobile Source Percent of Total	53	.....	.....	33	.....	.....

Notes:
[a] These are 48-state inventories. They do not include Alaska and Hawaii.

TABLE II.B–3.—ANNUAL DIRECT PM–2.5 BASELINE EMISSION LEVELS FOR MOBILE AND OTHER SOURCE CATEGORIES [a,b]

Category	1996			2020		
	PM–2.5 short tons	% of mobile source	% of total	PM–2.5 short tons	% of mobile source	% of total
Highway Motorcycles	184	0.0	0.0	434	0.1	0.0
Highway Light-duty	57,534	10.2	2.6	47,136	13.2	2.3
Highway Heavy-duty	172,965	30.7	7.8	24,806	7.0	1.2
Land-based Nonroad Diesel	176,510	31.3	8.0	124,334	34.9	6.0
Recreational Marine Diesel ≤50 hp	62	0.0	0.0	70	0.0	0.0
Recreational Marine Diesel >50 hp	815	0.1	0.0	1,162	0.3	0.1

TABLE II.B–3.—ANNUAL DIRECT PM–2.5 BASELINE EMISSION LEVELS FOR MOBILE AND OTHER SOURCE CATEGORIES [a,b]—Continued

Category	1996			2020		
	PM–2.5 short tons	% of mobile source	% of total	PM–2.5 short tons	% of mobile source	% of total
Recreational Marine SI	35,147	6.2	1.6	26,110	7.3	1.3
Nonroad SI ≤25 hp	24,130	4.3	1.1	29,998	8.4	1.5
Nonroad SI >25hp	1,374	0.2	0.1	2,302	0.6	0.1
Recreational SI	7,968	1.4	0.4	9,963	2.8	0.5
Commercial Marine Diesel	36,367	6.5	1.6	41,365	11.6	2.0
Commercial Marine SI	1,370	0.2	0.1	1,326	0.4	0.1
Locomotive	20,937	3.7	0.9	16,727	4.7	0.8
Aircraft	27,891	5.0	1.3	30,024	8.4	1.5
Total Nonroad	332,571	59	15	283,381	80	14
Total Highway	230,683	41	10	72,376	20	4
Total Mobile Sources	563,254	100	25	355,757	100	17
Stationary Point and Area Sources	1,653,392		75	1,712,004		83
Total Man-Made Sources	2,216,646			2,067,761		
Mobile Source Percent of Total	25			17		

Notes:
[a] These are 48-state inventories. They do not include Alaska and Hawaii.
[b] Excludes natural and miscellaneous sources.

III. Which Vehicles and Engines Are Covered?

We are adopting new standards for new highway motorcycles, including those with engines with displacements of less than 50cc. These requirements apply to manufacturers of motorcycles. Companies that produce and sell motorcycle engines are not directly covered, unless such a company also manufactures motorcycles. Every company that manufactures motorcycles for introduction into commerce in the U.S., whether or not they also manufacture motorcycle engines, is covered by EPA regulations. Engine manufacturers will be indirectly required to design and build complying engines, because their customers (*e.g.*, motorcycle manufacturers that purchase their engines) will require engines that comply with emission standards.

In order to be defined as a highway motorcycle—and therefore covered by the new standards—a motorcycle must first be defined as a motor vehicle under the Clean Air Act and EPA regulations. EPA regulations then specify the characteristics that cause a motor vehicle to be defined as a highway motorcycle. EPA regulations also divide highway motorcycles into three ''classes,'' which are used to determine the specific compliance requirements applicable to a given motorcycle. This section explains the definitions and the motorcycle classes defined by EPA.

A. What Is a Highway Motorcycle?

To reach the conclusion that a two- or three-wheeled vehicle is a highway motorcycle (a motorcycle legal for use on public roads), the vehicle must first be defined as a ''motor vehicle'' under the Clean Air Act.

The Clean Air Act specifies that the term ''motor vehicle,'' as used in the Act, applies only to vehicles ''designed for transporting persons or property on a street or highway'' (CAA section 216). In addition, EPA has promulgated regulations, in 40 CFR 85.1703, that elaborate on the Act's definition of motor vehicles and set forth three criteria, which, if any one is met, would cause a vehicle to not be considered a motor vehicle under the regulations, and therefore not subject to requirements applicable to motor vehicles. These criteria are:

(1) The vehicle cannot exceed a maximum speed of 25 miles per hour over a level paved surface; or

(2) The vehicle lacks features customarily associated with safe and practical street or highway use, including such things as a reverse gear (except motorcycles), a differential, or safety features required by state and/or federal law; or

(3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely, including tracked road contact means, an inordinate size, or features ordinarily associated with military combat or tactical vehicles such as armor and/or weaponry.

A vehicle that cannot be considered a motor vehicle under the statutory and regulatory definitions described above is generally considered under the Clean Air Act to be a ''nonroad'' vehicle. Mopeds and scooters that do not meet the definition of ''motor vehicle'' (*e.g.*, very small mopeds and scooters) because they can not exceed 25 miles per hour or because they meet some of the other criteria described above are considered nonroad recreational vehicles and are subject to the applicable emission standards for off-highway motorcycles.

Once it is determined that a vehicle is a ''motor vehicle'', EPA regulations then determine which motor vehicles are highway motorcycles for the purposes of applying emission standards. Although motorcycles come in a variety of two- and three-wheeled configurations and styles, for the most part they are two-wheeled, self-powered vehicles. EPA regulations currently define a motorcycle as ''any motor vehicle with a headlight, taillight, and stoplight and having: two wheels, or three wheels and a curb mass less than or equal to 793 kilograms (1749 pounds)'' (See 40 CFR 86.402–98).

In the past, vehicles that would otherwise meet the definition of a motorcycle but with an engine displacement of less than 50cc (*e.g.*, small scooters and mopeds), have not been subject to any EPA emission standards. In this final rule we are, for the first time, applying emission standards to any highway motorcycle, regardless of displacement.

B. What Are Class I, Class II, and Class III Highway Motorcycles?

Both EPA and California regulations sub-divide highway motorcycles into classes based on engine displacement. These divisions have been consistent

between EPA and the California ARB for many years. However, we are adopting a revised definition for Class I motorcycles in order to apply the Class I emission standards to motorcycles with displacements of less than 50cc. The revised definition will take effect with the 2006 model year. Table V.A–1 shows how these classes are defined before and after implementation of new standards for motorcycles with engines of less than 50cc displacement.

TABLE III.B–1.—MOTORCYCLE AND MOTORCYCLE ENGINE CLASSES

Motorcycle class	Engine displacement (cubic centimeters)	
	Through 2005 model year	2006 and later model years
Class I	50–169	0–169.
Class II	170–279	170–279.
Class III	280 and greater	280 and greater.

Highway motorcycles with engine displacements less than 50cc are mostly mopeds and motor scooters (''scooters,'' or sometimes, ''motorbikes''). These vehicles are generally powered by 49cc two-stroke engines, although four-stroke engines are becoming more popular. Honda, a major player in this market sector, will no longer be marketing any two-stroke street-use motorcycles as of the 2003 model year; everything, including their 49cc scooter, will be powered by a four-stroke engine.

All motorcycles currently certified to EPA emission standards are powered by four-stroke engines. Class I and II motorcycles, which make up less than ten percent of unit sales and only 24 out of 175 certified 2002 engine families, consist mostly of dual-sport motorcycles, scooters, and entry-level sport bikes and cruisers. Class III motorcycles represent 151 of the 175 certified 2002 engine families, and more than 90 percent of annual sales. Most Class III motorcycles are powered by relatively large engines, as demonstrated by an average displacement in the class of about 1100cc. Although there are some motorcycles that use eight-cylinder automotive engines and some on the horizon that may have displacements near 2300cc, the typical top-end displacement is around 1800cc.

IV. Exhaust Emission Standards and Test Procedures

We are adopting new exhaust emission standards for highway motorcycles. This section includes a description of the new standards and other important provisions. A discussion of the technological feasibility of the standards is in Section V of this document.

A. What Are the New Exhaust Emission Standards?

In general, we are harmonizing the federal exhaust emission standards for all classes of motorcycles with those of the California program, but on a delayed schedule relative to implementation in California. For Class I and Class II motorcycles this means meeting exhaust emission standards for HC and CO that have applied in California since 1982. Motorcycles with engine displacements of less than 50cc (previously unregulated) will be considered Class I motorcycles, and thus subject to the Class I standards. However, we have set a useful life of 6,000 km for under 50cc motorcycles. We are also adopting an optional HC+NO_X standard for Class I and II motorcycles, which will be required of manufacturers wishing to average their emissions or transfer emission credits across classes. For Class III motorcycles, the standards will require compliance with two tiers of exhaust emission standards that California ARB has put in place for future model years. The existing federal CO standard of 12.0 g/km remains unchanged. The process by which manufacturers certify their motorcycles, the test procedures, the driving cycle, and other elements of the federal program also remain unchanged.

1. Class I and II Motorcycles

We are adopting the current California ARB Class I and II exhaust emission standards on a nationwide basis starting with the 2006 model year. These standards, which have been in place in California since 1982, are shown in Table IV.A–1. In recent years, motorcycles certified to the California standards have been sold nationwide, and there have been few, if any, motorcycles in those classes that are limited to 49-state sales due to their not being able to meet the California standards.

TABLE IV.A–1.—FINAL CLASS I AND II EXHAUST EMISSION STANDARDS

Class and displacement (cc)	HC (g/km)	CO (g/km)	Useful life
I–A (0–49)	1.0	12.0	5 years/6,000 km [a].
I–B (50–169)	1.0	12.0	5 years/12,000 km [a].
II (170–279)	1.0	12.0	5 years/18,000 km.

Notes:
[a] In order to distinguish the two segments within Class I that have differing useful life definitions, the regulatory text defines Class I–A (0–49cc) and Class I–B (50–169cc).

We are also redefining Class I motorcycles to include those motorcycles with engine displacements under 50cc; thus, these previously unregulated motorcycles will be subject to the Class I standards shown in Table IV.A–1. As described further in Section IV.C, certain Class I motorcycles with an engine displacement under 50cc will be tested on a driving cycle that is slightly modified in order to accommodate the lower speed and acceleration capabilities of these motorcycles relative to other Class I motorcycles.

For all Class I and II motorcycles we are also adopting an optional HC+NO_X standard of 1.4 g/km. As of 2006 when new Class I and II standards become effective, the category of motorcycles under 50cc will be meeting an HC+NO_X standard of 1.2 g/km in the EU, albeit on a different duty cycle. Also in 2006, motorcycles at or above 50cc but less than 150cc in the EU will be meeting an

HC standard of 0.8 g/km and a NO_X standard of 0.15 g/km (combined $HC+NO_X$ of 0.95), and motorcycles over 150cc will be meeting standards that are even lower. In addition, an $HC+NO_X$ standard of 1.4 g/km is equivalent to the Class III standard that goes into effect in 2006. We believe that an $HC+NO_X$ standard is the only appropriate way to enable the transfer of credits across motorcycle classes in the finalized averaging program, and this optional standard should also be required of any manufacturer who wants to average Class I and II engine families (discussed in detail in Section IV.B).

We are providing a few years of lead time before these standards take effect for several reasons. First, the previously unregulated Class I category under 50cc will require some lead time to meet new standards. Second, we are allowing some averaging provisions that enable manufacturers to transfer Class III emission credits to Classes I and II, and these provisions will not be applicable until new Class III standards take effect in 2006. Third, although all Class I and II engine families in the 2002 model met these standards, that is not the case with the 2003 model year. This indicates to us that there may possibly be some models already under development in the context of the existing federal standard, and an abrupt transition to the new standard would create some difficulty in such cases. Given that the vast majority of Class I and II motorcycles do already meet the standards we are finalizing, it seems unreasonable to potentially disrupt the introduction and sale of a small number of motorcycles to advance the standards to an earlier date.

As we noted in the NPRM, the U.S. is a minor market for small motorcycles, scooters, and mopeds, especially those with engine displacements of under 50cc. Some manufacturers, such as Piaggio (maker of the Vespa scooters), may sell only a few thousand units in the U.S., but have worldwide sales of scooters that approach the magnitude of total U.S. motorcycle sales. We believe that an attempt to drive technology and emission limits for these vehicles beyond those that are applicable in the major small motorcycle and scooter markets could result in the outright withdrawal of some manufacturers' products from the U.S. market. These companies could choose to forego the small amount of U.S. sales rather than develop specific technologies to address U.S. requirements.

2. Class III Motorcycles

We are harmonizing the federal Class III motorcycle standards with the exhaust emission standards of the California program, as shown in Table IV.A–1. Specifically, we are adopting a Tier 1 standard of 1.4 g/km $HC+NO_X$ starting in the 2006 model year, and a Tier 2 standard of 0.8 g/km $HC+NO_X$ starting in the 2010 model year. Because both HC and NO_X are ozone precursors, this new standard would better reduce ozone than an HC-only standard. Implementation on a nationwide basis will take place starting two model years after implementation of identical exhaust emission standards in California, ensuring that manufacturers have adequate lead time to plan for these new standards. As described in Section IV.B in further detail, these standards can be met on a corporate-average basis.

TABLE IV.A–1.—FINAL CLASS III EXHAUST EMISSION STANDARDS (G/KM)

Model year	$HC+NO_X$	CO
2006–2009	1.4	12.0
2010 and later	0.8	12.0

As noted earlier, California ARB plans a technology progress review in 2006 to evaluate manufacturers' progress in meeting the Class III Tier 2 standards. We plan to participate in that review and work with California ARB and others, intending to make any appropriate adjustments to the standards or implementation schedule if warranted.

B. Can I Average, Bank, or Trade Emission Credits?

To provide flexibility in meeting the standards, we are adopting an emission-credit program comparable to the existing California ARB regulations, but with additional flexibility relative to California ARB's program. The program consists of two parts. The first component, the averaging program, allows manufacturers to meet the standards on a fleet-average basis. The second component, the early credits programs, provides incentives for the early introduction of Class III motorcycles meeting the Tier 2 standards. We are not adopting any banking provisions beyond the early credits program, and are not adopting any form of emissions trading program. The emission-credit program is described in detail in the following paragraphs.

Under the averaging program, manufacturers are able to balance the certified emissions of their motorcycles so that the sales-weighted emissions level meets the applicable standard. This means that some engine families may have emissions below the standards, while others have emissions higher than the standards. For enforcement purposes, manufacturers are required to specify a certification limit, or ''Family Emission Limit'' (FEL) for each engine family. The FEL is the emission level that a particular engine family is certified as meeting and, in effect, become the standard for the individual family. The FEL may be above or below the applicable standard as long as the manufacturer's sales-weighted emissions level meets the applicable standard.

We proposed an averaging program for Class III motorcycles only, and requested comment on whether we should include Class I and II motorcycles in the averaging program. Based on comments, we are including Class I and II motorcycles in the averaging program with certain restrictions intended to address concerns about the relative stringency of the Class I and II standards relative to the Class III standards. We are creating two separate averaging sets, one for Class I and II motorcycles and one for Class III motorcycles. Averaging would be allowed without constraint within each of these two averaging sets. However, we are limiting the manner in which credits could be exchanged between the two averaging sets. Credits from Class III motorcycles could be used to offset debits from Class I and II motorcycles. These credits are calculated by multiplying the g/km emission level by the useful life (in km) to give total grams of credits. Therefore, there is no need to accommodate the engine size differences between the different motorcycle classes. However, given that the Class I and II standards are less stringent than the Class III standards, we are not allowing Class I and II credits to be used to offset debits from Class III motorcycles. This also addresses concerns expressed by some commenters that all manufacturers do not offer products in all classes, and allowing Class I and II credits to be used for Class III compliance would inherently disadvantage Class III-only manufacturers. Because the Class III standards are $HC+NO_X$ standards while the primary Class I and II standards are HC only, we will allow such cross class averaging only if the manufacturer uses the optional $HC+NO_X$ standards for Classes I and II. In addition, Class I and II motorcycles could be averaged together, but must be certified to the optional $HC+NO_X$ standards in order to participate in the averaging program. We believe that this is an appropriate approach for several reasons. California

does not currently offer an averaging program for Class I and II motorcycles. Therefore, the optional standard provides additional flexibility relative to the California program, and this flexibility allows the certification of motorcycles that are higher-emitting than those allowed in California. An averaging program with an HC-only standard would result in additional flexibility, but also in additional uncertainty regarding the overall impact on total emissions of ozone precursors. We have also established that in some recent model years all Class I and II motorcycles have been in compliance with the primary HC standard that we are adopting, which is not typically the sort of situation where additional flexibility is warranted or offered. However, we believe that additional flexibility can be offered in exchange for controlling NO_X to reasonably achievable levels.

We believe that it is appropriate to retain our general historical approach to FEL caps by setting the Class III FEL cap at 5.0 g/km HC+NO_X as proposed, primarily to allow flexibility in the transition to the new standards. While it is true that this approach will allow some motorcycle models which do not meet the California FEL cap of 2.5 g/km HC+NO_X to be manufactured and sold outside of California, the number of models is quite small (less than ten of the 192 model year 2003 engine families certified as of March, 2003). However, we also believe that such an approach, while helping to ease the transition to the new standards, is not defensible for the long term. Thus, we are adopting an FEL cap of 2.5 g/km HC+NO_X (the level of the California FEL cap) for Class III motorcycles to be effective with the implementation of the Tier 2 standards in the 2010 model year. Consistent with our approach to FEL caps for Class III motorcycles, we are adopting 5.0 g/km HC+NO_X as an FEL cap for Class I and II motorcycles, to apply in the 2006 model year when the new standards and averaging program take effect for these motorcycles.

To encourage early compliance with the Tier 2 standards for Class III motorcycles, we are adopting an early credits program similar to the one in place in California, with timing adjusted due to the differing federal implementation schedule. We believe the incentives in this program will encourage manufacturers to introduce Tier 2 motorcycles nationwide earlier than required by the rule. In addition, we believe some manufacturers can reduce emissions even further than required by the Tier 2 standard, and we would like to encourage the early introduction of these very low-emission vehicles.

Under the early credits program, credits will be calculated based on the amount that a Class III motorcycle is below the Tier 2 standards. These credits are banked and can be used beginning with the 2010 model year. In order to provide incentives for the early introduction of even cleaner Tier 2 motorcycles, we are also adopting provisions to increase these early credits by a specific multiplier factor depending on how far below the Tier 2 standards a motorcycle is and how long before 2010 it is produced. These multipliers are shown in Table IV.B–1. Because we expect the Tier 2 technologies to become more widespread as 2010 approaches, the multipliers decrease linearly in value from 2006 until 2010, when the early compliance incentive will no longer have any value (*i.e.*, the multiplier has a value of 1.0) and the program will terminate.

TABLE IV.B–1.—MULTIPLIERS TO ENCOURAGE EARLY COMPLIANCE WITH THE TIER 2 STANDARD AND BEYOND

Model year sold	Multiplier (Y) for use in MY 2010 and later corporate averaging [a]	
	Early tier 2	Certified at 0.4 g/km HC+NO_X
2003 through 2006	1.5	3.0
2007	1.375	2.5
2008	1.250	2.0
2009	1.125	1.5

Notes:
[a] Early Tier 2 motorcycles and motorcycles certified to 0.4 g/km are counted cumulatively toward the MY 2010 and later corporate average.

In 2010 and later model years the program becomes a basic averaging program, where each manufacturer has to meet the applicable HC+NO_X standard on a fleet-average basis. See the regulations at § 86.449.

We are not adopting a required production line testing (PLT) program for highway motorcycles as part of this action. However, we are concerned about the integrity of post-certification changes to FELs in the absence of a PLT program which could be the source of data needed to justify a downward change in an FEL. Thus, we will not allow post-certification downward changes to FELs in the absence of supporting emission data. Further, a manufacturer must provide such data and seek advance approval from us for a downward FEL change. In addition, any such downward FEL change could not be inconsistent with the levels shown in existing certification data. These requirements only apply to downward FEL adjustments. We will not require such data or advance notice to justify upward adjustments to FELs. However, any upward adjustment to FELs must not cause a manufacturer's fleet to violate the relevant standard.

C. What Are the Applicable Test Procedures?

With the exception of the newly regulated category of motorcycles with engines of less than 50cc displacement, we are not making any changes to the motorcycle exhaust emission test procedures. We have noted the potential for a world harmonized test cycle—which would likely affect all highway motorcycle classes, and in fact would possibly redefine the classes—but international discussions regarding such a test cycle and associated standards are still likely two to three years away from being completed.

Class I motorcycles are currently provided with a less severe test cycle than Class II and III motorcycles. This test cycle is essentially the traditional FTP, but with lower top speeds and reduced acceleration rates relative to the FTP that is used for Class II and III motorcycles and other light-duty vehicles. The Class I FTP has a top speed of 58.7 km/hr (36.5 mph), whereas the Class II/III FTP has a top speed of 91.2 km/hr (56.7 mph). In the NPRM we requested comment on whether the existing Class I driving cycle was appropriate for the under 50cc category, and manufacturers of these motorcycles commented that it was not. The manufacturers (MIC and ACEM) noted that many of the machines in the under 50cc category have top speeds that are less than 36.5 mph, the highest speed of the current Class I test cycle. Based on these comments, we are adopting a modified version of the Class I driving cycle—supported by the manufacturers—that ensures that motorcycles under 50cc that have top speeds below 58.7 km/hr (36.5 mph) are tested within their operational limits.

Starting with the 2006 model year, the existing Class I driving cycle will be modified for motorcycles under 50cc with vehicle top speeds of less than 36.5 mph by adjusting each speed point of the driving cycle by the ratio of the top speed of the motorcycle to 36.5 mpg (the top speed of the existing Class I drive cycle). We are defining ''vehicle top speed'' in the regulations as the highest sustainable speed on a flat paved surface with a rider weighing 80 kg (176

lbs).[38] A motorcycle under 50cc with a top speed at or greater than 36.5 mph is required to be tested using the existing and unmodified Class I driving cycle.

D. What Test Fuel Is Required for Emission Testing?

The specifications for gasoline to be used by the EPA and by manufacturers for emission testing can be found in 40 CFR 86.513–94. These regulations also specify that the fuel used for vehicle service accumulation shall be ''representative of commercial fuels and engine lubricants which will be generally available through retail outlets.'' During the last twenty years of regulation of motorcycle emissions, the fuel specifications for motorcycle testing have been essentially identical to those for automotive testing. However, on February 10, 2000, EPA published a final rule entitled ''Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements'' (65 FR 6697, Feb. 10, 2000). In addition to finalizing a single set of emission standards that will apply to all passenger cars, light trucks, and larger passenger vehicles (*e.g.*, large SUVs), the rule requires the introduction of low-sulfur gasoline nationwide. To provide consistency with the fuels that will be in the marketplace, the rule amended the test fuel specifications, effective starting in 2004 when the new standards will take effect. The principal change that was made was a reduction in the allowable levels of sulfur in the test fuel, from a maximum of 0.10 percent by weight to a range of 0.0015 to 0.008 percent by weight.

Given that low-sulfur fuel will be the existing fuel in the marketplace when our program will take effect (and therefore required for service accumulation), we are amending the motorcycle test fuel to reflect the true nature of the fuels that will be available in the marketplace. Doing so will remove the possibility that a test could be conducted with an unrealistically high level of sulfur in the fuel. It will also ensure that motorcycles are tested using the same fuels found in the marketplace.

E. Hardship Provisions

We proposed two types of hardship provisions, one of which was intended specifically for small businesses and the other intended for all manufacturers. The first type of hardship provision allows a small volume motorcycle manufacturer to petition for up to three years additional lead time if the manufacturer can demonstrate that it has taken all possible steps to comply with the standards but the burden of compliance would have a significant impact on the company's solvency. The second type of hardship provision allows a company to apply for hardship relief if circumstances outside of the company's control cause a failure to comply, and the failure to sell the noncompliant product would have a major impact on the company's solvency.

In general, we do not expect that manufacturers will need to use these hardship provisions. However, having such provisions available gives us the flexibility to administratively deal with unexpected situations that may arise as companies work toward compliance with the regulations. Thus, we are adopting these hardship provisions as proposed.

F. Special Compliance Provisions for Small Manufacturers

While the highway motorcycle market is dominated by large companies, there are a large number of small businesses manufacturing motorcycles and motorcycle engines. They are active in both the federal and California markets. California has been much more active than EPA in setting new requirements for highway motorcycles, and indeed, the California requirements have driven the technology demands and timing for highway motorcycle emission controls. We have developed our special compliance provisions partly in response to the technology, timing, and scope of the requirements that apply to the small businesses in California's program. The provisions discussed below will reduce the economic burden on small businesses, allowing harmonization with California requirements in a phased, but timely manner.

The flexibilities described below will be available for small entities with U.S. highway motorcycle annual sales of fewer than 3,000 units per model year (combined Class I, II, and III motorcycles) *and* fewer than 500 employees worldwide. These provisions are appropriate because significant research and development resources may be necessary to meet the emission standards and related requirements. These provisions will reduce the burden while ensuring the vast majority of the program is implemented to ensure timely emission reductions. Many small highway motorcycle manufacturers market unique ''classic'' and ''custom'' motorcycles, often with a ''retro'' appearance, that tends to make the addition of new technologies a uniquely resource-intensive prospect.

1. Delay of Standards for Small Volume Manufacturers

We are delaying compliance with the Tier 1 standard of 1.4 g/km HC+NO_X until the 2008 model year for small manufacturers, and at this time, we are not requiring these manufacturers to meet the Tier 2 standard. The existing California regulations do not require small manufacturers to comply with the Tier 2 standard of 0.8 g/km HC+NO_X. The California Air Resources Board found that the Tier 2 standard represents a significant technological challenge and is a potentially infeasible limit for these small manufacturers. As noted above, many of these manufacturers market specialty products with a ''retro'' simplicity and style that may not easily lend itself to the addition of advanced technologies like catalysts and electronic fuel injection. However, the California ARB has acknowledged that, in the course of their progress review planned for 2006, they will revisit their small-manufacturer provisions. We plan to participate with the ARB and others in the 2006 progress review. Following our review of these provisions, as appropriate, we may decide to propose to make changes to the emission standards and related requirements through notice and comment rulemaking, including the applicability of Tier 2 to small businesses.

2. Broader Engine Families

Small businesses have met EPA certification requirements since 1978. Nonetheless, certifying motorcycles to revised emission standards has cost and lead time implications. Relaxing the criteria for what constitutes an engine or vehicle family could potentially allow small businesses to put all of their models into one vehicle or engine family (or more) for certification purposes. Manufacturers would then certify their engines using the ''worst case'' configuration within the family. This is currently allowed under the existing regulations for small-volume highway motorcycle manufacturers. These provisions remain in place without revision.

3. Averaging, Banking, and Trading

An emission-credit program allows a manufacturer to produce and sell engines and vehicles that exceed the applicable emission standards, as long as the excess emissions are offset by the production of engines and vehicles emitting at levels below the standards. The sales-weighted average of a

[38] Loaded vehicle mass, as defined in 40 CFR 86.402–78.

manufacturer's total production for a given model year must meet the standards. An emission-credit program typically also allows a manufacturer to bank credits for use in future model years. The emission-credit program we are implementing for all highway motorcycle manufacturers is described above. Some credit programs allow manufacturers to buy and sell credits (trade) between and among themselves. We are not implementing such a provision at this time, but such flexibility could be made available to manufacturers as part of the upcoming technology review.

4. Reduced Certification Data Submittal and Testing Requirements

Current regulations allow significant flexibility for certification by manufacturers projecting sales below 10,000 units of combined Class I, II, and III motorcycles. For example, a qualifying manufacturer must submit an application for certification with a statement that their vehicles have been tested and, on the basis of the tests, conform to the applicable emission standards. The manufacturer retains adequate emission test data, for example, but need not submit it. Qualifying manufacturers also need not complete the detailed durability testing required in the regulations. We are incorporating no changes to these existing provisions.

G. Exemption for Motorcycle Kits and Custom Motorcycles

During the rulemaking we sought comment on the need for emission control requirements for motorcycle engines distinct and separate from the current and future requirements for complete motorcycles. We sought comment in this area because we had identified a small sector in the motorcycle market where the engine manufacturer and chassis manufacturer are not the same entity. This includes two very small parts of the market: one in which motorcycles are assembled by individuals from parts and subassemblies procured from motorcycle kit marketers or other separate sources; and another in which elaborate custom motorcycles are created for display by collectors. At this time, we are not including any certification requirements for engine manufacturers. *See* discussion in Chapter 1.5 of the Summary and Analysis of Comments. The small volume motorcycle manufacturers who purchase the vast majority of engines from other entities for incorporation into the motorcycles will continue to be subject to the regulations, and will continue to meet the requirements of the regulations, as they have in the past.

However, for those individuals who put together a single motorcycle for individual use and businesses that produce a handful of custom motorcycles for display, we believe it is appropriate not to require these entities to have to certify their assembled vehicles. Therefore, we are promulgating provisions for two special exemptions. The first is a one-time exemption for any person building a motorcycle from a kit for individual use. We believe that the small benefit of having single individuals certify to the standards is outweighed by the substantial burden to these individuals in certifying. Moreover, because the engines in such kits generally are built by the same companies as those engines going to the small volume motorcycle manufacturers, who still must certify and who will represent the majority of the engine-makers' production, we believe that most of the engines will be the same or very similar to the engines used in the certified motorcycles. Individuals may not use this provision as a regulatory loophole to modify or customize a certified motorcycle in a manner which adversely affects emissions. This provision is limited to one motorcycle per individual over the life of the provision.

In the case where the owner of the kit motorcycle is not the assembler of the motorcycle, the limitation of one motorcycle per person applies to the purchaser of the kit components of the motorcycle, who we expect is the end user of the motorcycle, rather than to the person or persons who actually assemble the motorcycle. A kit purchaser may have the kit assembled by another party and retain the one-time exemption for the motorcycle. In order to qualify for the exemption under these circumstances, the kit must be purchased by the ultimate owner before assembly begins. Parties or businesses who purchase kit motorcycles for assembly and retail sale are not covered by this exemption.

The second exemption is a sales-limited exemption for elaborate custom motorcycles that are created for display by collectors. The chassis of these ''display'' motorcycles are usually unique designs, while the engines are either purchased from independent engine manufacturers or custom built from engine components. Current regulations in 40 CFR 85.1707 contain provisions which provide an exemption applicable for all motor vehicles and engines produced solely for display purposes. While these regulations are generally appropriate for display engines, certain aspects of the current custom-built motorcycle market make it appropriate to add a new provision applicable only to such motorcycles. In particular, because these motorcycles are often sold to collectors, the current exemption, which does not apply to engines that are sold, would not be applicable. Therefore, we are adding a limited exemption for custom manufacturers to sell a small number of these engines every year, with the conditions discussed below. It is our understanding that these motorcycles are rarely operated on public streets. Therefore, as a condition of this exemption, these motorcycles would be allowed to operate on public streets or highways only as necessary to the display purpose, such as traveling to and from motorcycle shows. No request for the exemption is necessary for motorcycles that will not be sold or leased. However, manufacturers planning to sell motorcycles for display under this exemption will be required to notify EPA of their intent before they sell any exempted motorcycles. They must also maintain sales records of exempted motorcycles for at least three years and make them available to EPA upon request. Sales under this exemption would be limited to less than 25 per year per manufacturer. Every motorcycle exempted under this provision must include a label that identifies the manufacturer and includes the following statement: THIS MOTORCYCLE IS EXEMPT FROM EPA EMISSION REQUIREMENTS. ITS USE ON PUBLIC ROADS IS LIMITED PURSUANT TO 40 CFR 86.407–78(c). We will generally allow manufacturers to locate the label where it will not detract from the appearance of the motorcycle. For example, We could allow the label to be located under the seat.

As noted elsewhere, EPA may be revisiting several issues related to motorcycle standards in the context of the 2006 technology review and review of a possible World Motorcycle Test Cycle. One of the issues we may be reviewing at that time is whether it is appropriate to regulate motorcycle engine manufacturers or motorcycle kit manufacturers under the motorcycle regulations. If we agree to regulate loose engine sales at that time, these exemption provisions may no longer be necessary, since both kit builders and custom manufacturers would be able to purchase certified engines. Therefore, we may propose to remove or modify these provisions in the future.

V. Technological Feasibility of the Exhaust Emission Standards

A. Class I Motorcycles and Motorcycle Engines Under 50cc

As we have described earlier we are applying the current California standard for Class I motorcycles to motorcycles with displacements of less than 50cc (*e.g.*, many motor scooters). These motorcycles are currently not subject to regulation by the U.S. EPA or the State of California. They are, however, subject to emission standards in Europe and much of the rest of the world. Historically these motorcycles have been powered by 2-stroke engines, but a trend appears to be developing that would result in many of these being replaced by 4-stroke engines or possibly by advanced technology 2-stroke engines, in some cases with catalysts. This trend is largely due to emission requirements in the nations where these types of two-wheelers are popular forms of transportation.

It has already been demonstrated that the 4-stroke engine is capable of meeting the standards. Class I motorcycles above 50cc are already meeting these standards, most of them employing a 4-stroke engine with minimal additional emission controls. For example, all 2002 model year Class I motorcycles (10 engine families) were certified at levels ranging from 0.4 to 0.9 grams per kilometer HC. The 2003 Class I motorcycle models (11 engine families) were certified at similar levels with the exception of two newly introduced models, each of which is certified at a level above 3.0 g/km HC. All of these achieve the standards with 4-stroke engine designs, and only three incorporate additional technology (secondary air injection or a catalyst). These current engines range from 80 to 151cc in displacement, which provides an indication that small 4-stroke scooter engines are capable of meeting the standards. In a test program conducted by the Japan Automobile Research Institute, a 49cc 4-stroke achieved average HC emissions of 0.71 g/km, a level that falls well under the 1.0 g/km standard we are adopting.[39] The technological feasibility of meeting a 1.0 g/km HC standard was also supported by MIC if EPA made appropriate revisions to the test cycle and the useful life. We evaluated these recommendations and have adopted both of them in this final rule. The Association of European Motorcycle Manufacturers (ACEM) confirmed that European manufactures will seek to export to the U.S. the same motorcycles under 50cc that they develop for the European market, and that standards in the E.U. are forcing the transition to 2-stroke direct injection and 4-stroke EFI technologies in 2002 and 2003.[40] ACEM also confirmed the feasibility of meeting the new U.S. standard and aligned with MIC comments regarding the test cycle and useful life.

In order to meet more stringent standards being implemented worldwide, manufacturers are developing and implementing a variety of technology approaches. Honda, perhaps the largest seller of scooters in the U.S., has entirely eliminated 2-stroke engines from its scooter product lines as of the 2002 model year. They continue to offer a 50cc model, but with a 4-stroke engine. Both of Aprilia's 49cc scooters available in the U.S. have incorporated electronic direct injection technology, which, in the case of one model, enables it to meet the ''Euro-2'' standards of 1.2 grams per kilometer HC and 0.3 grams per kilometer NO_X, without use of a catalytic converter.[41] Piaggio, while currently selling a 49cc basic 2-stroke scooter in the U.S., expects to begin production of a direct injection version in 2002, and a 4-stroke 50cc scooter is also in development. Numerous 49cc models marketed by Piaggio in Europe are available either as a 4-stroke or a 2-stroke with a catalyst. Piaggio, also an engine manufacturer and seller, is already offering 50cc 4-stroke and 50cc direct injection 2-stroke engines that meet the Euro-2 limits to its customers for incorporation into scooters.

The U.S. represents a very small portion of the market for small motorcycles and scooters. There are few, if any, manufacturers that develop a small-displacement motorcycle exclusively for the U.S. market; the domestic sales volumes do not appear large enough at this time to support an investment of this kind. The Italian company Piaggio (maker of the Vespa scooters), for example, sold about as many scooters worldwide in 2000 (about 480,000) as the entire volume of highway motorcycles of all sizes sold in the U.S. in that year. U.S. sales of Vespas in 2000 amounted to about 4800. The largest scooter markets today are in South Asia and Europe, where millions are sold annually. In Taiwan alone almost 800,000 motorcycles were sold domestically. More than one third of these were powered by 2-stroke engines. Two- and three-wheelers constitute a large portion of the transportation sector in Asia, and in some urban areas these vehicles—many of them powered by 2-stroke engines—can approach 75 percent of the vehicle population. According to a World Bank report, two-stroke gasoline engine vehicles are estimated to account for about 60 percent of the total vehicle fleet in South Asia.[42]

Many nations are now realizing that the popularity of these vehicles and the high density of these vehicles in urban areas are contributing to severe air quality problems. As a consequence, some of the larger markets for small motorcycles in Asia and India are now placing these vehicles under fairly strict regulation. It is clear that actions in these nations will move the emission control technology on small motorcycles, including those under 50cc, in a positive direction. For example, according to the World Bank report, as of 2000 catalytic converters are installed in all new two-stroke engine motorcycles in India, and 2003 standards in Taiwan will effectively ban new two-strokes with emission standards so stringent that only a four-stroke engine is capable of meeting them.

Given the emerging international picture regarding emission standards for scooters, we believe that scooter manufacturers will be producing scooters of less than 50cc displacement that meet our standards well in advance of the 2006 model year, the first year we will subject this category of motorcycle to U.S. emission standards. We expect that small entities that import scooters into the U.S. from the larger scooter markets will be able to import complying vehicles. We requested comment on this assessment in the NPRM and received none indicating otherwise.

There are numerous other factors in the international arena that may affect the product offerings in the less than 50cc market segment. For example, the European Union recently changed the requirements regarding insurance and

[39] ''WMTC 2nd step validation test results in Japan,'' Japan Automobile Research Institute, Nov. 29, 2001. Available for review in Docket A–2000–02.

[40] ACEM members are: Aprilia, Benelli, BMW, Derbi, Ducati, Honda, Kawasaki, KTM, Malaguti, MV Augusta, Peugeot, Piaggio, Suzuki, Triumph, Yamaha.

[41] Aprila Web site, *http://www.apriliausa.com/ridezone/ing/models/scarabeo50dt/moto.htm* and *http://www.aprilia.com/portale/eng/cafera articolo.phtm1?id=14*. Available for review in public docket A–2000–02.

[42] Improving Urban Air Quality in South Asia by Reducing Emissions from Two-Stroke Engine Vehicles. Masami Kojima, Carter Brandon, and Jitendra Shah. December 2000. Prepared for the World Bank. Available in the public docket for a review (Docket A–2000–01; document II–D–191), or on the Internet at: *http://www.worldbank.org/html/fpd.esmap/publication/airquality.html.*

helmet use for under 50cc scooters and mopeds. Previously, the insurance discounts and lack of helmet requirements in Europe provided two relatively strong incentives to purchasers to consider a 49cc scooter. Recently, however, the provisions were changed such that helmets are now required and the insurance costs are comparable to larger motorcycles. The result was a drop of about 30 percent in European sales of 49cc scooters in 2001 due to customers perceiving little benefit from a 49cc scooter relative to a larger displacement engine.

B. Class I and Class II Motorcycles Between 50 and 180cc

As discussed above, we are adopting a new exhaust emission standards of 1.0 g/km HC for Class I and Class II motorcycles. The existing CO standard is unchanged. These standards have been in place in California since 1982. The question of whether or not these standards are technically feasible has been answered in the affirmative, since 21 of the 22 EPA-certified 2001 model year motorcycle engine families in these classes are already certified to these standards, all 24 of the 2002 model year engine families meet these standards, and 22 of 29 2003 model year engine families meet these standards. These 29 model year 2003 engine families are all powered by four-stroke engines, with a variety of emission controls applied, including basic engine modifications on almost all engine families, secondary air injection on three engine families, and catalysts on four engine families.

C. Class III Motorcycles

1. Tier 1 Standards

In the short term, the Tier 1 standard of 1.4 g/km HC+NO_X reflects the goal of achieving emission reductions that can be met with reasonably available control technologies, primarily involving engine modifications rather than catalytic converters. As noted earlier, this standard will be effective starting with the 2006 model year. Based on current certification data, a number of existing engine families already could comply with this standard or will need relatively simple modifications to comply. In other cases, the manufacturers will need to use control technologies that are available but are not yet used on their particular cycles (*e.g.*, electronic fuel injection to replace carburetors, changes to cam lobes/timing, etc.). For the most part, manufacturers will not need to use advanced technologies such as close-coupled, closed-loop three-way catalysts.

While manufacturers will use various means to meet the Tier 1 standard, there are four basic types of existing, non-catalyst-based, emission-control systems available to manufacturers. The most important of these is the use of secondary pulse-air injection. Other engine modifications and systems include more precise fuel control, better fuel atomization and delivery, and reduced engine-out emission levels from engine changes. The combinations of low-emission technologies ultimately chosen by motorcycle manufacturers are dependent on the engine-out emission levels of the vehicle, the effectiveness of the prior emission-control system, and individual manufacturer preferences.

Secondary pulse-air injection, as demonstrated on current motorcycles, is applied using a passive system (*i.e.*, no air pump involved) that takes advantage of the flow of gases (''pulse'') in the exhaust pipes to draw in fresh air that further combusts unburned hydrocarbons in the exhaust. The extra air causes further combustion to occur, thereby controlling more of the hydrocarbons that escape the combustion chamber. This type of system is relatively inexpensive and uncomplicated because it does not require an air pump; air is drawn into the exhaust through a one-way reed valve due to the pulses of negative pressure inside the exhaust pipe. Secondary pulse-air injection is one of the most effective non-catalytic emission-control technologies; compared to engines without the system, reductions of 10 to 40 percent for HC are possible with pulse-air injection. Eighty—or about half—of the 162 2003 model year Class III engine families certified for sale in the U.S. employ secondary pulse-air injection to help meet the current California standards. We anticipate that most of the remaining engine families will use this technique to help meet the Tier 1 and Tier 2 standards. There are 47 2003 engine families that are certified using only engine management techniques (*e.g.*, no use of catalysts, fuel injection, secondary air injection, or oxygen sensors). The average certification HC level of these families is 1.17 g/km. By comparing this to the certification results of engine families that employ secondary air injection as the only means of emission control beyond engine modifications, we can gain some measure of the effectiveness of secondary air injection. We find that the currently certified 2003 models which employ secondary air injection have an average certification level of 0.91 g/km, a reduction of 0.26 g/km (or 22%) relative to those using only engine modification techniques.

Improving fuel delivery and atomization primarily involves the replacement of carburetors, currently used on most motorcycles, with more precise fuel injection systems. There are several types of fuel injection systems and components manufacturers can choose, including throttle-body injection systems, multi-point injection systems, and sequential multi-point fuel injection systems. Unlike conventional multi-point fuel injection systems that deliver fuel continuously or to paired injectors at the same time, sequential fuel injection can deliver fuel precisely when needed by each cylinder. The most likely type of fuel injection manufacturers will choose to help meet the Tier 1 standard is sequential multi-point fuel injection (SFI).

Motorcycle manufacturers are already using sequential fuel injection (SFI). Of the 162 2003 model year Class III motorcycle engine families certified to emission standards, at least 29 employ SFI systems.[43] We anticipate increased application of this or similar fuel injection systems to achieve the more precise fuel delivery needed to help meet the Tier 1 and Tier 2 standards. We analyzed the EPA certification data in the same way as done above with secondary air injection to estimate the effect of using SFI vehicle on emissions. Again, we identified the baseline of 47 engine families using the limited technologies and with an average certification level of 1.17 g/km HC, and compared the emissions of these engines with the emissions of engines using SFI. What we find is that use of all types of fuel injection can significantly reduce emissions. If we analyze those engine families that use some form of fuel injection other than SFI we see an average HC certification level of 1.09 g/km, a modest reduction of about 7 percent. However, the engines using SFI had significantly lower HC emissions on average of 0.72

[43] When manufacturers certify to EPA emission standards, they report the fuel delivery system used by each certified model as carbureted or fuel injected. They also report the emission control technologies used on each model to meet the emission standards. When reporting the fuel delivery system, they only indicate whether the system is carbureted or fuel injected, but not the specific type of fuel injection that is installed. When reporting the control technologies 29 models indicated the use of sequential fuel injection. However, there may be some inconsistencies in how these technologies are reported, and we believe that there may be models that employ sequential fuel injection that are shown in our database as being fuel injected, but the manufacturer may not have also specifically listed sequential fuel injection as a control technology on the motorcycle model. This is why we say ''at least'' 29 models are currently using sequential fuel injection.

g/km, a reduction of almost 40 percent. While this provides some indication of what can be achieved with fuel injection techniques (including SFI), it does not necessarily demonstrate the full potential of this technology. At this point in time it appears that SFI can get motorcycle certification levels down to about 0.4–0.6 g/km HC (certification at levels in this range can be seen in several current motorcycles that employ no other emission controls), but in the context of more stringent standards the manufacturers are likely to be able to accomplish even more with SFI, and further reductions by teaming SFI with additional emission reduction techniques.

In addition to the techniques mentioned above, various engine modifications can be made to improve emission levels. Engine modifications include a variety of techniques designed to improve fuel delivery or atomization; promote ''swirl'' (horizontal currents) and ''tumble'' (vertical currents); maintain tight control on air-to-fuel (A/F) ratios; stabilize combustion (especially in lean A/F mixtures); optimize valve timing; and retard ignition timing. Emission performance can be improved, for example, by reducing crevice volumes in the combustion chamber. Unburned fuel can be trapped momentarily in crevice volumes before being subsequently released. Since trapped and re-released fuel can increase engine-out emissions, the elimination of crevice volumes would be beneficial to emission performance. To reduce crevice volumes, manufacturers can evaluate the feasibility of designing engines with pistons that have reduced, top ''land heights'' (the distance between the top of the piston and the first ring).

Lubrication oil which leaks into the combustion chamber also has a detrimental effect on emission performance since the heavier hydrocarbons in oil do not oxidize as readily as those in gasoline and some components in lubricating oil may tend to foul a catalyst and reduce its effectiveness. Also, oil in the combustion chamber may trap HC and later release the HC unburned. To reduce oil consumption, manufacturers can tighten the tolerances and improve the surface finish on cylinders and pistons, piston ring design and materials, and exhaust valve stem seals to prevent excessive leakage of lubricating oil into the combustion chamber.

Increasing valve overlap is another engine modification that can help reduce emissions. This technique helps reduce NO_X generation in the combustion chamber by essentially providing passive exhaust gas recirculation (EGR). When the engine is undergoing its pumping cycle, small amounts of combusted gases flow past the intake valve at the start of the intake cycle. This creates what is essentially a passive EGR flow, which is then either drawn back into the cylinder or into another cylinder through the intake manifold during the intake stroke. These combusted gases, when combined with the fresh air/fuel mixture in the cylinder, help reduce peak combustion temperatures and NO_X levels. This technique can be implemented by making changes to cam timing and intake manifold design to optimize NO_X reduction while minimizing impacts to HC emissions.

Secondary pulse-air injection and engine modifications already play an important part in reducing emission levels, and we expect increased uses of these techniques to help meet the Tier 1 standard. Direct evidence of the extent to which these technologies can help manufacturers meet the Tier 1 standard can be found in EPA's highway motorcycle certification database. This database is comprised of publicly-available certification emission levels as well as some confidential data reported by the manufacturers pursuant to existing motorcycle emission certification requirements.

We do not expect any of these possible changes to adversely affect performance. Indeed, the transition to some of these technologies (*e.g.*, advanced fuel injection) is expected to improve performance, fuel economy, and reliability.

2. Tier 2 Standards

In the long term, the Tier 2 $HC+NO_X$ standard of 0.8 g/km will ensure that manufacturers will continue to develop and improve emission control technologies. The Tier 2 standard will become effective in the 2010 model year. We believe this standard is technologically feasible, though it will present some technical challenges for manufacturers. Several manufacturers are, however, already using some of the technologies that will be needed to meet this standard. In addition, our implementation time frame gives manufacturers two years of experience in meeting this standard in California before having to meet it on a nationwide basis. Several manufacturers already use closed-loop, three-way catalysts on a number of their product lines. At least one manufacturer has already certified several models to the Tier 2 standards levels, and at least one of these models is being sold nationwide. A number of additional models currently in the market may also meet the Tier 2 standards, depending on NO_X levels, using combinations of catalysts, fuel injection, secondary air injection, and other engine modifications. The current average HC certification level for Class III motorcycles is 0.93 g/km, with about forty engine families from a variety of manufacturers at levels of 0.5 g/km or lower. We expect that the provided six to seven years of lead time prior to meeting these standards on a nationwide basis will allow manufacturers to optimize these and other technologies to meet the Tier 2 standard.

To meet the Tier 2 standard for $HC+NO_X$, manufacturers will likely use more advanced engine modifications and secondary air injection. Specifically, we believe manufacturers will use computer-controlled secondary pulse-air injection (*i.e.*, the injection valve would be connected to a computer-controlled solenoid). In addition to these systems, manufacturers will probably need to use catalytic converters on some motorcycles to meet the Tier 2 standards. There are two types of catalytic converters currently in use: two-way catalysts (which control only HC and CO) and three-way catalysts (which control HC, CO, and NO_X). Under the Tier 2 standard, manufacturers will need to minimize levels of both HC and NO_X. Therefore, to the extent catalysts are used, manufacturers will likely use a three-way catalyst in addition to engine modifications and computer-controlled secondary pulse-air injection.

As discussed previously, improving fuel control and delivery provides emission benefits by helping to reduce engine-out emissions and minimizing the exhaust variability which the catalytic converter experiences. One method for improving fuel control is to provide enhanced feedback to the computer-controlled fuel injection system through the use of heated oxygen sensors. Heated oxygen sensors (HO2S) are located in the exhaust manifold to monitor the amount of oxygen in the exhaust stream and provide feedback to the electronic control module (ECM). These sensors allow the fuel control system to maintain a tighter band around the stoichiometric A/F ratio than conventional oxygen sensors (O2S). In this way, HO2S assist vehicles in achieving precise control of the A/F ratio and thereby enhance the overall emissions performance of the engine. At least one manufacturer is currently using this technology on several 2003 as

well as previous model year engine families.

In order to further improve fuel control, some motorcycles with electronic controls may utilize software algorithms to perform individual cylinder fuel control. While dual oxygen sensor systems are capable of maintaining A/F ratios within a narrow range, some manufacturers may desire even more precise control to meet their performance needs. On typical applications, fuel control is modified whenever the O2S determines that the combined A/F of all cylinders in the engine or engine bank is ''too far'' from stoichiometric. The needed fuel modifications (*i.e.*, inject more or less fuel) are then applied to all cylinders simultaneously. Although this fuel control method will maintain the ''bulk'' A/F for the entire engine or engine bank around stoichiometric, it would not be capable of correcting for individual cylinder A/F deviations that can result from differences in manufacturing tolerances, wear of injectors, or other factors.

With individual cylinder fuel control, A/F variation among cylinders will be diminished, thereby further improving the effectiveness of the emission controls. By modeling the behavior of the exhaust gases in the exhaust manifold and using software algorithms to predict individual cylinder A/F, a feedback fuel control system for individual cylinders can be developed. Except for the replacement of the conventional front O2S with an HO2S sensor and a more powerful engine control computer, no additional hardware is needed in order to achieve individual cylinder fuel control. Software changes and the use of mathematical models of exhaust gas mixing behavior are required to perform this operation.

In order to maintain good driveability, responsive performance, and optimum emission control, fluctuations of the A/F must remain small under all driving conditions including transient operation. Virtually all current fuel systems in automobiles incorporate an adaptive fuel control system that automatically adjusts the system for component wear, varying environmental conditions, varying fuel composition, etc., to more closely maintain proper fuel control under various operating conditions. For some current fuel control systems, this adaptation process affects only steady-state operating conditions (*i.e.*, constant or slowly changing throttle conditions). However, most vehicles are now being introduced with adaptation during ''transient'' conditions (*e.g.*, rapidly changing throttle positions).

Accurate fuel control during transient driving conditions has traditionally been difficult because of the inaccuracies in predicting the air and fuel flow under rapidly changing throttle conditions. Because of air and fuel dynamics (fuel evaporation in the intake manifold and air flow behavior) and the time delay between the air flow measurement and the injection of the calculated fuel mass, temporarily lean A/F ratios can occur during transient driving conditions that can cause engine hesitation, poor driveability and primarily an increase in NO_X emissions. However, by utilizing fuel and air mass modeling, vehicles with adaptive transient fuel control are more capable of maintaining accurate, precise fuel control under all operating conditions. Virtually all cycles will incorporate adaptive transient fuel control software; motorcycles with computer controlled fuel injection can also benefit from this technique at a relatively low cost.

Three-way catalytic converters traditionally utilize rhodium and platinum as the catalytic material to control the emissions of all three major pollutants (hydrocarbons (HC), CO, NO_X). Although this type of catalyst is very effective at converting exhaust pollutants, rhodium, which is primarily used to convert NO_X, tends to thermally deteriorate at temperatures significantly lower than platinum. Recent advances in palladium and tri-metal (*i.e.*, palladium-platinum-rhodium) catalyst technology, however, have improved both the light-off performance (light-off is defined as the catalyst bed temperature where pollutant conversion reaches 50-percent efficiency) and high temperature durability over previous catalysts. In addition, other refinements to catalyst technology, such as higher cell density substrates and adding a second layer of catalyst washcoat to the substrate (dual-layered washcoats), have further improved catalyst performance from just a few years ago.

Typical cell densities for conventional catalysts used in motorcycles are less than 300 cells per square inch (cpsi). To meet the Tier 2 standard, we expect manufacturers to use catalysts with cell densities of 300 to 400 cpsi. If catalyst volume is maintained at the same level (we assume volumes of up to 60 percent of engine displacement), using a higher density catalyst effectively increases the amount of surface area available for reacting with pollutants. Catalyst manufacturers have been able to increase cell density by using thinner walls between each cell without increasing thermal mass (and detrimentally affecting catalyst light-off) or sacrificing durability and performance.

In addition to increasing catalyst volume and cell density, we believe that increased catalyst loading and improved catalyst washcoats will help manufacturers meet the Tier 2 standards. In general, increased precious metal loading (to a point) will reduce exhaust emissions because it increases the opportunities for pollutants to be converted to harmless constituents. The extent to which precious metal loading is increased will be dependent on the precious metals used and other catalyst design parameters. We believe recent developments in palladium/rhodium catalysts are very promising since rhodium is very efficient at converting NO_X, and catalyst suppliers have been investigating methods to increase the amount of rhodium in catalysts for improved NO_X conversion.

Double layer technologies allow optimization of each individual precious metal used in the washcoat. This technology can provide reduction of undesired metal-metal or metal-base oxide interactions while allowing desirable interactions. Industry studies have shown that durability and pollutant conversion efficiencies are enhanced with double layer washcoats. These recent improvements in catalysts can help manufacturers meet the Tier 2 standard at reduced cost relative to older three-way catalysts.

New washcoat formulations are now thermally stable up to 1050 °C. This is a significant improvement from conventional washcoats, which are stable only up to about 900 oC. With the improvements in light-off capability, catalysts may not need to be placed as close to the engine as previously thought. However, if placement closer to the engine is required for better emission performance, improved catalysts based on the enhancements described above would be more capable of surviving the higher temperature environment without deteriorating. The improved resistance to thermal degradation will allow closer placement to the engines where feasible, thereby providing more heat to the catalyst and allowing them to become effective quickly.

It is well established that a warmed-up catalyst is very effective at converting exhaust pollutants. Recent tests on advanced catalyst systems in automobiles have shown that over 90 percent of emissions during the Federal Test Procedure (FTP) are now emitted during the first two minutes of testing after engine start up. Similarly, the

highest emissions from a motorcycle occur shortly after start up. Although improvements in catalyst technology have helped reduce catalyst light-off times, there are several methods to provide additional heat to the catalyst. Retarding the ignition spark timing and computer-controlled, secondary air injection have been shown to increase the heat provided to the catalyst, thereby improving its cold-start effectiveness.

In addition to using computer-controlled secondary air injection and retarded spark timing to increase the heat provided to the catalyst, some vehicles may employ warm-up, pre-catalysts to reduce the size of their main catalytic converters. Palladium-only warm-up catalysts (also known as ''pipe catalysts'' or ''Hot Tubes'') using ceramic or metallic substrates may be added to further decrease warm-up times and improve emission performance. Although metallic substrates are usually more expensive than ceramic substrates, some manufacturers and suppliers believe metallic substrates may require less precious metal loading than ceramic substrates due to the reduced light-off times they provide.

Improving insulation of the exhaust system is another method of furnishing heat to the catalyst. Similar to close-coupled catalysts, the principle behind insulating the exhaust system is to conserve the heat generated in the engine for aiding catalyst warm-up. Through the use of laminated thin-wall exhaust pipes, less heat will be lost in the exhaust system, enabling quicker catalyst light-off. As an added benefit, the use of insulated exhaust pipes will also reduce exhaust noise. Increasing numbers of manufacturers are expected to utilize air-gap exhaust manifolds (*i.e.*, manifolds with metal inner and outer walls and an insulating layer of air sandwiched between them) for further heat conservation.

Besides the hardware modifications described above, motorcycle manufacturers may borrow from other current automobile techniques. These include using engine calibration changes such as a brief period of substantial ignition retard, increased cold idling speed, and leaner air-fuel mixtures to quickly provide heat to a catalyst after cold-starts. Only software modifications are required for an engine which already uses a computer to control the fuel delivery and other engine systems. For these engines, calibration modifications provide manufacturers with an inexpensive method to quickly achieve light-off of catalytic converters. When combined with pre-catalysts, computer-controlled secondary air injection, and the other heat conservation techniques described above, engine calibration techniques may be very effective at providing the required heat to the catalyst for achieving the Tier 2 standard.

D. Safety and Performance Impacts

We noted in the NPRM that the nature of motorcycling makes riders particularly aware of any safety issues that confront them. Many motorcycle riders and their organizations submitted comments on the NPRM regarding their concerns that the proposed standards would adversely affect both performance and safety. These issues are discussed in detail in the Summary and Analysis of Comments; the remainder of this section summarizes our key findings regarding these issues.

Motorcycle riders are inherently closer to the engine and exhaust pipes than the driver of an enclosed vehicle, and the engine components tend to be more exposed and accessible as well. Because of this fact, we received many comments regarding the potential safety risk of catalytic converters, and many questioned whether this emission control device could be implemented on motorcycles without increasing the risk of injury to the rider and/or passenger. An economic impact study submitted by the Motorcycle Riders Foundation claimed that ''EPA ignores the issue of rider safety,'' apparently basing this claim on a word search of the rulemaking documents for the terms ''rider safety'' and ''consumer safety.'' In fact, the NPRM contained several paragraphs regarding the issue of safety as it relates to the use of catalytic converters on motorcycles.

Because of the serious nature of the concerns expressed by riders we expanded our assessment of the potential risks of using catalytic converters as an emission control device on motorcycles. Our complete analysis, described in the Summary and Analysis of Comments, involved the following:

- An improved assessment of the current use of catalytic converters on motorcycles, both in the U.S. and worldwide;
- Feedback from the motorcycle manufacturers regarding this issue;
- An analysis of exhaust- and catalyst-based complaints filed by consumers with the National Highway Traffic Safety Administration's Office of Defects Investigation, including feedback from manufacturers on the nature of these complaints; and
- An assessment of the technological approaches to isolating the rider and/or passenger from the heat of a catalytic converter.

We found that in the last five years at least 16 manufacturers have certified dozens of models equipped with catalytic converters. In the last two years sales of catalyst-equipped models in each year have approached twenty percent of all motorcycles sold in the U.S., and we conservatively estimate that there are at least 150,000 catalyst-equipped motorcycles of all sizes and styles on the roads in the U.S. today. Given that the total annual mileage accumulated on these motorcycles in the U.S. likely exceeds 300 million miles, the rider experience with the emission control devices is not trivial. Given this experience, we believe that there has been ample opportunity to assess the issue of catalyst safety, not just on a hypothetical basis but on the basis of actual manufacturing and on-road riding experience. Any serious concerns would be likely to be brought to the attention of manufacturers and/or the National Highway Traffic Safety Administration (NHTSA). Our analysis of the NHTSA database on consumer complaints revealed a small number related to the exhaust pipe, and only seven related to heat from the exhaust pipe. (In 1998 there were an estimated 5.4 million on-highway motorcycles in use in the United States.) These seven complaints are detailed in Table V.D–1.

TABLE V.D–1.—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, OFFICE OF DEFECTS INVESTIGATION; DATABASE OF CONSUMER COMPLAINTS: COMPLAINTS REGARDING EXCESS HEAT FROM EXHAUST PIPES

No.	Complaint
1	Passenger on motorcycle received burns on leg from hot mufflers.
2	Muffler not designed with heat shield, causing burn injury to driver when motorcycle turned over.
3	Exhaust manifold reaches temperatures so high that it has an orange glow. Manufacturer knows of problem, and there isn't a solution. Consumer will add additional information.

TABLE V.D–1.—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, OFFICE OF DEFECTS INVESTIGATION; DATABASE OF CONSUMER COMPLAINTS: COMPLAINTS REGARDING EXCESS HEAT FROM EXHAUST PIPES—Continued

No.	Complaint
4	Consumer states that when at a stop the exhaust pipe will glow red and this can cause injuries to the consumer. Dealer notified.
5	Exhaust system cross over pipe is located too close to seat, causing driver to be burned while driving, even if properly dressed.
6	Consumer states exhaust pipes are positioned below foot pegs so that when you come to a stop and put feet down, it's very likely that pant leg will at least brush up against pipe. Consumer has ruined clothes because of this. Manufacturer does not feel this is a problem, they suggested to consumer that he buy after market exhaust guards, which are expensive.
7	Exhaust pipes are positioned below foot pegs so that when you come to a stop and put your foot down you will brush up against hot pipe.

Source: National Highway Traffic Safety Administration, Office of Defects Investigation. Consumer Complaints Database. See *http://www-odi.nhtsa.dot.gov/cars/problems/complain/.*

Two of the seven (Nos. 1 and 2 in the table above) were clearly regarding motorcycles without catalysts, and of the remaining five only two were regarding models that clearly did have catalysts (Nos. 6 and 7). We are unable to determine whether complaints numbered 3–5 involve motorcycles with catalysts; although the manufacturer has been using catalysts for a number of years, sales of these motorcycles have been limited to California to date. The complaints shown in the table originated from Ohio, New York, and Arizona. The manufacturers of the motorcycles reflected in these five complaints unanimously stated their belief that these are isolated cases, that they have no record of consumer complaints indicating that widespread problems exist, and that they make every effort to protect the rider from injury or harm.

We are confident that manufacturers can design and produce motorcycles that respond to these safety concerns, and information submitted by the manufacturers supports our assessment that catalytic converters can be safely integrated into motorcycle designs. There are a number of approaches that manufacturers are using today to protect the rider from excessive heat. Some motorcycle designs permit the catalyst to be placed on the underside of the motorcycle where it is unable to contact the rider. Other manufacturers will use a double-pipe exhaust system to reduce heat loss, allowing the exhaust gases to remain hot before reaching the catalyst while maintaining lower exterior temperatures. Some manufacturers are placing the catalyst inside the muffler or close to the manifold in areas where it is unlikely to be contacted by the rider or passenger. Footrests can be shielded and pipes can be insulated to reduce the exterior transmission of heat. The fact that these approaches are already being successfully employed, combined with the significant lead time provided for the Tier 2 standard, leads us to conclude that catalysts can be safely integrated into both current and future motorcycle designs.

Every motorcycle manufacturer who either testified at the public hearing or provided written comments on the proposed rule has unequivocally stated that they can build motorcycles that will meet the standards with no negative impact on safety or performance relative to motorcycles manufactured today. Finally, MECA addressed this issue at the public hearing by noting that catalyst technology has been applied to over 15 million two- and three-wheelers worldwide. There is no indication from any nation worldwide—some of which are far more dependent on motorcycles as daily transportation than we are in the U.S.—that the use of catalysts on motorcycles presents a significant risk to the rider.

We do not expect any of these possible technology changes to adversely affect performance. Indeed, the transition to some of these technologies (*e.g.*, advanced fuel injection) would be expected to improve performance, fuel economy, and reliability. In the last ten years, and especially within the last few years, there has been an increasing use of the technologies that we expect will be used to meet the new standards (*i.e.*, secondary air injection, sequential fuel injection, and catalytic converters). There is no evidence to suggest that motorcycle performance has declined during that period, and every reason to believe that manufacturers have been able to continue to develop products that make continual improvements in performance. There are too many examples to repeat here that demonstrate that emission controls can be incorporated into motorcycles concurrent with increases in performance and handling, as well as decreases in weight. Consider the redesigned 2003 Yamaha YZF–R6, a 600cc high performance motorcycle in the highly competitive middleweight super sport/racing category. Relative to the 2002 model, the 2003 YZF–R6 is eight pounds lighter, several horsepower stronger, is being very well-reviewed in the press, and has about half the emissions of the 2002 model (0.6 g/km HC in 2003 versus 1.1 g/km HC in 2002). It's also being sold at the same price as the 2002 model. Emission-related improvements for 2003 include the addition of fuel injection and a catalytic converter. Even with the addition of a catalytic converter, the use of advanced materials enables the exhaust system of the 2003 model to be more than two pounds lighter than the 2002 model. We recognize that these are examples and do not address all combinations of technology and all sizes and styles of motorcycles, but they are clear demonstrations of what is achievable with the technology and materials available today.

Finally, motorcycle manufacturers have a tremendous amount at stake with respect to the issues of performance and safety, as well as the greatest amount of experience and technological expertise. They have every reason to balk at new emission standards if they believe that catalytic converters will raise in-use safety concerns and cause rider injuries and deaths as some have alleged. However, the manufacturers have not raised concerns. In fact, more than a dozen manufacturers from Indian to Honda and Harley-Davidson have unequivocally stated in the public record—directly or through their industry association—that motorcycles produced under the new standards will be as safe and have the same or better performance as motorcycles today.

E. Non-Conformance Penalties

Clean Air Act section 206(g) (42 U.S.C. 7525(g)), allows us to issue a

certificate of conformity for heavy-duty engines or for highway motorcycles that exceed an applicable section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking. Congress adopted section 206(g) in the Clean Air Act Amendments of 1977 as a response to perceived problems with technology-forcing heavy-duty engine emissions standards. If strict standards were maintained, then some manufacturers, ''technological laggards,'' might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem. The laggards would have a temporary alternative that would permit them to sell their engines or vehicles by payment of a penalty. Through regulation, we established three criteria for determining the eligibility of emission standards for NCPs in any given model year. First, the emission standard in question must become more difficult to meet, either by becoming more stringent itself or by its interaction with another emission standard that has become more stringent. Second, substantial work must be required to meet the emission standard. We consider ''substantial work'' to mean the application of technology not previously used in that vehicle or engine class/subclass, or a significant modification of existing technology, to bring that vehicle/engine into compliance. We do not consider minor modifications or calibration changes to be classified as substantial work. Third, it must be likely that a company will become a technological laggard. A technological laggard is defined as a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs penalties, might be forced from the marketplace.

We do not believe that the three criteria could be satisfied with respect to the Tier 1 standards. Thus, we are not at this time planning to offer NCPs for the Tier 1 standards. Furthermore, it is too early to determine whether the criteria will be satisfied with regards to the Tier 2 standards. Thus, we are also not offering NCPs at this time for the Tier 2 standards. However, we will monitor the manufacturers' efforts to comply with the Tier 2 standards and will consider proposing NCPs for the standards in the future if we believe conditions warrant them.

VI. Permeation Emission Control

A. Overview

In the proposal we specified only exhaust emission controls for motorcycles. However, we provided a detailed discussion of permeation emissions from motorcycles and technological strategies for reducing such emissions. We requested comment on whether we should finalize standards that would require low permeation fuel tanks and hoses and on the possible forms that regulations on permeation emissions from motorcycles could take. In a supplemental **Federal Register** notice (67 FR 66097, October 30, 2002), we stated that if we were to finalize permeation requirements for motorcycles, that it was highly likely that they would be modeled after those in the recreational vehicle regulations which had been recently finalized. Motorcycle manufacturers initially expressed concern about the feasibility of the proposed standards. However, through discussions between EPA and industry, manufacturers' concerns about the feasibility of permeation standards were largely resolved.

We are adopting performance standards intended to reduce permeation emissions from motorcycles. The standards, which apply to new motorcycles starting in 2008, are nominally based on manufacturers reducing these permeation emissions from new motorcycles by approximately 90 percent overall. We are also adopting several special compliance provisions to reduce the burden of permeation emission regulations on small businesses. These special provisions are the same as for the exhaust emission standards, as applicable.

B. Permeation Emission Standards

1. What Are the Emission Standards and Compliance Dates?

We are finalizing new standards that will require an 85-percent reduction in plastic fuel tank permeation and a 95-percent reduction in fuel system hose permeation from new motorcycles beginning in 2008. These standards and their implementation dates are presented in Table VI.B–1. Section VI.C presents the test procedures associated with these standards. Test temperatures are presented in Table VI.B–1 because they represent an important parameter in defining the emission levels.

The permeation standards are based on the inside surface areas of the hoses and fuel tanks. We sought comment on whether the potential permeation standards for fuel tanks should be expressed as grams per gallon of fuel tank capacity per day or as grams per square meter of inside surface area per day. Although volume is generally used to characterize fuel tanks, we base the standard on inside surface area because permeation is a function of surface area. In addition, the surface to volume ratio of a fuel tank changes with capacity and geometry of the tank. Two similar shaped tanks of different volumes or two different shaped tanks of the same volume could have different g/gallon/day permeation rates even if they were made of the same material and used the same emission-control technology. Therefore, we believe that using a $g/m^2/day$ form of the standard more accurately represents the emissions characteristics of a fuel tank and minimizes complexity. This is consistent with the permeation standards for recreational vehicles.

TABLE VI.B–1.—PERMEATION STANDARDS FOR MOTORCYCLES

Emission component	Implementation date	Standard	Test temperature
Fuel Tank Permeation	2008	1.5 $g/m^2/day$	28°C (82°F)
Hose Permeation	2008	15 $g/m^2/day$	23°C (73°F)

These standards are revised compared to the values we sought comment on in the notice. This revision is intended to accommodate emissions test variability and in-use deterioration associated with low permeation technology. Since the notice, we have received test information that suggests that a tank permeation standard representing an 85 rather than a 95-percent reduction is appropriate to accommodate these factors. Nonetheless, we continue to believe that manufacturers will target control technologies and strategies focused on achieving reductions of 95 percent in production tanks. With regard to the permeation standard for hoses, we have adjusted the standard slightly to give the manufacturers more freedom in selecting their hose material and to accommodate the fact that we

selected a certification test fuel based on a 10-percent ethanol blend, which would be prone to greater permeation than neat gasoline. The final standards are consistent with the recreational vehicle standards that were finalized after the motorcycle NPRM.

Cost-effective technologies exist to significantly reduce permeation emissions. Because essentially all of the plastic fuel tanks are made from high density polyethylene (HDPE), manufacturers would be able to choose from several technologies for providing a permeation barrier in HDPE tanks. The use of metal fuel tanks would also meet the standards, because fuel does not permeate through metal. The hose permeation standard can be met using barrier hose technology or through using low permeation automotive-type tubing. These technologies are discussed in Section VI.E. The implementation date gives manufacturers four years to comply. This will allow manufacturers time to implement controls in their tanks and hoses in an orderly business manner.

2. Will I Be Able To Average, Bank, or Trade Emissions Credits?

Averaging, banking, and trading (ABT) refers to the generation and use of emission credits based on certified emission levels relative to the standard. The general ABT concept is discussed in detail in Section IV.C. In many cases, an ABT program can improve technological feasibility, provide manufacturers with additional product planning flexibility, and reduce costs which allows us to consider emission standards with the most appropriate level of stringency and lead time, as well as providing an incentive for the early introduction of new technology.

We are finalizing ABT for non-metal fuel tanks to facilitate the implementation of the standard across a variety of tank designs. To meet the standard on average, manufacturers would be able to divide their fuel tanks into different emission families and certify each of their emission families to a different Family Emissions Level (FEL). The emission families would include fuel tanks with similar characteristics, including wall thickness, material used (including additives such as pigments, plasticizers, and UV inhibitors), and the emission-control strategy applied. The FELs would then be weighted by sales volume and fuel tank inside surface area to determine the average level across a manufacturer's total production. An additional benefit of a corporate-average approach is that it provides an incentive for developing new technology that can be used to achieve even larger emission reductions or perhaps to achieve the same reduction at lower costs or to achieve some reductions early.

For purposes of ABT we will not consider metal tanks as part of any sort of credit program. In other words, metal fuel tanks will not be able to generate permeation credits. We do not want to provide an opportunity for ''windfall'' credits for metal fuel tanks because this would undermine the value of the standard. The standard is based on feasible technology for plastic fuel tanks. If averaging were allowed between plastic and metal fuel tanks (which are used on most motorcycles), the standard would have to be adjusted accordingly.

If a manufacturer were to certify the majority of their fuel tanks to a level below the permeation standard, they would have the option of leaving a small number of their fuel tanks uncontrolled. In this case, manufacturers would have the option of either testing the uncontrolled fuel tanks or using an assigned family emission level of 12 $g/m^2/day$.

Any manufacturer could choose to certify each of its evaporative emission control families at levels which would meet the standard. Some manufacturers may choose this approach as they could see it as less complicated to implement.

We are also finalizing a voluntary program intended to give an opportunity for manufacturers to prove out technologies earlier than 2008. Manufacturers will be able to use permeation control strategies early, and even if they do not meet the 1.5 $g/m^2/day$ standard, they can earn credit through partial emission reduction that will give them more lead time to meet the standard. This program will allow a manufacturer to certify fuel tanks early to a less stringent standard of 3.0 $g/m^2/day$ and thereby delay meeting the 1.5 $g/m^2/day$ fuel tank permeation standard by 1 tank-year for every tank-year of early certification. As an alternative, this delay could be applied to other fuel tanks provided that these tanks have an equal or smaller inside surface area and meet a level of 3.0 $g/m^2/day$. As an example, suppose a manufacturer were to sell 50 motorcycles in 2006 and 75 motorcycles in 2007 with fuel tanks that meet a level of 3.0 $g/m^2/day$. This manufacturer would then be able to sell 125 vehicles with fuel tanks that meet a level of 3.0 $g/m^2/day$ in 2008 and later years. No uncontrolled tanks could be sold after 2007. In addition to providing implementation flexibility to manufacturers, this option, if used, would result in additional and earlier emission reductions.

For hoses, we do not believe that ABT provisions would result in a significant technological or cost benefit to manufacturers. We believe that all fuel hoses can meet the permeation standards using straightforward technology as discussed in Section VI.E. From EPA's perspective, including an ABT program in the rule creates a long-term administrative burden that is not worth taking on since it does not provide the industry with useful flexibility.

3. How Do I Certify My Products?

We are finalizing a certification process similar to our existing program for other mobile sources. Manufacturers test representative prototype designs and submit the emission data along with other information to EPA in an application for a Certificate of Conformity. As discussed in Section VI.C.3, we will allow manufacturers to certify based on either design (for which there is already data) or by conducting its own emissions testing. If we approve the application, then the manufacturer's Certificate of Conformity allows the manufacturer to produce and sell the vehicles described in the application in the U.S.

Manufacturers certify their fuel systems by grouping them into emission families that have similar emission characteristics. The emission family definition is fundamental to the certification process and to a large degree determines the amount of testing required for certification. The regulations include specific characteristics for grouping emission families for each category of tanks and hoses. For fuel tanks, key parameters include wall thickness, material used (including additives such as pigments, plasticizers, and UV inhibitors), and the emission-control strategy applied. For hoses, key parameters include material, wall thickness, and emission-control strategy applied. To address a manufacturer's unique product mix, we may approve using broader or narrower engine families. The certification process for vehicle permeation is similar as for the process for certifying engines.

4. What Durability Provisions Apply?

We are adopting several additional provisions to ensure that emission controls will be effective throughout the life of the motorcycle. This section discusses these provisions for permeation emissions from motorcycles.

a. How Long Do My Vehicles Have To Comply?

Manufacturers would be required to build fuel systems that meet the

emission standards over each motorcycle's useful life. For the permeation standards, we use the same useful life as for exhaust emissions from motorcycle engines based on the belief that fuel system components and engines are intended to have the same design life. This useful life is 5 years or 6,000 km for Class I <50cc, 12,000 km for Class I ≥50cc, 18,000 km for Class II, and 30,000 km for Class III. Further, we are applying the same warranty period for permeation emission related components of the fuel system as for exhaust emission-related components of the motorcycle.

b. How Do I Demonstrate Emission Durability?

We are adopting several additional provisions to ensure that emission controls will be effective throughout the life of the vehicle. Motorcycle manufacturers must demonstrate that the permeation emission-control strategies will last for the useful life of the vehicle. Any deterioration in performance would have to be included in the family emissions limit. This section discusses durability provisions for fuel tanks and hoses.

For plastic fuel tanks, we are specifying a preconditioning and four durability steps that must be performed in conjunction with the permeation testing for certification to the standard. These steps, which include fuel soaking, slosh, pressure-vacuum cycling, temperature cycling, and ultra-violet light exposure, are described in more detail in Section VI.C.1. The purpose of these preconditioning steps is to help demonstrate the durability of the fuel tank permeation control under conditions that may occur in use. For fuel hoses, the only preconditioning step that we are requiring is a fuel soak to ensure that the permeation rate is stabilized prior to testing. Data from before and after the durability tests would be used to determine deterioration factors for the certified fuel tanks. The durability factors would be applied to permeation test results to determine the certification emission level of the fuel tank at full useful life. The manufacturer would still be responsible for ensuring that the fuel tank and hose meet the permeation standards throughout the useful life of the motorcycle.

We recognize that motorcycle manufacturers will likely depend on suppliers/vendors for complying tanks and fuel hoses. We believe that, in addition to normal business practices, our testing requirements will help assure that suppliers/vendors consistently meet the performance specifications laid out in the certificate.

C. Testing Requirements

To obtain a certificate allowing sale of products meeting EPA emission standards, manufacturers generally must show compliance with such standards through emission testing. The test procedures for determining permeation emissions from fuel tanks and hoses on motorcycles are described below. This section also discusses design-based certification as an alternative to performing specific testing. These test procedures are the same as those existing for recreational vehicles.

1. What Are the Test Procedures for Measuring Permeation Emissions From Fuel Tanks?

Prior to testing the fuel tanks for permeation emissions, the fuel tank must be preconditioned by allowing the tank to sit with fuel in it until the hydrocarbon permeation rate has stabilized. Under this step, the fuel tank must be filled with a 10-percent ethanol blend in gasoline (E10), sealed, and soaked for 20 weeks at a temperature of 28 ± 5°C. Once the soak period has ended, the fuel tank is drained, refilled with fresh fuel, and sealed. The permeation rate from fuel tanks is measured at a temperature of 28 ± 2°C over a period of at least 2 weeks. Consistent with good engineering judgment, a longer period may be necessary for an accurate measurement for fuel tanks with low permeation rates. Permeation loss is determined by measuring the weight of the fuel tank before and after testing and taking the difference. Once the mass change is calculated, it is divided by the manufacturer determined tank surface area and the number of days of soak to get the emission rate. As an option, permeation may be measured using alternative methods that will provide equivalent or better accuracy. Such methods include enclosure testing as described in 40 CFR part 86. The fuel used for this testing will be a blend of 90-percent gasoline and 10-percent ethanol.

To determine permeation emission deterioration factor, we are specifying three durability tests: slosh testing, pressure-vacuum cycling, and ultra-violet exposure. The purpose of these deterioration tests is to help ensure that the technology is durable and the measured emissions are representative of in-use permeation rates. For slosh testing, the fuel tank is filled to 40-percent capacity with E10 fuel and rocked for 1 million cycles. The pressure-vacuum testing contains 10,000 cycles from −0.5 to 2.0 psi. These two durability tests are based on draft recommended SAE practice.[44] The third durability test is intended to assess potential impacts of UV sunlight (0.2 μm–0.4 μm) on the durability of the surface treatment. Because most of the irradiance from sunlight in this range is seen in wavelengths above 0.3 μm, we recommend testing with an average wavelength above 0.3 μm such as the UVA lamp described in SAE J2020.[45] In the UV exposure test, the tank must be exposed to a UV light of at least 24 W/m^2 (0.4 W-hr/m^2/min) on the tank surface for 15 hours per day for 30 days. Alternatively, it can be exposed to direct natural sunlight for an equivalent period of time. To allow for weekends and rainy days, these exposure days do not need to be continuous.

2. What Are the Test Procedures for Measuring Permeation Emissions From Fuel System Hoses?

The permeation rate of fuel from hoses would be measured at a temperature of 23 ± 2°C using SAE method J30[46] with E10. The hose must be preconditioned with a fuel soak to ensure that the permeation rate has stabilized. The fuel to be used for this testing would be a blend of 90-percent gasoline and 10-percent ethanol. This fuel is consistent with the test fuel used for highway evaporative emission testing. Alternatively, for purposes of submission of data at certification, permeation could be measured using alternative equipment and procedures that provide equivalent results. To use these alternative methods, manufacturers would have to apply to us and demonstrate equivalence. Examples of alternative approaches that we anticipate manufacturers may use are the recirculation technique described in SAE J1737,[47] enclosure-type testing such as in 40 CFR part 86, or weight loss testing such as described in SAE J1527.[48]

[44] Draft SAE Information Report J1769, ''Test Protocol for Evaluation of Long Term Permeation Barrier Durability on Non-Metallic Fuel Tanks,'' (Docket A–2000–01, document IV–A–24).

[45] SAE Surface Vehicle Standard J2020, ''Accelerated Exposure of Automotive Exterior Materials Using a Fluorescent UV and Condensation Apparatus,'' Revised February, 2003 (Docket A–2000–02, document, IV–A–10).

[46] SAE Recommended Practice J30, ''Fuel and Oil Hoses,'' June 1998 (Docket A–2000–01, document IV–A–92).

[47] SAE Recommended Practice J1737, ''Test Procedure to Determine the Hydrocarbon Losses from Fuel Tubes, Hoses, Fittings, and Fuel Line Assemblies by Recirculation,'' 1997 (Docket A–2000–01, document, IV–A–34).

[48] SAE Recommended Practice J1527, ''Marine Fuel Hoses,'' 1993 (Docket A–2000–01, document IV–A–19).

3. Can I Certify Based on Engineering Design Rather Than Through Testing?

In general, test data would be required to certify fuel tanks and hoses to the permeation standards. Test data could be carried over from year to year for a given emission-control design. We do not believe the cost of testing tanks and hose designs for permeation would be burdensome especially given that the data could be carried over from year to year, and that there is a good possibility that the broad emission family concepts embodied in this program would lead to minimum testing. However, there are some specific cases where we would allow certification based on design. These special cases are discussed below.

We would consider a metal fuel tank to meet the design criteria for a low permeation fuel tank because fuel does not permeate through metal. However, we would not consider this design to be any more effective than any other low permeation fuel tank for the purposes of any sort of credit program. Although metal is impermeable, seals and gaskets used on the fuel tank may not be. The design criteria for the seals and gaskets would be that either they would not have a total exposed surface area exceeding 1000 mm^2, or the seals and gaskets would have to be made of a material with a permeation rate of 10 g/m^2/day or less at 23°C as measured under ASTM D814.[49] A metal fuel tank with seals that meet this design criteria would readily pass the standard.

Another technology that we considered for design-certification was multi-layer fuel tank construction with low-permeation (EVOH) barrier. This technology is widely used in automotive applications to meet the vehicle evaporative emission standards. However, we believe that a manufacturer must demonstrate that their design meets the standards prior to certification. For instance, if the layers are not sealed well at a seam or if the fuel tank is prone to delamination in-use, permeation emissions could be above the standard without a noticeable fuel leak. Therefore, we would require the manufacturer to submit test data on the effectiveness and durability of the fuel tank. As discussed above, test data could be carried over from year-to-year and across product lines provided that a worst case configuration is tested.

Similarly, if manufacturers were to produce fuel tanks out of low-permeability materials other than metal (such as an acetal copolymer), permeation testing on a worst case configuration would initially need to be performed. This test data could then be used to certify other fuel tanks which are otherwise similar and using the same material (including additives). Because permeation is a function of wall thickness, the worst case configuration, in this case, would likely be the fuel tank design with the thinnest walls. If new test data demonstrates that the use of other technology designs will ensure compliance with the applicable emission standards, we may establish additional design certification options for these technologies such as those we are finalizing for metal fuel tanks.

Fuel hoses can be certified by design as being manufactured in compliance with certain accepted SAE specifications. Specifically, a fuel hose meeting the SAE J30 R11–A or R12 requirements could be design-certified to the standard. In addition, fuel line meeting the SAE J2260[50] Category 1 requirements could be design-certified to the standard. These fuel hoses and fuel line specifications are based on 15-percent methanol fuel and higher temperatures. We believe that fuel hoses and lines that are tested and meet these requirements would also meet our hose permeation standards because both are generally acknowledged as representing more stringent test parameters. In the future, if new SAE specifications are developed which are consistent with our hose permeation standards, we would consider including hoses meeting the new SAE requirements as being able to certify by design.

At certification, manufacturers will have to submit an engineering analysis showing that the tank or hose designs will meet the standards throughout their full useful life. The tanks and hoses will remain subject to the emission standards throughout their useful lives. The design criteria relate only to the issuance of a certificate.

4. Technical Amendments to 40 CFR Part 1051 Test Procedures

We are updating the figure in § 1051.515 that presents a flow chart of the fuel tank test procedures to help better clarify the procedures. In addition, we are updating the structure of the language in § 1051.515 to be parallel to the construction of the flow chart. In the UV exposure test, we are simplifying the units from W-hr/m^2/min to W/m^2 (0.40 W-hr/m^2/min equals 24 W/m^2). These changes are for clarity only and do not result in substantive changes to the test procedures. One other change we are making is to make the length of the UV exposure test in the regulations match the length specified in the preamble for the recreational vehicles FRM. Therefore, we are changing the specification of 4 weeks in the regulatory text to 30 days. The UV exposure test is contained in § 1051.515(d)(2). All of these changes were developed in the process of the motorcycle rulemaking. However, we decided to make the amendments applicible to recreational vehicles as well for several reasons. These reasons include: (1) The motorcycle permeation requirements are essentially the same as for recreational vehicles, (2) the motorcycle test procedures are in the same body of regulatory text as for recreational vehicles, (3) the amendments are not substantive, and (4) the amendments help clarify the test procedures.

D. Special Compliance Provisions

We believe that the permeation control requirements will be relatively easy for small businesses to meet, given the relatively low cost of the requirements and the availability of materials and treatment support by outside vendors. In addition, this regulatory program is structured in such a way to minimize burdens on all manufacturers by including design-based certification, ABT, broad emission families, minimized compliance requirements, and hardship provisions. Low permeation fuel hoses are available from vendors today, and we would expect that surface treatment would be applied through an outside company if that is the compliance approach used. However, to minimize any additional burden these requirements may impose on small businesses, we are delaying the implementation date of the permeation standards for small business manufacturers to 2010.

E. Technological Feasibility

We believe there are several strategies that manufacturers can use to meet our permeation emission standards. This section gives an overview of this technology. See Chapters 3 and 4 of the Final Regulatory Support Document for more detail on the technology discussed here.

1. Implementation Schedule

The permeation emission standards for fuel tanks become effective in the 2008 model year. Several technologies are available that could be used to meet this standard. Surface treatments to reduce tank permeation are widely used

[49] ASTM Standard Test Method D 814–95 (Reapproved 2000), ''Rubber Property—Vapor Transmission of Volatile Liquids,'' (Docket A–2000–01, document IV–A–95).

[50] SAE Recommended Practice J2260, ''Nonmetallic Fuel System Tubing with One or More Layers,'' 1996, (Docket A–2000–01, document IV–A–18).

today in other container applications, and the technology and production facilities needed to conduct this process exist. Selar® is used by at least one portable fuel tank manufacturer and has also been used in automotive applications. Plastic tanks with coextruded barriers have been used in automotive applications for years. However, plastic fuel tanks used in motorcycles are primarily high-density polyethylene tanks with no permeation control. We received comment that they it would be unreasonable for manufacturers to have to comply before 2008 because this is the date already established for recreational vehicles. Manufacturers will need lead time to allow for durability testing and other development work associated with applying this technology to motorcycles. This is especially true for manufacturers or vendors who choose to set up their own surface barrier treatment equipment in-house.

We believe that the low permeation hose technology can also be applied in the 2008 time frame. A lower permeation fuel hose exists today known as the SAE R9 hose that is as flexible as the SAE R7 hose used in most motorcycle applications today. These SAE hose specifications are contained in SAE J30 cited above. This hose would meet our permeation standard on gasoline, but probably not on a 10-percent ethanol blend. As noted in Chapter 4 of the Final Regulatory Support Document, barrier materials typically used in R9 hose today may have permeation rates 3 to 5 times higher on a 10-percent ethanol blend than on straight gasoline. However, there are several lower permeability barrier materials that can be used in rubber hose that will comply with the hose permeation requirement on a 10-percent ethanol blend and still be flexible and durable enough for use in motorcycles. This hose is available for automotive applications at this time, but some lead time may be required to apply these hoses to motorcycles if hose connection fitting changes were required. This would enhance both in-use effectiveness and safety. For these reasons, we are implementing the hose permeation standard on the same schedule as the tank permeation standards.

2. Standard Levels

We have identified several strategies for reducing permeation emissions from fuel tanks and hoses. We recognize that some of these technologies may be more desirable than others for some manufacturers, and we recognize that different strategies for equal emission reductions may be better for different applications. A specific example of technology that could be used to meet the fuel tank permeations would be surface barrier treatments such as sulfonation or fluorination. With these surface treatments, more than a 95-percent reduction in permeation emissions from new fuel tanks is feasible. However, variation in material tolerances and in-use deterioration can reduce this effectiveness. Given the lead time for the standards, manufacturers will be able to provide fuel tanks with consistent material quality, and the surface treatment processes can be optimized for a wide range of material qualities and additives such as pigments, plasticizers, and UV inhibitors. We do not expect a large deterioration in use; however, data on slosh testing suggest that some deterioration is likely. To accommodate variability and deterioration, we are finalizing a standard that represents about an 85-percent reduction in permeation emissions from plastic fuel tanks. It is our expectation that manufacturers will aim for an effectiveness rate as near to 100 percent as practical for new tanks. Therefore, even with variability and deterioration in use, control rates are likely to exceed 85 percent. Several materials are available today that could be used as a low permeation barrier in rubber hoses. We present more detail on these and other technological approaches below.

3. Technological Approaches

a. Fuel Tanks

Blow molding is widely used for the manufacture of fuel tanks for motorcycles. Typically, blow molding is performed by creating a hollow tube, known as a parison, by pushing high-density polyethylene (HDPE) through an extruder with a screw. The parison is then pinched in a mold and inflated with an inert gas. In highway applications, non-permeable plastic fuel tanks are produced by blow molding a layer of ethylene vinyl alcohol (EVOH) or nylon between two layers of polyethylene. This process is called coextrusion and requires at least five layers: the barrier layer, adhesive layers on either side of the barrier layer, and HDPE as the outside layers which make up most of the thickness of the fuel tank walls. However, multi-layer construction requires additional extruder screws which significantly increases the cost of the blow molding process. Multi-layer fuel tanks can also be formed using injection molding. In this method, a low viscosity polymer is forced into a thin mold to create each side of the fuel tank. The two sides are then welded together. To add a barrier layer, a thin sheet of the barrier material is placed inside the mold prior to injection of the polyethylene. The polyethylene, which generally has a much lower melting point than the barrier material, bonds with the barrier material to create a shell with an inner liner.

A less expensive alternative to coextrusion is to blend a low permeable resin in with the HDPE and extrude it with a single screw. The trade name typically used for this permeation control strategy is Selar®. The low permeability resin, typically EVOH or nylon, creates non-continuous platelets in the HDPE fuel tank which reduce permeation by creating long, tortuous pathways that the hydrocarbon molecules must navigate to pass through the fuel tank walls. Although the barrier is not continuous, this strategy can still achieve greater than a 90-percent reduction in permeation of gasoline. EVOH has much higher permeation resistance to alcohol than nylon; therefore, it would be the preferred material to use for meeting our standard which is based on testing with a 10-percent ethanol fuel.

Another type of low permeation technology for fuel tanks would be to treat the surfaces of plastic fuel tanks with a barrier layer. Two ways of achieving this are known as fluorination and sulfonation. The fluorination process causes a chemical reaction where exposed hydrogen atoms are replaced by larger fluorine atoms to create a barrier on the surface of the fuel tank. In this process, a batch of fuel tanks are generally processed post production by stacking them in a steel container. The container is then voided of air and flooded with fluorine gas. By pulling a vacuum in the container, the fluorine gas is forced into every crevice in the fuel tanks. As a result of this process, both the inside and outside surfaces of the fuel tank are treated. As an alternative, fuel tanks can be fluorinated on-line by exposing the inside surface of the fuel tank to fluorine during the blow molding process. However, this method may not prove as effective as off-line fluorination which treats the inside and outside surfaces.

Sulfonation is another surface treatment technology where sulfur trioxide is used to create the barrier by reacting with the exposed polyethylene to form sulfonic acid groups on the surface. Current practices for sulfonation are to place fuel tanks on a small assembly line and expose the inner surfaces to sulfur trioxide, then

rinse with a neutralizing agent. However, sulfonation can also be performed using a batch method. Either of these processes can be used to reduce gasoline permeation by more than 95 percent.

Over the first month or so of use, polyethylene fuel tanks can expand by as much as three percent due to saturation of the plastic with fuel. Manufacturers have raised the concern that this hydrocarbon expansion could affect the effectiveness of surface treatments like fluorination or sulfonation. We believe this will not have a significant effect on the effectiveness of these surface treatments. We and California ARB have performed extensive permeation testing on HDPE fuel tanks with and without these surface treatments. Prior to the ARB permeation testing, the tanks were prepared by first performing a durability procedure where the fuel container is cycled a minimum of 1000 times between -1 psi and 5 psi. In addition, for both the EPA and ARB testing, the fuel containers were soaked with fuel to stabilize permeation rates. The test data, presented in Chapter 4 of the Final Regulatory Support Document show that fluorination and sulfonation are still effective after this testing.

Manufacturers have also commented that fuel sloshing in the fuel tank, under normal in-use operation, could wear off the surface treatments. However, we do not believe that this is likely. These surface treatments actually result in an atomic change in the structure of the outside surface of the fuel tank. To wear off the treatment, the plastic would need to be worn away on the outside surface. In addition, testing by California ARB shows that the fuel tank permeation standard can be met by fuel tanks that have been sloshed for 1.2 million cycles. Test data on an sulfonated automotive HDPE fuel tank after five years of use showed no deterioration in the permeation barrier. This data are presented in Chapter 4 of the Final Regulatory Support Document.

Permeation can also be reduced from fuel tanks by constructing them out of a lower permeation material than HDPE. For instance, metal fuel tanks would not permeate. In addition, there are grades of plastics other than HDPE that could be molded into fuel tanks. An example of materials which have excellent permeation resistance, even with alcohol-blended fuels, are acetal copolymers and thermoplastic polyesters.

b. Hoses

Fuel hoses produced for use in motorcycles are generally extruded nitrile rubber with a cover for abrasion resistance. Lower permeability fuel hoses produced today for other applications are generally constructed in one of two ways: either with a low permeability layer or by using a low permeability rubber blend. By using hose with a low permeation thermoplastic layer, permeation emissions can be reduced by more than 95 percent. Because the thermoplastic layer is very thin, on the order of 0.1 to 0.2 mm, the rubber hose retains its flexibility. Two thermoplastics which have excellent permeation resistance, even with an alcohol-blend fuel, are ETFE and THV.[51]

In automotive applications, multilayer plastic tubing, made of fluoropolymers is generally used. An added benefit of these low permeability lines is that some fluoropolymers can be made to conduct electricity and therefore can prevent the buildup of static charges. Although this technology can achieve more than an order of magnitude lower permeation than barrier hoses, it is relatively inflexible and may need to be molded in specific shapes for each motorcycle design. Manufacturers have commented that motorcycle hose would need to be designed for elements such as location, exposure, and vibration that are unique to motorcycle design.

4. Conclusions

The standards for permeation emissions for motorcycles reasonably reflect what manufacturers can achieve through the application of available technology. Manufacturers will have several years of lead time to select, design, and produce permeation emission-control strategies that will work best for their product lines. We expect that meeting these requirements will pose a challenge, but one that is feasible taking into consideration the availability and cost of technology, lead time, noise, energy, and safety. The role of these factors is presented in detail in Chapters 3 and 4 of the Final Regulatory Support Document.

The permeation standards are based on the effective application of low permeable materials or surface treatments. This is a step change in technology; therefore, we believe that even if we set a less stringent permeation standard, these technology options would likely still be used. In addition, this technology is relatively inexpensive and can achieve meaningful emission reductions. The standards are expected to achieve more than an 85-percent reduction in permeation emissions from fuel tanks and more than 95 percent from hoses. We believe that more stringent standards could result in significantly more expensive materials without corresponding additional emission reduction. In addition, the control technology would generally pay for itself over time by conserving fuel that would otherwise evaporate. The projected costs and fuel savings are discussed in Section VII.B.

VII. Environmental Impacts and Program Costs

The following section summarizes the emission benefits, costs, and cost per ton of pollutant reduced of the new motorcycle emission standards. Further information on these and other aspects of the environmental and economic impacts of this rule are presented in more detail in the Regulatory Support Document for this rulemaking.

A. Environmental Impacts

Emission estimates for highway motorcycles were developed using information on the emission levels of current motorcycles and updated information on motorcycle use provided by the motorcycle industry. Permeation emissions for highway motorcycles were developed based on known material permeation rates as a function of surface area and temperature. A more detailed description of the methodology used for projecting inventories and projections for additional years can be found in the Chapter 6 of the Regulatory Support Document.

Tables VII.A–1 and VII.A–2 contain the projected emission inventories for the years 2010 and 2020, respectively, from the motorcycles subject to this rulemaking. The inventories are presented for the base case which assumes no change from current conditions (*i.e.*, without the standards taking effect) and assuming the standards being adopted today take effect. The inventories for 2010 and 2020 include the effect of growth. The percent reductions based on a comparison of estimated emission inventories with and without the emission standards are also presented.

[51] Ethylene-tetrafluoro-ethylene (ETFE), tetra-fluoro-ethylene, hexa-fluoro-propylene, and vinyledene fluoride (THV).

TABLE VII.A–1—2010 PROJECTED ON-HIGHWAY MOTORCYCLE EMISSIONS INVENTORIES

[thousand short tons]

Standards	NO_X			HC		
	Base case	With standards	Percent reduction	Base case	With standards	Percent reduction
Exhaust	11	10	9	45	41	10
Permeation	.....	.....	.....	16	13	22
Total	11	10	9	61	54	13

TABLE VII.A–2—2020 PROJECTED ON-HIGHWAY MOTORCYCLE EMISSIONS INVENTORIES

Standards	NO_X			HC		
	Base case	With standards	Percent reduction	Base case	With standards	Percent reduction
Exhaust	14	7	50	58	28	51
Permeation	.....	.....	.....	21	3	85
Total	14	7	50	79	31	61

As described in Section II, there will also be environmental benefits associated with reduced haze in many sensitive areas.

Finally, anticipated reductions in hydrocarbon emissions will correspond with reduced emissions of the toxic air emissions referenced in Section II. In 2020, the projected reduction in hydrocarbon emissions should result in an equivalent percent reduction in air toxic emissions.

B. Motorcycle Engine and Equipment Costs

In assessing the economic impact of setting emission standards, we have made a best estimate of the technologies and their associated costs to meet the standards. In making our estimates for the final rule we have relied on our own technology assessment, which includes information supplied by individual manufacturers, and we have made revisions after considering information provided by commenters. Estimated costs include variable costs (for hardware and assembly time) and fixed costs (for research and development, retooling, and certification). We projected that manufacturers will recover the fixed costs over the eight years of production and used an amortization rate of 7 percent in our analysis. The analysis also considers total operating costs, including maintenance and fuel consumption. Cost estimates based on the projected technologies represent an expected change in the cost of engines as they begin to comply with new emission standards. All costs are presented in 2001 dollars. Full details of our cost analysis can be found in Chapter 5 of the Regulatory Support Document.

Cost estimates based on the current projected costs for our estimated technology packages represent an expected incremental cost of vehicles in the near term. For the longer term, we have identified factors that would cause cost impacts to decrease over time. First, as noted above, we project that manufacturers will spread their fixed costs over the first eight years of production. After the eighth year of production, we project that the fixed costs would be retired and the per unit costs could be reduced as a result.

For highway motorcycles above 50cc, the analysis also incorporates the expectation that manufacturers and suppliers will apply ongoing research and manufacturing innovation to making emission controls more effective and less costly over time. Research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production and use, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts.[52] (see the Final Regulatory Support Document for additional information). The cost analysis generally incorporates this learning effect by decreasing estimated variable costs by 20 percent starting in the third year of production. Long-term impacts on costs are expected to decrease as manufacturers fully amortize their fixed costs and learn to optimize their designs and production processes to meet the standards more efficiently. The learning curve has not been applied to the motorcycles under 50cc because we expect manufacturers to use technologies that will be well established prior to the start of the program.

We project average costs of $30 per Class III highway motorcycle to meet the Tier 1 standard and $45 to meet the Tier 2 standards, incremental to Tier 1. We anticipate the manufacturers will meet the emission standards with several technologies, including electronic fuel injection, catalysts, pulse-air systems, and other general improvements to engines. For motorcycles with engines of less than 50cc, we project average costs of $44 per motorcycle to meet emission standards. We anticipate the manufacturers of these small motorcycles (mostly scooters) will meet the emission standards by replacing any remaining two-stroke engines with four-strokes. The costs are based on the conversion to 4-stroke because we believe this to be the most likely technology path for the majority of scooters. Manufacturers could also choose to employ advanced technology two-stroke (*e.g.*, direct injection and/or catalysts) designs. The process of developing clean technologies is very much underway already as a result of regulatory actions in Europe and the rest of world where the primary markets for small motorcycles exist. Chapter 4 of the Regulatory Support Document describes these technologies further.

[52] For further information on learning curves, see previous final rules for Tier 2 highway vehicles (65 FR 6698, February 10, 2000), marine diesel engines (64 FR 73300, December 29, 1999), nonroad diesel engines (63 FR 56968, October 23, 1998), and highway diesel engines (62 FR 54694, October 21, 1997).

We received comments that our costs appeared to be underestimated. We have considered these comments and, where further data and information was provided, we have made revisions to our cost estimates when they were appropriate. Chapter 5 for the Summary and Analysis of Comments provides our detailed response to comments. It is important to note that the above cost estimates are average costs and are based on both the current state of technology and projections of technology needed to meet standards. Our average cost estimates consider, for example, that almost half of current production is already equipped with fuel injection and about 20 percent of production is equipped with catalysts. To estimate average per unit costs, the costs associated with the increased use of emission control technologies due to the new standards are spread over all units produced. Costs for individual models would be higher or lower than the average depending on the changes manufacturers decide to make for their various models. Models already equipped with fuel injection, pulse air, and a catalyst are likely to have low incremental costs compared to models that are not currently equipped with these technologies. The averaging program for the standards provides manufacturers with flexibility in determining what technologies to use on their various models. Because several models are already available with the anticipated long-term emission-control technologies, we believe that manufacturers and consumers will be able to bear the added cost associated with the new emission standards.

We have also estimated a per unit cost for fuel tank and hose permeation control for motorcycles. About 10 percent of motorcycles sold have plastic fuel tanks which would be subject to the fuel tank permeation requirements. We project the additional cost per tank, assuming sulfonation treatment, to be less than $2 per fuel tank. This cost includes shipping, handling, and overhead costs. Weighting technology cost for plastic tanks with zero costs for metal tanks which will not need to apply permeation control, we get an average cost of less than $0.20 per motorcycle. Hose permeation costs are based on the costs of existing barrier-lined hoses products used in marine and automotive applications. We projected an incremental cost of less than $2 per motorcycle for barrier hoses. This cost includes upgrades to the hose clamps. Therefore, the average cost per motorcycle for permeation emission control is projected to be about $2.

Because evaporative emissions are composed of otherwise usable fuel that is lost to the atmosphere, measures that reduce evaporative emissions will result in fuel savings. We estimate that the average fuel savings, due to permeation control, be about 9 gallons over the 12.5 year average operating lifetime. This translates to a discounted lifetime savings of nearly $7 at an average fuel price of $1.10 per gallon (non-tax). Therefore, we anticipate that the fuel savings will more than offset the technology costs.

C. Aggregate Costs and Cost-Effectiveness

The above section presents unit cost estimates for each of the standards being adopted for motorcycles. These average costs represent the total set of costs the engine manufacturers will bear to comply with emission standards. With current and projected estimates of vehicle sales, we translate these costs into projected direct costs to the nation for the new emission standards in any year. A summary of the annualized costs to manufacturers is presented in Table VII.C–1. (The annualized costs are determined over the first twenty-years that the new standards will be effective.) The annual cost savings for highway motorcycles are due to reduced fuel costs (from the <50cc motorcycle standards and the permeation controls). The total fleetwide fuel savings start slowly, then increase as greater numbers of compliant motorcycles enter the fleet. Table VII.C–1 presents a summary of the annualized reduced operating costs as well.

TABLE VII.C–1.—ESTIMATED ANNUALIZED COST TO MANUFACTURERS AND ANNUALIZED FUEL SAVINGS DUE TO THE NEW MOTORCYCLE STANDARDS

Standards	Annualized cost to manufacturers (millions/year)	Annualized fuel savings (millions/year)
Exhaust	$32.0	$0.2
Permeation	1.4	4.2
Aggregate [a]	33.4	3.7

Notes:
[a] Because of the different implementation dates for the exhaust and permeation standards, the aggregate is based on a 22 year (rather than 20 year) annualized cost. Therefore, the aggregate is not equal to the sum of the costs for the two standards.

We calculated the cost per ton of emission reductions for the standards. For these calculations, we attributed the entire cost of the program to the control of ozone precursor emissions (HC or NO_X or both). Table VII.C–2 presents the discounted cost-per-ton estimates for this action. Reduced operating costs offsets a portion of the increased cost of producing the cleaner highway motorcycles under 50cc. Reduced fuel consumption also offsets the costs of permeation control.

TABLE VII.C–2.—ESTIMATED COST-PER-TON OF THE EMISSION STANDARDS

Category	Effective date	Discounted reductions per engine (short tons)	Pollutants	Discounted cost per ton	
				Without fuel savings	With fuel savings
Highway motorcycles >50cc	2006	0.03	Exhaust HC+NO_X	$1,150	$1,150
Highway motorcycles >50cc	2010	0.03	Exhaust HC+NO_X	1,550	1,550
Highway motorcycles <50cc	2006	0.02	Exhaust HC	2,130	1,750
Permeation control	2008	0.02	Evaporative HC	103	($260)

Because the primary purpose of cost-effectiveness is to compare our program to alternative programs, we made a comparison between the cost per ton values presented in this chapter and the cost-effectiveness of other programs. Table VI.C–3 summarizes the cost effectiveness of several recent EPA actions for controlled emissions from mobile sources. Additional discussion of these comparisons is contained in the Regulatory Impact Analysis.

TABLE VII.C–3.—COST-EFFECTIVENESS OF PREVIOUSLY IMPLEMENTED MOBILE SOURCE PROGRAMS

[Costs Adjusted to 2001 Dollars]

Program	$/ton
Tier 2 vehicle/gasoline sulfur	1,437–2,423
2007 Highway HD diesel	1,563–2,002
2004 Highway HD diesel	227–444
Off-highway diesel engine	456–724
Tier 1 vehicle	2,202–2,993
NLEV	2,069
Marine SI engines	1,255–1,979
On-board diagnostics	2,480
Marine CI engines	26–189

VIII. Public Participation

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for public comment following the proposal that we published August 14, 2002 (67 FR 53050). We held a public hearing on the proposal in Ann Arbor, Michigan on September 17, 2002. At that hearing, oral comments on the proposal were received and recorded. We published an additional notice for comment in two areas on October 30, 2002 (67 FR 66097). A written comment period remained open until January 7, 2003. Comments and hearing testimony have been placed in the docket for this rule. We considered these comments in developing the final rule.

We have prepared a detailed Summary and Analysis of Comments document, which describes the comments we received on the proposal and our response to each of these comments. The Summary and Analysis of Comments is available in the docket for this rule and on the Office of Transportation and Air Quality Internet home page at *http://www.epa.gov/otaq/roadbike.htm.*

IX. 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 review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. The Executive Order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A Final Regulatory Support Document has been prepared and is available in the docket for this rulemaking and at the internet address listed under **ADDRESSES** above. Annual initial costs of this rulemaking are estimated to be well below $100 million per year, even when excluding annualized operating cost savings of approximately $3.7 million per year. Even so, OMB has informed us that it considers this rule to be a ''significant regulatory action.'' Thus, this action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866. Written comments from OMB and responses from EPA to OMB comments are in the public docket for this rulemaking.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (ICR No. 0783.46). The reporting requirements in this final rule are not enforceable until the Office of Management and Budget approves them.

The information being collected is to be used by EPA to ensure that new highway motorcycles comply with applicable emissions standards through certification requirements and various subsequent compliance provisions.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 32 hours per response, with collection required annually. The estimated number of respondents is 46. The total annual cost for the first 3 years of the program is estimated to be $79,428 per year, including $23,686 in operating and maintenance costs and no capital costs, at a total of 1,449 hours per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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; adjusting the existing ways to comply with any previously applicable instructions and to 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 in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, then we will publish a technical amendment to

40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

We have determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. We have also determined that this rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in the manufacture of motorcycles, as defined by NAICS code 336991, with less than 500 employees (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In accordance with section 609 of the RFA, we conducted outreach to small entities and convened a Small Business Advocacy Review (SBAR) Panel prior to proposing this rule, to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. Through the Panel process, we gathered advice and recommendations from small-entity representatives who would be affected by the provisions in the rule relating to large SI engines and land-based recreational vehicles, and published the results in a Final Panel Report, dated July 17, 2001. We also prepared an Initial Regulatory Flexibility Analysis (IRFA) in accordance with section 603 of the Regulatory Flexibility Act. The IRFA is found in chapter 8 of the Draft Regulatory Support Document. The Panel report and the IRFA have been placed in the docket for this rulemaking (Public Docket A–2000–01, item II–A–85, and Public Docket A–2000–02, item III–B–01).

We proposed the majority of the Panel recommendations, and took comments on these and other recommendations. Since highway motorcycles have had to meet emission standards for more than twenty years, we have good information on the number of companies that manufacture or market highway motorcycles for the U.S. market in each model year. In addition to the largest six manufacturers (BMW, Harley-Davidson, Honda, Kawasaki, Suzuki, Yamaha), we find as many as several dozen more companies that have operated in the U.S. market in the last couple of model years. Most of these are U.S. companies that are either manufacturing or importing motorcycles, although a few are U.S. affiliates of larger companies in Europe or Asia. Some of the U.S. manufacturers employ only a few people and produce only a handful of custom motorcycles per year, while others may employ several hundred and produce up to several thousand motorcycles per year. These new emission standards impose no new development or certification costs for any company producing compliant engines for the California market. In fact, implementing the California standards with a two-year delay also allows manufacturers to streamline their production to further reduce the cost of compliance. The estimated hardware costs are less than one percent of the cost of producing a highway motorcycle, so none of these companies should have a compliance burden greater than one percent of revenues. We expect that a small number of companies affected by EPA emission standards will not already be certifying products in California. For these companies, the modest effort associated with applying established technology will add compliance costs representing between 1 and 3 percent of revenues. The flexible approach we are adopting to limit testing, reporting, and recordkeeping burden prevents excessive costs for all these companies. Thus, EPA has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. We prepared a Small Business Flexibility Analysis that examines the impact of the rule on small entities, along with regulatory alternatives that could reduce that impact. This analysis would meet the requirements for a Final Regulatory Flexibility Analysis (FRFA), had that analysis been required. The Small Business Flexibility Analysis can be found in Chapter 8 of the Final Regulatory Support Document, which is available for review in the docket and is summarized below. The key elements of our Small Business Flexibility Analysis include:

—The need for, and objectives of, the rule.

—The significant issues raised by public comments, a summary of the Agency's assessment of those issues, and a statement of any changes made to the proposed rule as a result of those comments.

—The types and number of small entities to which the rule will apply.

—The reporting, record keeping and other compliance requirement of the rule.

—The steps taken to minimize the impact of the rule on small entities, consistent with the stated objectives of the applicable statute.

A fuller discussion of each of these elements can be found in the Small Business Flexibility Analysis (Chapter 8 of the Final Regulatory Support Document).

1. The Need for and Objectives of This Rule

The current HC and CO emission standards for highway motorcycles were set in 1978 and are based on 1970s technology. There are currently no NO_X standards for highway motorcycles. We expect that implementation of the standards will result in about a 50 percent reduction in HC emissions and NO_X emissions from highway motorcycles in 2020. These emission reductions would reduce ambient concentrations of ozone, and fine particles, which is a health concern and contributes to visibility impairment. The standards would also reduce personal exposure for people who operate or who work with or are otherwise in close proximity to these engines and vehicles. As described more fully in the Final Regulatory Support Document for this rule, many types of hydrocarbons are air toxics.

The reductions in emissions are a part of the effort by federal, state and local governments to reduce the health related impacts of air pollution and to reach attainment of the NAAQS for ozone and particulate matter (PM) as well as to improve other environmental effects such as atmospheric visibility. Based on the most recent data available for this rule (1999–2001), ozone and PM air quality problems are widespread in the United States. There are 111 million people living in counties with monitored concentrations exceeding the 8-hour ozone NAAQS, and over 65 million people living in counties with monitored $PM_{2.5}$ levels exceeding the $PM_{2.5}$ NAAQS.

2. Summary of Significant Issues Raised by Public Comment

We received a number of comments during the public comment process, these comments mainly focused on 8 specific areas of concern for commenters: (1) Impact on small/independent and aftermarket motorcycle shops, and the belief EPA did not fulfill its SBREFA obligations; (2) customer rejection of products; (3) fewer options for customers and lower sales; (4) cost of ownership will increase, and consumers will be unable to service their own motorcycles; (5) reduction/elimination of competition from aftermarket and specialty shops (for major manufacturers); (6) elimination of aftermarket supplies and services; (7) consumers will be forced to purchase only manufacturer-offered products; and (8) the Barcia Act/H.R. 5433. A detailed summary of the comments that we received regarding the NPRM can be found in the Final Summary and Analysis of Comments located in the public docket for this rulemaking.

3. Numbers and Types of Small Entities Affected

The following table provides an overview of the primary SBA small business categories potentially affected by this regulation.

TABLE IX.C–1—PRIMARY SBA SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS PROPOSED REGULATION

Industry	NAICS[a] codes	Defined by SBA as a small business If: [b]
Motorcycle manufacturers	336991	<500 employees.

Notes:
[a] North American Industry Classification System.
[b] According to SBA's regulations (13 CFR 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered ''small entities'' for purposes of a regulatory flexibility analysis.

Of the numerous manufacturers supplying the U.S. market for highway motorcycles, Honda, Harley Davidson, Yamaha, Kawasaki, Suzuki, and BMW are the largest, accounting for 95 percent or more of the total U.S. sales. Harley-Davidson is the only company manufacturing highway motorcycles exclusively in the U.S. for the U.S. market.

Since highway motorcycles have had to meet emission standards for the last twenty years, we have good information on the number of companies that manufacture or market highway motorcycles for the U.S. market in each model year. In addition to the big six manufacturers noted above, we find as many as several dozen more companies that have operated in the U.S. market in the last couple of model years. Most of these are U.S. companies that are either manufacturing or importing motorcycles, although a few are U.S. affiliates of larger companies in Europe or Asia. Some of the U.S. manufacturers employ only a few people and produce only a handful of custom motorcycles per year, while others may employ several hundred and produce up to several thousand motorcycles per year.

4. Potential Reporting, Record Keeping, and Compliance

For any emission control program, we must have assurances that the regulated engines will meet the standards. Historically, EPA programs have included provisions placing manufacturers responsible for providing these assurances. The program that we are adopting for manufacturers subject to this rule include testing, reporting, and record keeping requirements. Testing requirements for some manufacturers may include certification (including deterioration testing). Reporting requirements would likely include test data and technical data on the engines including defect reporting. Manufacturers would likely have to keep records of this information.

5. Steps Taken To Minimize the Impact on Small Entities

The SBAR Panel considered a variety of provisions to reduce the burden of complying with new emission standards and related requirements. Some of these provisions (such as emission-credit programs and hardship provisions) would apply to all companies, while others would be targeted at the unique circumstances faced by small businesses. A complete discussion of the regulatory alternatives recommended by the Panel can be found in the Final Panel Report.

The following Panel recommendations are being finalized in this rule:

i. Delay of Proposed Standards

We are delaying compliance with the Tier 1 standard of 1.4 g/km $HC+NO_X$ until the 2008 model year for small manufacturers, and at this time, we are not requiring these manufacturers to meet the Tier 2 standard. The existing California regulations do not require small manufacturers to comply with the Tier 2 standard of 0.8 g/km $HC+NO_X$. The California Air Resources Board found that the Tier 2 standard represents a significant technological challenge and is a potentially infeasible limit for these small manufacturers. As noted above, many of these manufacturers market specialty products with a ''retro'' simplicity and style that may not easily lend itself to the addition of advanced technologies like catalysts and electronic fuel injection. However, the California ARB has acknowledged that, in the course of their progress review planned for 2006, they will revisit their small-manufacturer provisions. We plan to participate with the ARB and others in the 2006 progress review. Following our review of these provisions, as appropriate, we may decide to propose to make changes to the emission standards and related requirements through notice and comment rulemaking, including the applicability of Tier 2 to small businesses. The hardship provisions described below could be used to provide a small manufacturer with yet additional lead time if justified.

ii. Broader Engine Families

Small businesses have met EPA certification requirements since 1978. Nonetheless, certifying motorcycles to revised emission standards has cost and lead time implications. Relaxing the criteria for what constitutes an engine or vehicle family could potentially allow small businesses to put all of their models into one vehicle or engine family (or more) for certification purposes. Manufacturers would then certify their engines using the ''worst case'' configuration within the family.

This is currently allowed under the existing regulations for small-volume highway motorcycle manufacturers. These provisions remain in place without revision.

iii. Averaging, Banking, and Trading

An emission-credit program allows a manufacturer to produce and sell engines and vehicles that exceed the applicable emission standards, as long as the excess emissions are offset by the production of engines and vehicles emitting at levels below the standards. The sales-weighted average of a manufacturer's total production for a given model year must meet the standards. An emission-credit program typically also allows a manufacturer to bank credits for use in future model years. The emission-credit program we are implementing for all highway motorcycle manufacturers is described above. Some credit programs allow manufacturers to buy and sell credits (trade) between and among themselves. We are not implementing such a provision at this time, but such flexibility could be made available to all small manufacturers as part of the upcoming technology review.

iv. Reduced Certification Data Submittal and Testing Requirements

Current regulations allow significant flexibility for certification by manufacturers projecting sales below 10,000 units of combined Class I, II, and III motorcycles. For example, a qualifying manufacturer must submit an application for certification with a statement that their vehicles have been tested and, on the basis of the tests, conform to the applicable emission standards. The manufacturer retains adequate emission test data, for example, but need not submit it. Qualifying manufacturers also need not complete the detailed durability testing required in the regulations. We are incorporating no changes to these existing provisions.

v. Hardship Provisions

We proposed two types of hardship provisions, one specifically for small businesses and one available to all manufacturers. The first type of hardship provision allows a manufacturer to petition for additional lead time if the manufacturer can demonstrate that it has taken all possible steps to comply with the standards but the burden of compliance would have a significant impact on the company's solvency. The second type of hardship provision allows a company to apply for hardship relief if circumstances outside of the company's control cause a failure to comply, and the failure to sell the noncompliant product would have a major impact on the company's solvency.

6. Conclusion

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have conducted a substantial outreach program designed to gather information as to the effect of this final rulemaking on small entities. This process included an SBAR Panel, which sought advice and recommendations from potentially affected small entities regarding ways to minimize their compliance burden. We published both an ANPRM and an NPRM which requested comments from potentially affected entities, as well as other interested parties in the public at large. We have determined, from the information that we have gathered during the SBREFA process, that there are 42 manufacturers that certified motorcycles in the year 2003. Of these, 30 manufacturers are small by the SBREFA definition given above. However, certification emission data indicates that essentially all of these 30 manufacturers are currently meeting the Tier 1 exhaust emission standard. Given small costs of complying with the permeation evaporative emission requirements and the lead time and other flexibilities that are being finalized in this rulemaking, these manufacturers will not be significantly affected by the rule.

Therefore, we have determined that this final rulemaking will not have a significant economic impact on a substantial number of 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 of 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.

This rule contains no Federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

We have determined that this rule does not contain a Federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. We believe that this final rule represents the least costly, most cost effective approach to achieve the air quality goals of the rule. The costs and benefits are discussed in Section VII and in the Final Regulatory Support Document.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance

costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

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.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

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 effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule contains no Federal mandates for tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''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, section 5–501 of the Order directs the Agency to 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 the Executive Order because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and EPA is not revisiting those issues here. EPA believes, however, that the emission reductions from the strategies proposed in this rulemaking will further reduce air toxics and the related adverse impacts on children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The standards have for their aim the reduction of emissions from highway motorcycles, and have no effect on fuel formulation, distribution, or use. Generally, the program leads to reduced fuel usage due to the reduction of wasted fuel through evaporation.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule involves technical standards. The following paragraphs describe how we specify testing procedures for engines subject to this proposal.

We are adopting provisions to test exhaust emissions from highway motorcycles with the Federal Test Procedure, a chassis-based transient test. There is no voluntary consensus standard that would adequately address engine or vehicle operation for suitable emission measurement.

For permeation emissions, we are adopting testing provisions which utilize consensus standards where applicable. For fuel hose testing we are adopting the hose permeation standard developed by the Society of Automotive Engineers. There is no voluntary consensus standard for testing permeation emissions from fuel tanks. Therefore, we are adopting provisions to use the permeation emission test procedures recently adopted for nonroad recreational vehicles.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before the rule is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

K. Plain Language

This document follows the guidelines of the June 1, 1998 Executive Memorandum on Plain Language in Government Writing. To read the text of the regulations, it is also important to understand the organization of the Code of Federal Regulations (CFR). The CFR uses the following organizational names and conventions.

Title 40—Protection of the Environment

Chapter I—Environmental Protection Agency

Subchapter C—Air Programs. This contains parts 50 to 99, where the Office of Air and Radiation has usually placed emission standards for motor vehicle and nonroad engines.

Subchapter U—Air Programs Supplement. This contains parts 1000 to 1299, where we intend to place regulations for air programs in future rulemakings.

Part 1045—Control of Emissions from Marine Spark-ignition Engines and Vessels

Part 1068—General Compliance Provisions for Engine Programs. Provisions of this part apply to everyone.

Each part in the CFR has several subparts, sections, and paragraphs. The following illustration shows how these fit together.

Part 1045
Subpart A
Section 1045.1
(a)
(b)
(1)
(2)
(i)
(ii)
(A)
(B)

A cross reference to § 1045.1(b) in this illustration would refer to the parent paragraph (b) and all its subordinate paragraphs. A reference to ''§ 1045.1(b) introductory text'' would refer only to the single, parent paragraph (b).

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 90

Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 1051

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: December 23, 2003.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318 1321, 1326, 1330, 1342 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. Section 9.1 is amended in the table by adding the entries under the existing center heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control no.
* * * * *	
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines; Certification and Test Procedures	
* * * * *	
86.446–2006	2060–0460
86.447–2006	2060–0460
86.448–2006	2060–0460
86.449–2006	2060–0460
* * * * *	

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 3. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

Subpart E—[Amended]

■ 4. A new § 86.401–2006 is added to read as follows:

§ 86.401–2006 General applicability.

This subpart applies to 1978 and later model year, new, gasoline-fueled motorcycles built after December 31, 1977, and to 1990 and later model year, new methanol-fueled motorcycles built after December 31, 1989 and to 1997 and later model year, new natural gas-fueled and liquefied petroleum gas-fueled motorcycles built after December 31, 1996 and to 2006 and later model year new motorcycles, regardless of fuel.

■ 5. Section 86.402–98 is amended by adding definitions for ''Designated Compliance Officer'', ''Motor vehicle'', and ''Useful life'' in alphabetical order to read as follows:

§ 86.402–98 Definitions.

* * * * *

Designated Compliance Officer means the Manager, Engine Programs Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

* * * * *

Motor vehicle has the meaning we give in 40 CFR 85.1703.

* * * * *

Useful life is defined for each class (see § 86.419) of motorcycle:

(1) Class I–A—5.0 years or 6,000 km (3,728 miles), whichever occurs first.

(2) Class I–B—5.0 years or 12,000 km (7,456 miles), whichever occurs first.

(3) Class II—5.0 years or 18,000 km (11,185 miles), whichever occurs first.

(4) Class III—5.0 years or 30,000 km (18,641 miles), whichever occurs first.

■ 6. Section 86.407–78 is revised to read as follows:

§ 86.407–78 Certificate of conformity required.

(a) *General requirement.* Every new motorcycle manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States which is subject to any of the standards prescribed in this subpart is required to be covered by a certificate of conformity issued pursuant to this subpart, except as specified in paragraph (b) of this section, or otherwise exempted from this requirement.

(b) *Interim personal use exemption.* An individual may manufacture one motorcycle for personal use without a certificate of conformity, subject to the following provisions:

(1) The motorcycle may not be manufactured from a certified motorcycle. The motorcycle may not be manufactured from a partially complete motorcycle that is equivalent to a certified motorcycle, unless the emission controls are included in the final product. The motorcycle must be manufactured primarily from unassembled components, but may incorporate some preassembled components. For example, fully preassembled transmissions may be used.

(2) The motorcycle may not be sold within five years of the date of final assembly.

(3) No individual may manufacture more than one motorcycle during his or her lifetime under this exemption. This restriction applies with respect to the person who purchases the components and/or uses the motorcycle, rather than to the person(s) who actually assemble(s) the motorcycle.

(4) This exemption may not be used to circumvent the requirements of paragraph (a) of this section or the requirements of the Clean Air Act. For example, this exemption would not cover a case in which an entity purchases a kit, assembles the kit, and then sells it to another party; this would be considered to be the sale of the complete motorcycle.

(c) *Interim display exemptions.* Uncertified custom motorcycles that are used solely for display purposes are exempt from the standards provided they conform to the requirements of this paragraph (c). Unless a certificate of conformity has been received for such motorcycles, they may not be operated on the public streets or highways except for that operation incident and necessary to the display purpose.

(1) No request is necessary for display motorcycles that will not be sold or leased.

(2) The following requirements apply for exempting display motorcycles that will be sold or leased:

(i) Manufacturers planning to sell motorcycles for display must notify EPA of their intent to do so before they sell any exempted motorcycles. They must also maintain sales records of exempted motorcycles for at least three years and make them available to EPA upon request.

(ii) No manufacturer may sell or lease more than 24 exempted display motorcycles in any single calendar year.

(iii) Anyone selling or leasing a motorcycle exempt under this paragraph (c) must ensure that the buyer or lessee agrees to comply with the display exemption terms in the regulations.

(3) Each motorcycle exempt under this paragraph (c) must include a label that identifies the manufacturer and includes the following statement: THIS MOTORCYCLE IS EXEMPT FROM EPA EMISSION REQUIREMENTS. ITS USE ON PUBLIC ROADS IS LIMITED PURSUANT TO 40 CFR 86.407–78(c). EPA may allow manufacturers to locate the label in a location where it is obscured or hidden by a readily removable component. For example, EPA may allow the label to be located under the seat.

(4) As described in 40 CFR part 1051, motorcycles that are not considered to be motor vehicles according to 40 CFR 85.1703(a) may be exempt under this paragraph (c) from the standards and requirements of 40 CFR part 1051. Such motorcycles shall be combined with the manufacturer's highway motorcycles with respect to the sales restriction described in paragraph (c)(2)(ii) of this section.

(5) This exemption may not be used to circumvent the requirements of paragraph (a) of this section or the requirements of the Clean Air Act.

■ 7. A new § 86.410–2006 is added to read as follows:

§ 86.410–2006 Emission standards for 2006 and later model year motorcycles.

(a)(1) Exhaust emissions from Class I and Class II motorcycles shall not exceed the standards listed in the following table:

TABLE E2006–1.—CLASS I AND II MOTORCYCLE EMISSION STANDARDS

Model year	Emission standards (g/km)	
	HC	CO
2006 and later ..	1.0	12.0

(2) Exhaust emissions from Class III motorcycles shall not exceed the standards listed in the following table:

TABLE E2006–2.—CLASS III MOTORCYCLE EMISSION STANDARDS

Tier	Model year	Emission standards (g/km)	
		$HC + NO_X$	CO
Tier 1	2006–2009	1.4	12.0
Tier 2	2010 and later.	0.8	12.0

(b) The standards set forth in paragraphs (a) (1) and (2) of this section refer to the exhaust emitted over the driving schedule as set forth in subpart F and measured and calculated in accordance with those procedures.

(c) Compliance with the $HC+NO_X$ standards set forth in paragraph (a)(2) of this section may be demonstrated using the averaging provisions of § 86.449.

(d) No crankcase emissions shall be discharged into the ambient atmosphere from any new motorcycle subject to this subpart.

(e) Manufacturers with fewer than 500 employees worldwide and producing fewer than 3,000 motorcycles per year in the United States are considered small-volume manufacturers for the purposes of this section. The following provisions apply for these small-volume manufacturers:

(1) Small-volume manufacturers are not required to comply with the Tier 1 standards applicable to Class III motorcycles until model year 2008.

(2) Small-volume manufacturers are not required to comply with the Tier 2 standards applicable to Class III motorcycles.

(f) Manufacturers may choose to certify their Class I and Class II motorcycles to an $HC + NO_X$ standard of 1.4 g/km instead of the 1.0 g/km HC standard listed in paragraph (a)(1) of this section. Engine families certified to this standard may demonstrate compliance using the averaging provisions of § 86.449.

(g) Model year 2008 and later motorcycles must comply with the evaporative emission standards described in 40 CFR 1051.110. Manufacturers may show compliance using the design-based certification procedures described in 40 CFR 1051.245. Manufacturers may comply with the tank permeation standards using the averaging provisions in 40 CFR part 1051, subpart H, but may not include any motorcycles equipped with metal fuel tanks in their average emission level. Manufacturers may not average between highway motorcycle engine families and recreational vehicle families.

■ 8. Section 86.416–80 is amended by revising the introductory text of paragraph (b) and adding paragraphs (a)(2)(viii) and (f) to read as follows:

§ 86.416–80 Application for certification.

(a) * * *

(2) * * *

(viii) Beginning with model year 2008, a description of the evaporative emission controls and applicable test data.

* * * * *

(b) New motorcycles produced by a small-volume manufacturer (as defined in § 86.410(e)) or by any other manufacturer whose projected sales in the United States is less than 10,000 units (for the model year in which certification is sought) are covered by the following:

* * * * *

(f) Upon request, the Administrator may allow a manufacturer to use alternate certification procedures that are equivalent in terms of demonstrating compliance with the requirements of this part.

■ 9. A new § 86.419–2006 is added to read as follows:

§ 86.419–2006 Engine displacement, motorcycle classes.

(a)(1) Engine displacement shall be calculated using nominal engine values and rounded to the nearest whole cubic centimeter, in accordance with ASTM E 29–93a (incorporated by reference in § 86.1).

(2) For rotary engines, displacement means the maximum volume of a combustion chamber between two rotor tip seals, minus the minimum volume of the combustion chamber between those two rotor tip seals, times three times the number of rotors, according to the following formula:

$$cc = (\text{max. chamber volume} - \text{min. chamber volume}) \times 3 \times \text{no. of rotors}$$

(b) Motorcycles will be divided into classes based on engine displacement.

(1) Class I—0 to 169 cc (0 to 10.4 cu. in.).

(i) Class I motorcycles with engine displacement less than 50 cc comprise the Class I–A subclass.

(ii) Class I motorcycles with engine displacement 50 cc or higher comprise the Class I–B subclass.

(2) Class II—170 to 279 cc (10.4 to 17.1 cu. in.).

(3) Class III—280 cc and over (17.1 cu. in. and over).

(c) At the manufacturer's option, a vehicle described in an application for certification may be placed in a higher class (larger displacement). All procedures for the higher class must then be complied with and compliance with emission standards will be determined on the basis of engine displacement.

■ 10. A new § 86.445–2006 is added to subpart E to read as follows:

§ 86.445–2006 What temporary provisions address hardship due to unusual circumstances?

(a) After considering the circumstances, the Director of the Office of Transportation and Air Quality may permit you to introduce into commerce highway motorcycles that do not comply with emission standards if all the following conditions and requirements apply:

(1) Unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion prevent you from meeting requirements from this chapter.

(2) You exercised prudent planning and were not able to avoid the violation; you have taken all reasonable steps to minimize the extent of the nonconformity.

(3) Not having the exemption will jeopardize the solvency of your company.

(4) No other allowances are available under the regulations of this part to avoid the impending violation, excluding those in § 86.446.

(b) To apply for an exemption, you must send the Designated Compliance Officer a written request as soon as possible before you are in violation. In your request, show that you meet all the conditions and requirements in paragraph (a) of this section.

(c) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(d) You must give us other relevant information if we ask for it.

(e) We may include reasonable additional conditions on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit or paying fees to offset any economic gain resulting from the exemption. For example, in the case of multiple tiers of emission standards, we may require that you meet the less stringent standards.

(f) Add a permanent, legible label, written in block letters in English, to a readily visible part of each motorcycle exempted under this section. This label must include at least the following items:

(1) The label heading ''EMISSION CONTROL INFORMATION''.

(2) Your corporate name and trademark.

(3) Engine displacement (in liters) and model year of the engine or whom to contact for further information.

(4) The statement ''THIS MOTORCYCLE IS EXEMPT UNDER 40 CFR 86.445–2006 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

■ 11. A new § 86.446–2006 is added to subpart E to read as follows:

§ 86.446–2006 What are the provisions for extending compliance deadlines for small-volume manufacturers under hardship?

(a) After considering the circumstances, the Director of the Office of Transportation and Air Quality may extend the compliance deadline for you to meet new or revised emission standards, as long as you meet all the conditions and requirements in this section.

(b) To be eligible for this exemption, you must qualify as a small-volume manufacturer under § 86.410–2006(e).

(c) To apply for an extension, you must send the Designated Compliance Officer a written request. In your request, show that all the following conditions and requirements apply:

(1) You have taken all possible business, technical, and economic steps to comply.

(i) In the case of importers, show that you attempted to find a manufacturer capable of supplying complying products as soon as you became aware of the applicable requirements, but were unable to do so.

(ii) For all other manufacturers, show that the burden of compliance costs prevents you from meeting the requirements of this chapter.

(2) Not having the exemption will jeopardize the solvency of your company.

(3) No other allowances are available under the regulations in this part to avoid the impending violation, excluding those in § 86.445.

(d) In describing the steps you have taken to comply under paragraph (c)(1) of this section, include at least the following information:

(1) Describe your business plan, showing the range of projects active or under consideration.

(2) Describe your current and projected financial standing, with and without the burden of complying fully with the regulations in this part.

(3) Describe your efforts to raise capital to comply with regulations in this part (this may not apply for importers).

(4) Identify the engineering and technical steps you have taken or plan to take to comply with the regulations in this part.

(5) Identify the level of compliance you can achieve. For example, you may be able to produce engines that meet a somewhat less stringent emission standard than the regulations require.

(e) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(f) You must give us other relevant information if we ask for it.

(g) An authorized representative of your company must sign the request and include the statement: ''All the information in this request is true and accurate, to the best of my knowledge.''

(h) Send your request for this extension at least nine months before new standards apply. Do not send your request before the regulations in question apply to other manufacturers.

(i) We may include reasonable requirements on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit. For example, we may require that you meet a less stringent emission standard or buy and use available emission credits.

(j) We will approve extensions of up to one year. We may review and revise an extension as reasonable under the circumstances.

(k) Add a permanent, legible label, written in block letters in English, to a readily visible part of each motorcycle exempted under this section. This label must include at least the following items:

(1) The label heading ''EMISSION CONTROL INFORMATION''.

(2) Your corporate name and trademark.

(3) Engine displacement (in liters) and model year of the motorcycle or whom to contact for further information.

(4) The statement ''THIS MOTORCYCLE IS EXEMPT UNDER 40 CFR 86.446 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

■ 12. A new § 86.447–2006 is added to subpart E to read as follows:

§ 86.447–2006 What are the provisions for exempting motorcycles under 50 cc from the requirements of this part if they use engines certified under other programs?

(a) This section applies to you if you manufacture engines under 50 cc for installation in a highway motorcycle (that is, a motorcycle that is a motor vehicle). See § 86.448–2006 if you are not the engine manufacturer.

(b) The only requirements or prohibitions from this part that apply to a motorcycle that is exempt under this section are in this section and § 86.448–2006.

(c) If you meet all the following criteria regarding your new engine, it is exempt under this section:

(1) You must produce it under a valid certificate of conformity for one of the following types of engines or vehicles:

(i) Class II engines under 40 CFR part 90.

(ii) Recreational vehicles under 40 CFR part 1051.

(2) You must not make any changes to the certified engine that we could reasonably expect to increase its exhaust emissions. For example, if you make any of the following changes to one of these engines, you do not qualify for this exemption:

(i) Change any fuel system parameters from the certified configuration.

(ii) Change any other emission-related components.

(iii) Modify or design the engine cooling system so that temperatures or heat rejection rates are outside the original engine's specified ranges.

(3) You must make sure the engine has the emission label we require under 40 CFR part 90 or part 1051.

(4) You must make sure that fewer than 50 percent of the engine model's total sales, from all companies, are used in highway motorcycles.

(d) If you produce only the engine, give motorcycle manufacturers any necessary instructions regarding what they may or may not change under paragraph (c)(2) of this section. Upon request, send EPA a list the motorcycle models you expect to be produced under this exemption in the model year (including motorcycles produced under § 86.448–2006), and the manufacturers of those motorcycles.

(e) If you produce both the engine and motorcycle under this exemption, you must do all of the following to keep the exemption valid:

(1) Make sure the original emission label is intact.

(2) Add a permanent supplemental label to the engine in a position where it will remain clearly visible after installation in the vehicle. In your engine's emission label, do the following:

(i) Include the heading: ''Highway Motorcycle Emission Control Information''.

(ii) Include your full corporate name and trademark.

(iii) State: ''THIS ENGINE WAS ADAPTED FOR HIGHWAY USE WITHOUT AFFECTING ITS EMISSION CONTROLS.''.

(iv) State the date you finished installation (month and year).

(3) Send the Designated Compliance Officer a signed letter by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the motorcycle models you expect to produce under this exemption in the coming year.

(iii) State: ''We produce each listed model as a highway motorcycle without making any changes that could increase its certified emission levels, as described in 40 CFR 86.447.''.

(f) If your vehicles do not meet the criteria listed in paragraph (c) of this section, they will be subject to the standards and prohibitions of this part. Producing these vehicles without a valid exemption or certificate of conformity would violate the prohibitions in Clean Air Act section 203 (42 U.S.C. 7522).

(g) Upon request, you must send to EPA emission test data on the duty cycle for Class I motorcycles. You may include the data in your application for certification or in your letter requesting the exemption.

(h) Vehicles exempted under this section are subject to all the requirements affecting engines and vehicles under 40 CFR part 90 or part 1051, as applicable. The requirements and restrictions of 40 CFR part 90 or 1051 apply to anyone manufacturing these engines, anyone manufacturing vehicles that use these engines, and all other persons in the same manner as if these engines were used in a nonroad application.

■ 13. A new § 86.448–2006 is added to subpart E to read as follows:

§ 86.448–2006 What are the provisions for producing motorcycles under 50 cc with engines already certified under other programs?

(a) You may produce a highway motorcycle (that is, a motorcycle that is a motor vehicle) under 50 cc using a nonroad engine if you meet four criteria:

(1) The engine or vehicle is certified to 40 CFR part 90 or part 1051.

(2) The engine is not adjusted outside the engine manufacturer's specifications, as described in § 86.447–2006(c)(2) and (d).

(3) The engine or vehicle is not modified in any way that may affect its emission control.

(4) Fewer than 50 percent of the engine model's total sales, from all companies, are used in highway motorcycles.

(b) If you produce a motorcycle under this exemption, you must do all of the following to keep the exemption valid:

(1) Make sure the original emission label is intact.

(2) Add a permanent supplemental label to the motorcycle in a position where it will remain clearly visible.

(i) Include the heading: ''Highway Motorcycle Emission Control Information''.

(ii) Include your full corporate name and trademark.

(iii) State: ''THIS MOTORCYCLE WAS PRODUCED WITH A NONROAD ENGINE FOR HIGHWAY USE WITHOUT AFFECTING THE ENGINE'S EMISSION CONTROLS.''.

(c) This section does not apply if you manufacture the engine yourself; see § 86.447–2006.

(d) Upon request, you must send to EPA emission test data on the duty cycle for Class I motorcycles.

(e) Vehicles exempted under this section are subject to all the requirements affecting engines and vehicles under 40 CFR part 90 or part 1051, as applicable. The requirements and restrictions of 40 CFR part 90 or 1051 apply to anyone manufacturing these engines, anyone manufacturing vehicles that use these engines, and all other persons in the same manner as if these engines were used in a nonroad application.

■ 14. A new § 86.449 is added to subpart E to read as follows:

§ 86.449 Averaging provisions.

(a) This section describes how and when averaging may be used to show compliance with applicable $HC+NO_X$ emission standards. Emission credits may not be banked for use in later model years, except as specified in paragraph (j) of this section.

(1) Compliance with the Class I and Class II $HC+NO_X$ standards set forth in § 86.410–2006 (f) may be demonstrated using the averaging provisions of this section. To do this you must show that your average emission levels are at or below the applicable standards in § 86.410–2006.

(2) Compliance with the Class III $HC+NO_X$ standards set forth in § 86.410–2006 (a)(2) may be demonstrated using the averaging provisions of this section. To do this you must show that your average emission levels are at or below the applicable standards in § 86.410–2006.

(3) Family emission limits (FELs) may not exceed the following caps:

Class	Tier	Model year	FEL cap (g/km)
			$HC+NO_X$
Class I or II	Tier 1	2006 and later	5.0
Class III	Tier 1	2006–2009	5.0
	Tier 2	2010 and later	2.5

(b) Do not include any exported vehicles in the certification averaging program. Include only motorcycles certified under this subpart and intended for sale in the United States.

(c) To use the averaging program, do the following things:

(1) Certify each vehicle to a family emission limit.

(2) Calculate a preliminary average emission level according to paragraph (d) of this section using projected production volumes for your application for certification.

(3) After the end of your model year, calculate a final average emission level according to paragraph (d) of this section for each averaging set for which you manufacture or import motorcycles.

(d) Calculate your average emission level for each averaging set for each model year according to the following equation and round it to the nearest tenth of a g/km. Use consistent units throughout the calculation. The averaging sets are defined in paragraph (k) of this section.

(1) Calculate the average emission level as:

$$\text{Emission level} = \left[\sum_i (\text{FEL})_i \times (\text{UL})_i \times (\text{Production})_i\right] \Big/ \left[\sum_i (\text{Production})_i \times (\text{UL})_i\right]$$

Where:

FEL_i = The FEL to which the engine family is certified.

UL_i = The useful life of the engine family.

$Production_i$ = The number of vehicles in the engine family.

(2) Use production projections for initial certification, and actual production volumes to determine compliance at the end of the model year.

(e)(1) Maintain and keep five types of properly organized and indexed records for each group and for each emission family:

(i) Model year and EPA emission family.

(ii) FEL.

(iii) Useful life.

(iv) Projected production volume for the model year.

(v) Actual production volume for the model year.

(2) Keep paper records of this information for three years from the due date for the end-of-year report. You may use any additional storage formats or media if you like.

(3) Follow paragraphs (f) through (i) of this section to send us the information you must keep.

(4) We may ask you to keep or send other information necessary to implement this subpart.

(f) Include the following information in your application for certification:

(1) A statement that, to the best of your belief, you will not have a negative credit balance for any motorcycle when all credits are calculated. This means that if you believe that your average emission level will be above the standard (*i.e.*, that you will have a deficit for the model year), you must have banked credits pursuant to paragraph (j) of this section to offset the deficit.

(2) Detailed calculations of projected emission credits (zero, positive, or negative) based on production projections. If you project a credit deficit, state the source of credits needed to offset the credit deficit.

(g) At the end of each model year, send an end-of-year report.

(1) Make sure your report includes the following things:

(i) Calculate in detail your average emission level and any emission credits based on actual production volumes.

(ii) If your average emission level is above the allowable average standard, state the source of credits needed to offset the credit deficit.

(2) Base your production volumes on the point of first retail sale. This point is called the final product-purchase location.

(3) Send end-of-year reports to the Designated Compliance Officer within 120 days of the end of the model year. If you send reports later, EPA may void your certificate ab initio.

(4) If you generate credits for banking pursuant to paragraph (j) of this section and you do not send your end-of-year reports within 120 days after the end of the model year, you may not use the

credits until we receive and review your reports. You may not use projected credits pending our review.

(5) You may correct errors discovered in your end-of-year report, including errors in calculating credits according to the following table:

If . . .	And if . . .	Then we . . .
(i) Our review discovers an error in your end-of-year report that increases your credit balance.	The discovery occurs within 180 days of receipt.	Restore the credits for your use.
(ii) You discover an error in your report that increases your credit balance.	The discovery occurs within 180 days of receipt.	Restore the credits for your use.
(iii) We or you discover an error in your report that increases your credit balance.	The discovery occurs more than 180 days after receipt.	Do not restore the credits for your use.
(iv) We discover an error in your report that reduces your credit balance.	At any time after receipt	Reduce your credit balance.

(h) Include in each report a statement certifying the accuracy and authenticity of its contents.

(i) We may void a certificate of conformity for any emission family if you do not keep the records this section requires or give us the information when we ask for it.

(j) You may include Class III motorcycles that you certify with $HC+NO_X$ emissions below 0.8 g/km in the following optional early banking program:

(1) To include a Class III motorcycle in the early banking program, assign it an emission rate of 0.8 g/km when calculating your average emission level for compliance with the Tier 1 standards.

(2)(i) Calculate bankable credits from the following equation:

Bonus credit = Y × [(0.8 g/km − Certified emission level)] × [(Production volume of engine family) × (Useful life)]

(ii) The value of Y is defined by the model year and emission level, as shown in the following table:

Model year	Multiplier (Y) for use in MY 2010 or later corporate averaging	
	If your certified emission level is less than 0.8 g/km, but greater than 0.4 g/km, then Y = . . .	If your certified emission level is less than 0.4 g/km, then Y = . . .
2003 through 2006	1.500	3.000
2007	1.375	2.500
2008	1.250	2.000
2009	1.125	1.500

(3) Credits banked under this paragraph (j) may be use for compliance with any 2010 or later model year standards as follows:

(i) If your average emission level is above the average standard, calculate your credit deficit according to the following equation, rounding to the nearest tenth of a gram:

Deficit = (Emission Level − Average Standard) × (Total Annual Production) × (Useful Life)

(ii) Credit deficits may be offset using banked credits.

(k) Credits may not be exchanged across averaging sets except as explicitly allowed by this paragraph (k).

(1) There are two averaging sets:

(i) Class I and Class II motorcycles certified to $HC+NO_X$ standards.

(ii) Class III motorcycles.

(2) Where a manufacturer's average $HC+NO_X$ emission level for Class III motorcycles (as calculated under paragraph (d)(1) of this section) is below the applicable standard, the manufacturer may generate credits that may be used show compliance with $HC+NO_X$ standards for Class I and Class II motorcycles during the same model year. Use the following equations to calculate credits and credit deficits for each class or subclass:

Credit = (Average Standard − Emission Level) × (Total Annual Production) × (Useful Life)

Deficit = (Emission Level − Average Standard) × (Total Annual Production) × (Useful Life)

(l) Manufacturers participating in the averaging program of this section may modify FELs during the model year as specified in this paragraph (l).

(1) Upon notifying EPA, manufacturers may raise the FEL for an engine family and begin labeling motorcycles with the new FEL.

(2) Manufacturers may ask to lower FELs based on test data of production vehicles showing that the motorcycles in the engine family have emissions below the new FEL. Manufacturers must test the motorcycles according to 40 CFR part 1051, subpart D. Manufacturers may not begin labeling motorcycles with the new FEL until they have received EPA approval to do so.

(3) Manufacturers may not change the FEL of any motorcycle that has been placed into service or that is no longer in their possession.

Subpart F—[Amended]

■ 15.A new § 86.505–2004 is added to read as follows:

§ 86.505–2004 Introduction; structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform exhaust emission tests on motorcycles. Subpart E sets forth the testing requirements and test intervals necessary to comply with EPA certification procedures. Alternate equipment, procedures, and calculation methods may be used if shown to yield equivalent or superior results, and if approved in advance by the Administrator.

(b) Three topics are addressed in this subpart. Sections 86.508 through 86.515 set forth specifications and equipment requirements; §§ 86.516 through 86.526 discuss calibration methods and frequency; test procedures and data requirements are listed (in approximate order of performance) in §§ 86.527 through 86.544.

(c) For diesel-fueled motorcycles, use the sampling and analytical procedures and the test fuel described in subpart B of this part for diesel-fueled light-duty vehicles. PM measurement is not required.

■ 16. A new § 86.513–2004 is added to read as follows:

§ 86.513–2004 Fuel and engine lubricant specifications.

Section 86.513–2004 includes text that specifies requirements that differ from § 86.513–94. Where a paragraph in § 86.513–94 is identical and applicable to § 86.513–2004, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.513–94.'' Where a corresponding paragraph of § 86.513–94 is not applicable, this is indicated by the statement ''[Reserved].''

(a) *Gasoline.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust emission testing of gasoline-fueled motorcycles. Gasoline having the following specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer for emission testing except that the octane specifications do not apply.

TABLE 1 OF § 86.513–2004.—GASOLINE TEST FUEL SPECIFICATIONS

Item	Procedure	Value
Distillation Range:		
1. Initial boiling point, °C	ASTM D 86–97	23.9—35.0 [1].
2. 10% point, °C	ASTM D 86–97	48.9—57.2.
3. 50% point, °C	ASTM D 86–97	93.3—110.0.
4. 90% point, °C	ASTM D 86–97	148.9—162.8.
5. End point, °C	ASTM D 86–97	212.8.
Hydrocarbon composition:		
1. Olefins, volume %	ASTM D 1319–98	10 maximum.
2. Aromatics, volume %	ASTM D 1319–98	35 minimum.
3. Saturates	ASTM D 1319–98	Remainder.
Lead (organic), g/liter	ASTM D 3237	0.013 maximum.
Phosphorous, g/liter	ASTM D 3231	0.005 maximum.
Sulfur, weight %	ASTM D 1266	0.08 maximum.
Volatility (Reid Vapor Pressure), kPa	ASTM D 3231	55.2 to 63.4[1].

[1] For testing at altitudes above 1 219 m, the specified volatility range is 52 to 55 kPa and the specified initial boiling point range is 23.9° to 40.6° C.

(2) Unleaded gasoline and engine lubricants representative of commercial fuels and engine lubricants which will be generally available through retail outlets shall be used in service accumulation.

(3) The octane rating of the gasoline used shall be no higher than 4.0 Research octane numbers above the minimum recommended by the manufacturer.

(4) The Reid Vapor Pressure of the gasoline used shall be characteristic of commercial gasoline fuel during the season in which the service accumulation takes place.

(b) through (d) [Reserved]. For guidance *see* § 86.513–94.

■ 17. Section 86.515–78 is amended by adding paragraph (d) to read as follows:

§ 86.515–78 EPA urban dynamometer driving schedule.

* * * * *

(d) For motorcycles with an engine displacement less than 50 cc and a top speed less than 58.7 km/hr (36.5 mph), the speed indicated for each second of operation on the applicable Class I driving trace (speed versus time sequence) in appendix I(c) shall be adjusted downward by the ratio of actual top speed to specified maximum test speed. Calculate the ratio with three significant figures by dividing the top speed of the motorcycle in km/hr by 58.7. For example, for a motorcycle with a top speed of 48.3 km/hr (30 mph), the ratio would be 48.3/58.7 = 0.823. The top speed to be used under this section shall be indicated in the manufacturer's application for certification, and shall be the highest sustainable speed of the motorcycle with an 80 kg rider on a flat paved surface. If the motorcycle is equipped with a permanent speed governor that is unlikely to be removed in actual use, measure the top speed in the governed configuration; otherwise measure the top speed in the ungoverned configuration.

■ 18. Section 86.544–90 is amended by revising the introductory text to read as follows:

§ 86.544–90 Calculations; exhaust emissions.

The final reported test results, with oxides of nitrogen being optional for model years prior to 2006 and required for 2006 and later model years, shall be computed by use of the following formula: (The results of all emission tests shall be rounded, in accordance with ASTM E29–93a (incorporated by reference in § 86.1), to the number of places to the right of the decimal point indicated by expressing the applicable standard to three significant figures.)

* * * * *

Subpart I—[Amended]

■ 19. Section 86.884–14 is amended by revising the equation in paragraph (a) to read as follows:

(a) * * *

$$N_s = 100 \times (1 - (1 - N_m / 100)^{L_s / L_m})$$

* * * * *

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AT OR BELOW 19 KILOWATTS

■ 20. The authority citation for part 90 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

■ 21. Section 90.1 is amended by adding paragraph (g) to read as follows:

§ 90.1 Applicability.

* * * * *

(g) This part also applies to engines under 50 cc used in motorcycles that are motor vehicles if the manufacturer uses

the provisions of 40 CFR 86.447–2006 to meet the emission standards in this part instead of the requirements of 40 CFR part 86. In this case, compliance with the provisions of this part is a required condition of that exemption.

PART 1051—CONTROL OF EMISSIONS FROM RECREATIONAL ENGINES AND VEHICLES

■ 22. The authority citation for part 1051 continues to read as follows:

Authority: 42 U.S.C. 7401—7671(q).

Subpart A—[Amended]

■ 23. Section 1051.1 is amended by adding new paragraphs (g) and (h) to read as follows:

§ 1051.1 Does this part apply to me?

* * * * *

(g) This part also applies to engines under 50 cc used in motorcycles that are motor vehicles if the manufacturer uses the provisions of 40 CFR 86.447–2006 to meet the emission standards in this part instead of the requirements of 40 CFR part 86. Compliance with the provisions of this part is a required condition of that exemption.

(h) The evaporative emission requirements of this part applies to highway motorcycles as specified in 40 CFR part 86.

Subpart C—[Amended]

■ 24. Section 1051.245 is amended by revising paragraphs (c)(1)(i) and (e)(2) to read as follows:

§ 1051.245 How do I demonstrate that my engine family complies with evaporative emission standards?

* * * * *

(c) * * *

(1) * * *

(i) Calculate the deterioration factor from emission tests performed before and after the durability tests as described in § 1051.515(c) and (d) and using good engineering judgment. The durability tests described in § 1051.515(d) represent the minimum requirements for determining a deterioration factor. You may not use a deterioration factor that is less than the difference between evaporative emissions before and after the durability tests as described in § 1051.515(c) and (d).

* * * * *

(e) * * *

(2) For certification to the standards specified in § 1051.110(b) with the control technologies shown in the following table:

TABLE 2 OF § 1051.245.—DESIGN-CERTIFICATION TECHNOLOGIES FOR CONTROLLING FUEL-LINE PERMEATION

If the fuel-line permeability control technology is . . .	Then you may design-certify with a fuel line permeation emission level of . . .
(i) Hose meeting Category 1 permeation specifications in SAE J2260 (incorporated by reference in § 1051.810).	15 g/m^2/day.
(ii) Hose meeting the R11–A or R12 permeation specifications in SAE J30 (incorporated by reference in § 1051.810).	15 g/m^2/day.

* * * * *

Subpart F—Test Procedures

■ 25. Section 1051.501 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 1051.501 What procedures must I use to test my vehicles or engines?

* * * * *

(d) * * *

(2) *Fuel Tank Permeation.* (i) For the preconditioning soak described in § 1051.515(a)(1) and fuel slosh durability test described in § 1051.515(d)(3), use the fuel specified in Table 1 of § 1065.210 of this chapter blended with 10 percent ethanol by volume. As an alternative, you may use Fuel CE10, which is Fuel C as specified in ASTM D 471–98 (incorporated by reference in § 1051.810) blended with 10 percent ethanol by volume.

(ii) For the permeation measurement test in § 1051.515(b), use the fuel specified in Table 1 of § 1065.210 of this chapter. As an alternative, you may use the fuel specified in paragraph (d)(2)(i) of this section.

(3) Fuel Hose Permeation. Use the fuel specified in Table 1 of § 1065.210 of this chapter blended with 10 percent ethanol by volume for permeation testing of fuel lines. As an alternative, you may use Fuel CE10, which is Fuel C as specified in ASTM D 471–98 (incorporated by reference in § 1051.810) blended with 10 percent ethanol by volume.

* * * * *

■ 26. Section 1051.515 is amended by revising the introductory text of paragraphs (a) and (b), paragraphs (b)(8), (c), and (d) and adding paragraph (e) and Figure 1051.515–1 to read as follows:

§ 1051.515 How do I test my fuel tank for permeation emissions?

* * * * *

(a) *Preconditioning fuel soak.* To precondition your fuel tank, follow these five steps:

* * * * *

(b) *Permeation test run.* To run the test, follow these nine steps for a tank that was preconditioned as specified in paragraph (a) of this section:

* * * * *

(8) Subtract the weight of the tank at the end of the test from the weight of the tank at the beginning of the test; divide the difference by the internal surface area of the fuel tank. Divide this g/m^2 value by the number of test days (using at least three significant figures) to calculate the g/m^2/day emission rate. Example: If a tank with an internal surface area of 0.72 m^2 weighed 31882.3 grams at the beginning of the test and weighed 31760.2 grams after soaking for 25.03 days, then the g/m^2/day emission rate would be: (31882.3 g – 31760.2 g) / 0.72 m^2 / 25.03 days = 6.78 g/m^2/day.

* * * * *

(c) *Determination of final test result.* To determine the final test result, apply a deterioration factor to the measured emission level. The deterioration factor is the difference between permeation emissions measured before and after the durability testing described in paragraph (d) of this section. Adjust the baseline test results for each tested fuel tank by adding the deterioration factor to the measured emissions. The deterioration factor determination must be based on good engineering judgement. Therefore, during the durability testing, the test tank may not exceed the fuel tank permeation standard described in § 1051.110 (this is known as ''line-crossing''). If the deterioration factor is less than zero, use zero.

(d) *Durability testing.* You normally need to perform a separate durability demonstration for each substantially different combination of treatment approaches and tank materials. Perform these demonstrations before an emission

test by taking the following steps, unless you can use good engineering judgment to apply the results of previous durability testing with a different fuel system. You may ask to exclude any of the following durability tests if you can clearly demonstrate that it does not affect the emissions from your fuel tank.

(1) *Pressure cycling.* Perform a pressure test by sealing the tank and cycling it between +2.0 psig and −0.5 psig and back to +2.0 psig for 10,000 cycles at a rate 60 seconds per cycle.

(2) *UV exposure.* Perform a sunlight-exposure test by exposing the tank to an ultraviolet light of at least 24 W/m^2 (0.40 W-hr/m^2/min) on the tank surface for 15 hours per day for 30 days. Alternatively, the fuel tank may be exposed to direct natural sunlight for an equivalent period of time, as long as you ensure that the tank is exposed to at least 450 daylight hours.

(3) *Slosh testing.* Perform a slosh test by filling the tank to 40 percent of its capacity with the fuel specified in § 1051.501(d)(2)(i) and rocking it at a rate of 15 cycles per minute until you reach one million total cycles. Use an angle deviation of +15° to −15° from level. This test must be performed at a temperature of 28°C ±5° C.

(4) *Final test result.* Following the durability testing, the fuel tank must be soaked (as described in paragraph (a) of this section) to ensure that the permeation rate is stable. The period of slosh testing and the period of ultraviolet testing (if performed with fuel in the tank consistent with paragraph (a)(1) of this section) may be considered to be part of this soak, provided that the soak begins immediately after the slosh testing. To determine the final permeation rate, drain and refill the tank with fresh fuel, and repeat the permeation test run (as described in paragraph (b) of this section) immediately after this soak period. The same test fuel must be used for this permeation test run as for the permeation test run performed prior to the durability testing.

(e) *Flow chart.* The following figure presents a flow chart for the permeation testing described in this section, showing the full test procedure with durability testing, as well as the simplified test procedure with an applied deterioration factor:

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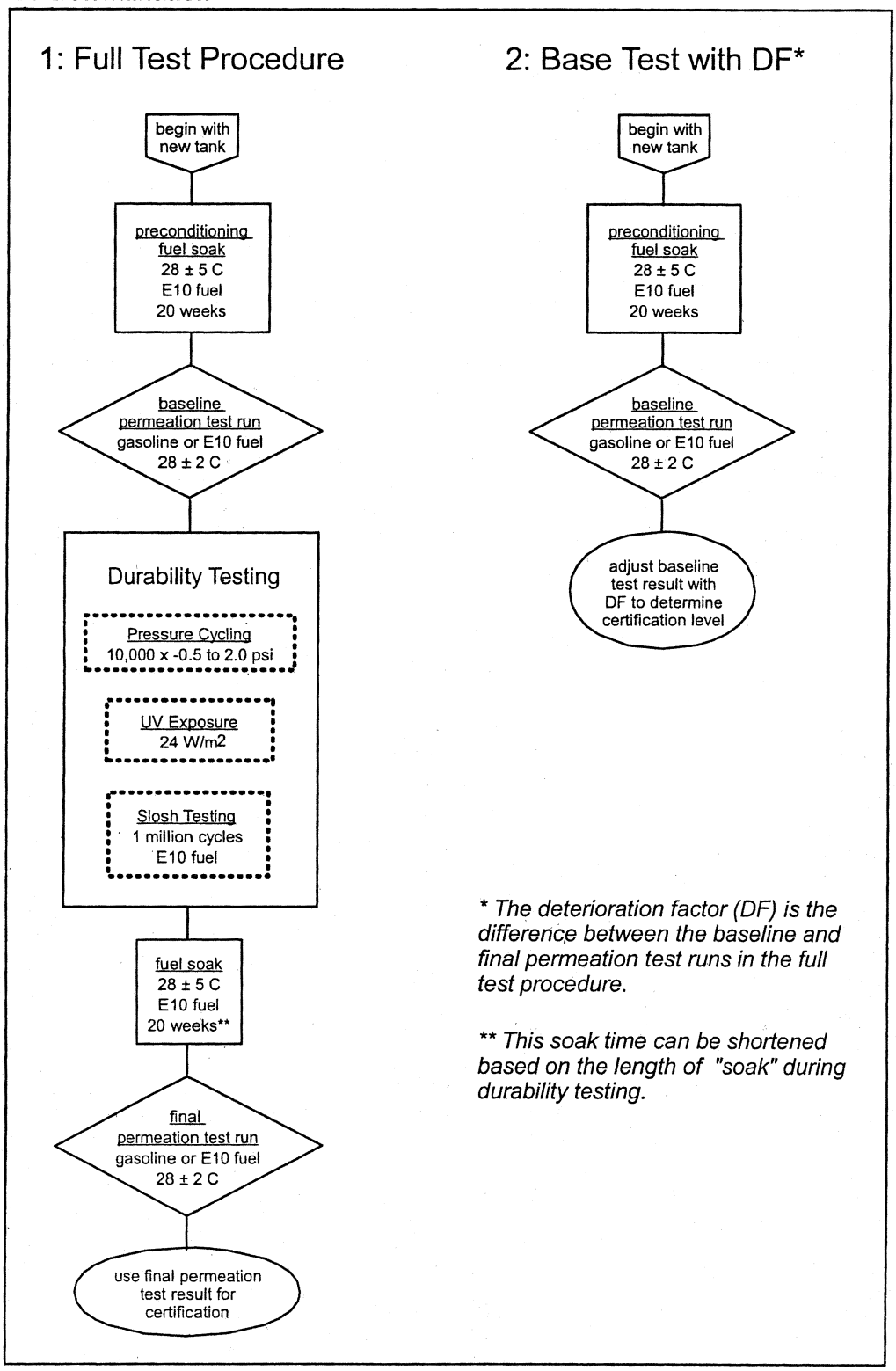
Figure 1051.515-1: Flow Chart of Permeation Test Procedure with and without DF Determination



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■ 27. A new § 1051.640 is added to subpart G to read as follows:

§ 1051.640 What special provisions apply for custom off-highway motorcycles that are similar to highway motorcycles?

You may ask to exempt custom-designed off-highway motorcycles that are substantially similar to highway motorcycles under the display exemption provisions of 40 CFR 86.407–78(c). Motorcycles exempt under this provision are subject to the restrictions of 40 CFR 86.407–78(c) and are considered to be motor vehicles for the purposes of this part 1051.

[FR Doc. 04–6 Filed 1–14–04; 8:45 am]

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Federal Register

Thursday,
January 15, 2004

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, 3, 12, et al.

Federal Acquisition Regulation; Commercially Available Off-the-Shelf (COTS) Items; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 12, 22, 23, 25, 27, 44, 47, and 52

[FAR Case 2000–305]

RIN 9000–AJ55

Federal Acquisition Regulation; Commercially Available Off-the-Shelf (COTS) Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are soliciting comments regarding the implementation of section 4203 of the Clinger-Cohen Act of 1996, 41 U.S.C. 431 (the Act) with respect to Commercially Available Off-the-Shelf Item acquisitions. The Act requires the Federal Acquisition Regulation (FAR) list certain provisions of law that are inapplicable to contracts for acquisitions of commercially available off-the-shelf items. The Act excludes section 15 of the Small Business Act and bid protest procedures from the list. The list of inapplicable statutes cannot include a provision of law that provides for criminal or civil penalties.

DATES: Interested parties should submit comments in writing on or before March 15, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to— *farcase.2000–305@gsa.gov.*

Please submit comments only and cite FAR case 2000–305 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAR case 2000–305.

SUPPLEMENTARY INFORMATION:

A. Background

Certain laws have already been determined to be inapplicable to all commercial items as a result of the implementation of the Federal Acquisition Streamlining Act of 1994 (*see* FAR 12.503). On January 30, 2003, the FAR Secretariat issued an Advanced Notice of Proposed Rulemaking in the **Federal Register** (68 FR 4874) that lists the additional provisions of law that could be determined inapplicable to commercially available off-the-shelf (COTS) items. Seven public comments were received. The Commercial Products and Practices Committee reviewed the public comments; identified potential changes to the FAR; and submitted a report, including a draft proposed rule for consideration by the Councils.

The Councils recognize the concerns raised by the U.S. Trade Representative, the Department of Labor, and other agencies regarding the listing of certain laws. The proposed rule does not represent a final decision on any of those laws. Rather, the proposed rule lists the universe of laws that could be determined inapplicable to COTS. The Council is seeking public comments that the Administrator for Federal Procurement Policy will use in making the statutory determination that it would be in the best interest of the Government to maintain certain of those proposed laws.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant, but beneficial, economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule exempts the application of a number of laws to businesses, large and small, offering commercially available off-the-shelf items to the Federal Government. An Initial Regulatory Flexibility Act Analysis (IRFA) has been prepared and is summarized as follows:

The objective and legal basis of this rule is to implement the requirements of section 4203 of the Clinger-Cohen Act (Public Law 104–106). Available data indicates that many commercial sales to the Government will come from small businesses. The rule does not impose new reporting or record keeping requirements and does not duplicate, overlap, or conflict with any other Federal rules. The rule is expected to have a beneficial impact on industry because it proposes to exempt purchases of commercially available off-the-shelf items from many Government-unique requirements. Although the rule does not specifically propose different procedures for small versus large entities, existing preferences for small businesses, contained in FAR Part 19, remain unchanged. We believe that the relief from administrative burdens proposed by this rule may serve to motivate more small entities to do business with the Government.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. The Councils will consider comments from small entities concerning the affected FAR parts 2, 3, 12, 22, 23, 25, 27, 44, 47, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–305), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. It is anticipated that the rule will reduce annual information collection burdens. An estimate of the burden reduction is undetermined at this time. The reduction will be dependant on the estimated burden reductions taken for each provision of law that will be excluded from the final rule. Accordingly, a Paperwork Reduction Act Change to pertinent existing burdens will be submitted to the Office of Management and Budget under 44 U.S.C. 2502, *et seq.*

List of Subjects in 48 CFR Parts 2, 3, 12, 22, 23, 25, 27, 44, 47, and 52

Government procurement.

Dated: January 9, 2004.

Ralph De Stefano,

Deputy Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 3, 12, 22, 23, 25, 27, 44, 47, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 3, 12, 22, 23, 25, 27, 44, 47, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition ''Commercially available off-the-shelf item (COTS)'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Commercially available off-the-shelf item (COTS)—(1) Is a subset of a

commercial item and means any item of supply that is—

(i) A commercial item (as defined in this section);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace.

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Revise section 3.503–2 to read as follows:

3.503–2 Contract clause.

The contracting officer shall insert the clause at 52.203–6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold, except when contracts are for the acquisition of commercially available off-the-shelf items. For the acquisition of commercial items, other than COTS, the contracting officer shall use the clause with its Alternate I.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

4. Amend section 12.102 by adding a sentence to the end of paragraph (a) to read as follows:

12.102 Applicability.

(a) * * * Unless indicated otherwise, all of the policies that apply to commercial items also apply to COTS items defined in 2.101.

* * * * *

5. Amend section 12.301 by—

a. Revising the section heading;

b. Adding a sentence to the end of paragraph (b)(3);

c. Revising the paragraph heading and the first sentence of paragraph (b)(4); and

d. Adding paragraph (b)(5) to read as follows:

12.301 Solicitation provisions and contract clauses.

* * * * *

(b) * * *

(3) * * * When acquiring a COTS item, contracting officers may include Alternate I of the clause when it is in the best interests of the Government.

(4) *The clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Other than COTS).* This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items, other than COTS items. * * *

(5) *The clause at 52.212–XX, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercially Available Off-the-Shelf (COTS) Items.* This clause incorporates by reference only those clauses required to implement provisions of law or Executive orders applicable to the acquisition of COTS items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in 52.212–XX (b) or (c) are applicable to the specific acquisition. This clause may not be tailored.

* * * * *

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items and Commercially Available Off-the-Shelf Items

6. Revise the heading of Subpart 12.5 to read as set forth above.

7. Revise section 12.500 to read as follows:

12.500 Scope of subpart.

(a) As required by sections 34 and 35 of the Office of Federal Procurement Policy Act (41 U.S.C. 401, *et seq.*), this subpart lists provisions of law that are not applicable to—

(1) Contracts for commercial items;

(2) Subcontracts, at any tier, for the acquisition of commercial items; and

(3) Contracts and subcontracts, at any tier, for the acquisition of COTS items.

(b) This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial items.

8. Amend section 12.502 by adding paragraph (c) to read as follows:

12.502 Procedures.

* * * * *

(c) The FAR prescription for the provision or clause for each of the laws listed in 12.505 has been revised in the appropriate part to reflect its proper application to prime contracts for the acquisition of COTS items. For subcontracts for the acquisition of COTS items or COTS components, the clauses at 52.212-XX, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercially Available Off-the-Shelf (COTS) Items, and 52.244–6, Subcontracts for Commercial Items and Commercial Components, reflect the applicability of the laws listed in 12.505 by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of COTS items or COTS components.

12.504 [Amended]

9. Amend section 12.504 in paragraph (a) by removing paragraph (a)(2) and redesignating paragraphs (a)(3) through (a)(12) as (a)(2) through (a)(11), respectively.

10. Add section 12.505 to read as follows:

12.505 Applicability of certain laws to contracts and subcontracts for the acquisition of COTS items.

(a) The following laws are not applicable to contracts or subcontracts, at any tier, for the acquisition of COTS items:

(1) 10 U.S.C. 2631, Transportation of Supplies by Sea (*see* 52.247–64).

(2) 19 U.S.C. 2501, *et seq.*, Trade Agreements Act (*see* 52.225–5).

(3) 19 U.S.C. 2512, *et seq.*, Trade Agreements Act (*see* 52.225–5).

(4) 29 U.S.C. 793, Affirmative Action for Handicapped Workers (*see* 52.222–36).

(5) 31 U.S.C. 3324, Restrictions on Advance Payments (*see* Alternate I to 52.212–4 which permits payment upon notice of shipping).

(6) 31 U.S.C. 1352, Limitation on Payments to Influence Certain Federal Transactions (*see* Subpart 3.8).

(7) 31 U.S.C. 1354(a), Limitation on use of appropriated funds for contracts with entities not meeting veteran's employment reporting requirements (*see* 22.1302).

(8) 38 U.S.C. 4212, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (*see* 52.222–35).

(9) 38 U.S.C. 4212(d)(1), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (*see* 52.222–37).

(10) 41 U.S.C. 10a, *et seq.*, Buy American Act—Supplies (*see* 52.225–1 and 52.225–3).

(11) 41 U.S.C. 43, Walsh-Healey Act (*see* Subpart 22.6).

(12) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (*see* Subpart 5.2).

(13) 41 U.S.C. 418a, Rights in Technical Data (*see* sections 12.211 and 27.409).

(14) 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (*see* sections 12.211 and 27.409).

(15) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition of Limiting Subcontractor Direct Sales to the United States (*see* 52.203–6).

(16) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (*see* Subpart 3.4).

(17) 41 U.S.C. 254d(c) and 10 U.S.C. 2513(c), Examination of Records of Contractor (*see* 52.215–2).

(18) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (*see* Subpart 23.5).

(19) 46 U.S.C. Appx 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (*see* 52.247–64).

(20) 49 U.S.C. 40118, Fly American provisions (*see* Subpart 47.4).

(b) The requirement for a clause and certain other requirements related to 40 U.S.C. 327, *et seq.*, Requirements for a Certificate and Clause under the Contract Work Hours and Safety Standards Act (*see* Subpart 22.3), 41 U.S.C. 57(a) and (b), and 41 U.S.C. 58, the Anti-Kickback Act of 1986, and 42 U.S.C. 6962(c)(3)(A), Estimate of Percentage of Recovered Material EPA-Designated Product (limited to the certification and estimate requirements) (*see* 52.223–9) have been eliminated for contracts and subcontracts at any tier for the acquisition of COTS items (*see* 3.502).

(c) The applicability of 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (*see* Subpart 15.4) and 41 U.S.C. 422, Cost Accounting Standards (*see* section 12.214) have been modified in regards to contracts or subcontracts at any tier for the acquisition of COTS items.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1310 [Amended]

11. Amend section 22.1310 by removing the word ''Insert'' from the introductory text of paragraph (a)(1) and adding ''Except for the acquisition of commercially available off-the-shelf items, insert'' in its place.

22.1408 [Amended]

12. Amend section 22.1408 in the introductory text of paragraph (a) by removing the comma after ''$10,000'' and adding ''and are not for the acquisition of commercially available off-the-shelf items,'' in its place.

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.406 [Amended]

13. Amend section 23.406 by removing the word ''Insert'' from paragraphs (a) and (b) and adding ''Except for the acquisition of commercially available off-the-shelf items, insert'' in its place.

PART 25—FOREIGN ACQUISITION

14. Amend section 25.401 by—

a. Removing the word ''and'' from the end of paragraph (a)(4);

b. Removing the period at the end of paragraph (a)(5) and adding ''; and'' in its place; and

c. Adding paragraph (a)(6) to read as follows:

25.401 Exceptions.

(a) * * *

(6) Acquisitions for commercially available off-the-shelf items.

* * * * *

15. Amend section 25.1101 by—

a. Removing from the introductory text of paragraph (a)(1) ''or $15,000 for acquisitions as described in 13.201(g)(1)(ii)'';

b. Removing the word ''or'' from the end of paragraph (a)(1)(ii);

c. Removing the period from the end of paragraph (a)(1)(iii) and adding ''; or'' in its place;

d. Adding paragraph (a)(1)(iv); and

e. Removing the word ''Insert'' from the introductory text of paragraph (b)(1)(i) and adding ''Except for the acquisition of commercially available off-the-shelf items, insert'' in its place. The added text reads as follows:

25.1101 Acquisition of supplies.

* * * * *

(a)(1) * * *

(iv) The acquisition is for commercially available off-the-shelf items.

* * * * *

PART 27—PATENTS, DATA, AND COPYRIGHTS

16. Amend section 27.409 by—

a. Removing the word ''or'' from the end of paragraph(a)(1)(vi);

b. Removing ''. (*See* 27.408.)'' from the end of paragraph (a)(1)(vii) and adding ''(*see* 27.408); or'' in its place; and

c. Adding paragraph (a)(1)(viii) to read as follows:

27.409 Solicitation provisions and contract clauses.

(a)(1) * * *

(viii) An acquisition for commercially available off-the-shelf items.

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.400 [Amended]

17. Amend section 44.400 by removing the period at the end of the sentence and adding ''and section 4203 (Pub. L. 104–106).'' in its place.

PART 47—TRANSPORTATION

47.507 [Amended]

18. Amend section 47.507 in paragraph (a)(1) by removing ''Insert'' and adding ''Except for the acquisition of commercially available off-the-shelf items, insert'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–3 [Amended]

19. Amend section 52.212–3 by revising the date of the provision to read ''(Date)''; and in paragraph (e) of the clause by removing the period after ''$100,000'' and adding '', except for the acquisition of commercially available off-the-shelf items.'' in its place.

20. Amend section 52.212–4 by adding Alternate I to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

(Alternate I (XX/XX)). As prescribed in 12.301(b)(3), substitute the following paragraph (i)(1) for paragraph(i)(1) in the basic clause:

(i)(1) *Items accepted.* Payment shall be made based upon the Contractor's submission of an invoice that is supported by evidence the Contractor has delivered the supplies to a post office, common carrier, or point of first receipt by the Government. Payment prior to acceptance shall not abrogate the Contractor's responsibilities to replace, repair, or correct—

(i) Supplies not received at destination;

(ii) Supplies damaged in transit; or

(iii) Supplies that do not conform to the contract.

21. Add section 52.212–XX to read as follows:

52.212–XX Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercially Available Off-the-Shelf (COTS) Items.

As prescribed in 12.301(b)(5), insert the following clause:

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercially Available Off-the-Shelf (COTS) Items (Date)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this

contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of COTS items: 52.233–3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of COTS items: *[Contracting Officer check as appropriate.]*

____ (1) 52.219–3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).

____ (2) 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

____ (3)(i) 52.219–5, Very Small Business Set-Aside (June 2003) (Pub. L. 103–403, section 304, Small Business Reauthorization and Amendments Act of 1994).

____ (ii) Alternate I (Mar 1999) of 52.219–5.

____ (iii) Alternate II (June 2003) of 52.219–5.

____ (4)(i) 52.219–6, Notice of Total Small Business Set-Aside (June 2003) (15 U.S.C. 644).

____ (ii) Alternate I (Oct 1995) of 52.219–6.

____ (5)(i) 52.219–7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

____ (ii) Alternate I (Oct 1995) of 52.219–7.

____ (6) 52.219–8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)).

____ (7)(i) 52.219–9, Small Business Subcontracting Plan (Jan 2002) (15 U.S.C. 637(d)(4)).

____ (ii) Alternate I (Oct 2001) of 52.219–9.

____ (iii) Alternate II (Oct 2001) of 52.219–9.

____ (8) 52.219–14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).

____ (9)(i) 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (June 2003) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323). (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

____ (ii) Alternate I (June 2003) of 52.219–23.

____ (10) 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

____ (11) 52.219–26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

____ (12) 52.222–3, Convict Labor (June 2003) (E.O. 11755).

____ (13) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Sep 2002) (E.O. 13126).

____ (14) 52.222–21, Prohibition of Segregated Facilities (Feb 1999).

____ (15) 52.222–26, Equal Opportunity (Apr 2002) (E.O. 11246).

____ (16) 52.225–13, Restrictions on Certain Foreign Purchases (Dec 2003) (E.O.'s proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

____ (17) 52.225–15, Sanctioned European Union Country End Products (Feb 2000) (E.O. 12849).

____ (18) 52.232–29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

____ (19) 52.232–30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

____ (20) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

____ (21) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

____ (22) 52.232–36, Payment by Third Party (May 1999) (31 U.S.C. 3332).

(c)(1) Notwithstanding the requirements of the clauses in paragraphs (a) and (b) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (ii) of this paragraph in a subcontract for COTS items. Unless other-wise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.219–8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222–26, Equal Opportunity (Apr 2002) (E.O. 11246).

(2) While not required, the Contractor may include in its subcontracts for COTS items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

22. Amend section 52.244–6 by—

a. Revising the date of the clause to read ''(Date)'';

b. In paragraph (a) of the clause by adding, in alphabetical order, the definition ''Commercially available off-the-shelf item'';

c. In paragraph (c)(1)(iii) of the clause by removing the semicolon at the end of the paragraph and adding ''. (This clause does not apply to subcontracts for commercially available off-the-shelf items.)'' in its place; and

d. Adding ''(This clause does not apply to subcontracts for commercially available off-the-shelf items.)'' to the end of paragraphs (c)(1)(iv) and (c)(1)(v) of the clause. The added definition reads as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (Date)

(a) * * *

Commercially available off-the-shelf item has the meaning contained in the clause at 52.202–1, Definitions.

* * * * *

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Federal Register

Thursday,
January 15, 2004

Part IV

Department of Transportation

Federal Transit Administration

Fiscal Year 2004 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2004 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: Appendix A of this Notice contains the Federal Transit Administration's (FTA) comprehensive compilation of the Federal Fiscal Year 2004 certifications and assurances to be used in connection with all Federal assistance programs FTA administers during Federal Fiscal Year 2004, in compliance with 49 U.S.C. 5323(n).

EFFECTIVE DATE: These certifications and assurances became effective on October 1, 2003, the first day of fiscal year 2004.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate Regional Office listed below. For copies of other related documents, see the FTA Web site at *http://www.fta.dot.gov* or contact FTA's Office of Administration at (202) 366–4022.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts, Telephone # 617–494–2055

Region 2: New York

States served: New York, New Jersey, and the Virgin Islands, Telephone # 212–668–2170

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia, Telephone # 215–656–7100

Region 4: Atlanta

States served: Kentucky, Georgia, North Carolina, South Carolina, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico, Telephone # 404–562–3500

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio, Telephone # 312–353–2789

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico, Telephone # 817–978–0550

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska, Telephone # 816–329–3920

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota, Telephone # 303–844–3242

Region 9: San Francisco

States served: California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands, Telephone # 415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska. Telephone # 206–220–7954

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the Applicant must submit all certifications and assurances pertaining to itself and its project as required by Federal laws and regulations. These certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. chapter 53, or Title 23, United States Code, or another Federal statute.

The Applicant's Annual Certifications and Assurances for Federal Fiscal Year 2004 cover all projects for which the Applicant seeks funding during Federal Fiscal Year 2004 through the next fiscal year until FTA issues annual Certifications and Assurances for Federal Fiscal Year 2005. An Applicant's Annual Certifications and Assurances applicable to a specific grant or cooperative agreement generally remain in effect for either the duration of the grant or cooperative agreement to project closeout or the duration of the project or project property when a useful life or industry standard is in effect, whichever occurs later; EXCEPT, if the Applicant provides certifications and assurances in a later year that differ from certifications and assurances previously provided, the later certifications and assurances will apply to the grant, cooperative agreement, project, or project property, unless FTA permits otherwise.

Background: Since Federal Fiscal Year 1995, FTA has been consolidating the various certifications and assurances that may be required into a single document for publication in the **Federal Register**. FTA intends to continue publishing this document annually, often in conjunction with its publication of the FTA annual apportionment Notice, which sets forth the allocations of funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Federal Fiscal Year 2004 Changes: Apart from minor editorial revisions, changes include the following:

(1) Former Certification 01.C, ''Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions,'' has been deleted because the newly revised U.S. DOT regulations, ''Debarment and Suspension (Nonprocurement),'' published in the **Federal Register** of November 26, 2003 (68 FR 66534–66557, and 66643–66645) no longer require a certification, although FTA cautions that the substantive provisions of the revised regulations will apply to Recipients of Federal assistance awarded by FTA.

(2) Former Certification 01.D, ''Drug-Free Workplace Agreement,'' has been deleted because the newly revised U.S. DOT regulations, ''Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),'' published in the **Federal Register** of November 26, 2003 (68 FR 66557–66560, and 66645–666460) no longer require a certification, although FTA cautions that the substantive provisions of the new regulations will apply to Recipients of Federal assistance awarded by FTA.

(3) Former Certification 01.G, ''Disadvantaged Business Enterprise Assurance'' does not apply to projects administered by FTA that are not financed by TEA–21, ISTEA, or the Highway Trust Fund. U.S. DOT's DBE regulations, 49 CFR part 26 do not treat the DBE assurance as a pre-award requirement, but only require that the assurance be included in each financial assistance agreement funded under specified titles of TEA–21, ISTEA, or the Highway Trust Funds, such as our FTA's Master Agreement, which is incorporated by reference and made part of each Grant or Cooperative Agreement. *See,* 49 CFR 26.3(a) and 26.13(a). For these reasons, we have deleted the DBE certification from the list of certifications required of all Applicants.

(4) Re-numbered Certification 01.D, ''Nondiscrimination Assurance,'' has been revised to state expressly that the Federal Government has a right to seek judicial enforcement with regard to any matter arising under Title VI of the Civil Rights Act and implementing regulations.

(5) Renumbered Certification 01.F, ''Procurement Compliance Certification,'' has been modified to add a reference to the new FTA Circular 4220.1E, ''Third Party Contracting Guidelines,'' and indicate that those requirements are applicable to the

extent required by Federal law or regulation.

(6) Renumbered Certification 01.G(7) pertaining to employee protection certifications has been revised to reflect new citation to various Federal labor protection statutes resulting from the partial codification of Title 40, United States Code.

(7) Renumbered Certification 01.G(18) covering Federal audit requirements has been modified to acknowledge that OMB Circular A–133 has been revised, and to state that the most recent applicable OMB Compliance Supplement provisions for the Department of Transportation will apply.

(8) Certification 02.A(3), ''Lobbying,'' has been added to emphasize that the lobbying certification flows down to subrecipients and third party contractors at all tiers.

(9) The applicability paragraph preceding Certification 05, ''Acquisition of Rolling Stock,'' has been modified to clarify that the requirement applies to Applicants for Federal assistance authorized by 49 U.S.C. chapter 53.

(10) The applicability paragraph preceding Certification 06, ''Bus Testing,'' has been modified to clarify that the requirement applies to Applicants for Federal assistance appropriated or authorized for 49 U.S.C. chapter 53.

(11) The applicability paragraph preceding Certification 09, ''Demand Responsive Service,'' has been modified to clarify that the requirements limited to non-rail acquisitions by Applicants that have demand responsive service.

(12) Certification 12, ''Intelligent Transportation Systems,'' has been expanded to add a best efforts requirement for Applicants intending to procure intelligent transportation systems using Federal assistance other than Highway Trust Funds (including funds from the Mass Transit Account) or funds made available for the Intelligent Transportation Systems program authorized by TEA–21, title V, subtitle C, 23 U.S.C. 502 note.

Text of Federal Fiscal Year 2004 Certifications and Assurances: The text of the certifications and assurances in Appendix A of this Notice also appears in TEAM-Web (*http://ftateamweb.fta.dot.gov/*) in the ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients.'' It is important that each Applicant be familiar with all sixteen (16) certification and assurance categories and their requirements, as they may be a prerequisite for receiving FTA financial assistance. Provisions of this Notice supersede conflicting statements in any FTA circular containing a previous version of the Annual Certifications and Assurances. The certifications and assurances contained in those FTA circulars are merely examples, and are not acceptable or valid for Federal Fiscal Year 2004; do not rely on the provisions of certifications and assurances appearing in FTA circulars.

Significance of Certifications and Assurances: Selecting and submitting certifications and assurances to FTA, either through TEAM-Web or submission of the Signature Page(s) of Appendix A, signifies the Applicant's intent to comply with the requirements of the certifications and assurances it has selected to the extent they apply to a project for which the Applicant submits an application for assistance in Federal Fiscal Year 2004.

Requirement for Attorney's Signature: FTA requires a current (Federal Fiscal Year 2004) affirmation, signed by the Applicant's attorney, of the Applicant's legal authority to certify compliance with the obligations imposed by the certifications and assurances the Applicant has selected. Irrespective of whether the Applicant makes a single selection for all 16 categories or selects individual options from the 16 categories, the Affirmation of Applicant's Attorney from a previous year is not acceptable.

Deadline for Submission: All Applicants for FTA formula program or capital investment program assistance, and current FTA grantees with an active project financed with FTA formula program or capital investment program assistance, are expected to provide Federal Fiscal Year 2004 Certifications and Assurances within 90 days from the date of this publication or with their first grant application in Federal Fiscal Year 2004, whichever is first. FTA encourages other Applicants to submit their certifications and assurances as soon as possible.

Preference for Electronic Submission: Applicants registered in TEAM-Web must submit their certifications and assurances, as well as their applications, in TEAM-Web. Only if an Applicant is unable to submit its certifications and assurances in TEAM-Web should the Applicant use the Signature Page(s) in Appendix A of this Notice.

Procedures for Electronic Submission: The TEAM-Web ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients'' contains fields for selecting the categories of certifications and assurances to be submitted. Within that tab is a field for the Applicant's authorized representative to enter its personal identification number (PIN), which constitutes the Applicant's electronic signature for the certifications and assurances it has selected; in addition, there is a field for the Applicant's attorney to enter his or her PIN, affirming the Applicant's legal authority to make and comply with the certifications and assurances the Applicant has selected. In certain circumstances, the Applicant may enter its PIN in lieu of its Attorney's PIN, provided that the Applicant has on file the Affirmation of Applicant's Attorney in Appendix A of this Notice, written and signed by the attorney and dated this Federal fiscal year. For more information, Applicants may contact the appropriate Regional Office listed in this Notice or the TEAM-Web Helpdesk.

Procedures for Paper Submission: If an Applicant is unable to submit its certifications electronically, it must mark the certifications and assurances it is making on the Signature Page(s) in Appendix A of this Notice and submit it to FTA. The Applicant may signify compliance with all Categories by placing a single mark in the appropriate space or select the Categories applicable to itself and its projects. In certain circumstances, the Applicant may enter its signature in lieu of its Attorney's signature in the Affirmation of Applicant's Attorney section of the Signature Page(s), provided that the Applicant has on file the Affirmation of Applicant's Attorney in Appendix A of this Notice, written and signed by the attorney and dated this Federal fiscal year. For more information, Applicants may contact the appropriate Regional Office listed in this Notice.

References. The Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act, Pub. L. 105–206, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, other Federal laws administered by FTA, U.S. DOT and FTA regulations at 49 CFR, and FTA Circulars.

Dated: December 29, 2003.

Jennifer L. Dorn,

Administrator.

Appendix A

Federal Fiscal Year 2004 Certifications and Assurances for Federal Transit Administration Assistance Programs

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2004. FTA strongly encourages each Applicant to submit its

certifications and assurances through TEAM-Web, FTA's electronic award and management system, at *http://ftateamweb.fta.dot.gov*.

Sixteen (16) Categories of certifications and assurances are listed by numbers 01 through 16 in the TEAM-Web ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients,'' and on the opposite side of the Signature Page(s) at the end of this document. Category 01 applies to all Applicants. Categories 02 through 16 will apply to and be required for some, but not all, Applicants and projects.

1. Required of Each Applicant

Each Applicant for FTA assistance must provide all certifications and assurances in this Category ''01.'' FTA may not award any Federal assistance until the Applicant provides these certifications and assurances by selecting Category ''01.''

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable state and local law and the Applicant's by-laws or internal rules to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws, regulations, policies, and administrative practices may be modified from time to time and those modifications may affect project implementation. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance it submits to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17.

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients,'' and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant assures that:

(1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements of 49 U.S.C. 5332 and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.

(4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits.

(5) The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, regulations, and this assurance.

(6) It will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

F. Procurement Compliance Certification

The Applicant certifies that its procurements and procurement system will comply with all applicable third party procurement requirements of Federal laws, executive orders, regulations, and FTA directives, and requirements, as amended and revised, as well as other requirements FTA may issue including FTA Circular 4220.1E, ''Third Party Contracting Guidelines,'' and any revisions thereto, to the extent those requirements are applicable. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and its contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

G. Certifications and Assurances Required by the U.S. Office of Management and Budget (OMB) (SF–424B and SF–424D)

As required by OMB, the Applicant certifies that it:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and

completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,'' 49 CFR part 25, which prohibit discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, 21 U.S.C. 1174 *et seq.* relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, 42 U.S.C. 4581 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited, to 49 U.S.C. 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity, and section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) Any other nondiscrimination statute(s) that may apply to the project;

(6) Will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable state and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24, and will comply with or has complied with that Act and those U.S. DOT implementing regulations, including but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(1) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland ''Anti-Kickback'' Act, as amended, 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted subagreements;

(2) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;

(10) Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency;

(11) Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;

(12) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the state;

(14) Will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* and

Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.*;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.*;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, state, or local significance or any land from a historic site of national, state, or local significance to be used in a transportation project as required by 49 U.S.C. 303;

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 *et seq.*; and

(k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–1 *et seq.*; and Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, ''Protection of Human Subjects,'' 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, ''Animal Welfare,'' 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*, OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' Revised, and the most recent applicable OMB A–133 Compliance Supplement provisions for the Department of Transportation; and

(19) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

2. Lobbying

An Applicant that submit or intends to submit an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not award Federal assistance exceeding $100,000 until the Applicant provides this certification by selecting Category ''02.''

A. As required by U.S. DOT regulations, ''New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352.

(3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements).

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. Private Mass Transportation Companies

A State or local government Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 to acquire the property or an interest in the property of a private mass transportation company or to operate mass transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category ''03.''

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private mass transportation company or operates mass transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing mass transportation company, it has or will have:

A. Found that the assistance is essential to carrying out a program of projects as determined by the plans and programs of the metropolitan planning organization;

B. Provided for the participation of private mass transportation companies to the maximum extent feasible consistent with applicable FTA requirements and policies;

C. Paid just compensation under state or local law to a private mass transportation company for its franchises or property acquired; and

D. Acknowledged that the assistance falls within the labor standards compliance requirements of 49 U.S.C. 5333(a) and 5333(b).

4. Public Hearing

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's mass transportation service must provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category ''04.''

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, it will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the proposed project; and

D. Determined that the proposed project is consistent with official plans for developing the urban area.

5. Acquisition of Rolling Stock

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 to acquire any rolling stock must provide the following certification. FTA may not award any Federal assistance to acquire such rolling stock until

the Applicant provides this certification by selecting Category ''05.''

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

6. Bus Testing

An Applicant for Federal assistance appropriated or made available for 49 U.S.C. chapter 53 to acquire any new bus model or any bus model with a new major change in configuration or components must provide the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category ''06.''

As required by FTA regulations, ''Bus Testing,'' at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665), the bus model:

A. Will have been tested at a bus testing facility approved by FTA; and

B. Will have received a copy of the test report prepared on the bus model.

7. Charter Service Agreement

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or by Title 23, U.S.C. to acquire or operate any mass transportation equipment or facilities must enter into the following Charter Service Agreement. FTA may not provide assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or by Title 23, U.S.C. for projects until the Applicant enters into this Charter Service Agreement by selecting Category ''07.''

A. As required by 49 U.S.C. 5323(d) and FTA regulations, ''Charter Service,'' at 49 CFR 604.7, the Applicant agrees that it and its recipients will:

(1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies; and

(2) Comply with the requirements of 49 CFR part 604 before providing any charter service using equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. for transportation projects.

B. As The Applicant understands that:

(1) The requirements of 49 CFR part 604 will apply to any charter service it provides,

(2) The definitions of 49 CFR part 604 will apply to this Charter Service Agreement, and

(3) A violation of this Charter Service Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

8. School Transportation Agreement

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 or by Title 23, U.S.C. to acquire or operate transportation facilities and equipment must enter into the following School Transportation Agreement. FTA may not provide assistance for such projects until the Applicant enters into this agreement by selecting Category ''08.''

A. As required by 49 U.S.C. 5323(f) and FTA regulations, ''School Bus Operations,'' at 49 CFR 605.14, the Applicant agrees that it and all its recipients will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by 49 U.S.C. 5323(f), and Federal regulations; and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance and authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for transportation projects.

B. As The Applicant understands that:

(1) The requirements of 49 CFR part 605 will apply to any school transportation service it provides,

(2) The definitions of 49 CFR part 605 will apply to this school transportation agreement, and

(3) A violation of this School Transportation Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

9. Demand Responsive Service

An Applicant that operates demand responsive service and applies for direct Federal assistance authorized for 49 U.S.C. chapter 53 to acquire non-rail mass transportation vehicles is required to provide the following certification. FTA may not award direct Federal assistance authorized for 49 U.S.C. chapter 53 to an Applicant that operates demand responsive service to acquire non-rail mass transportation vehicles until the Applicant provides this certification by selecting Category ''09.''

As required by U.S. DOT regulations, ''Transportation Services for Individuals with Disabilities (ADA),'' at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When the Applicant's service is viewed in its entirety, the Applicant's service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

10. Alcohol Misuse and Prohibited Drug Use

If the Applicant is required to provide the following certification concerning its activities to prevent alcohol misuse and prohibited drug use in its transit operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category ''10.''

As required by FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' 49 CFR part 655.

11. Interest and Other Financing Costs

An Applicant that intends to request the use of Federal assistance for reimbursement of interest or other financing costs incurred for its capital projects must provide the following certification. FTA may not provide assistance to support those costs until the Applicant provides this certification by selecting Category ''11.''

In compliance with 49 U.S.C. 5307(g), 49 U.S.C. 5309(g)(2)(B), 49 U.S.C. 5309(g)(3)(A), and 49 U.S.C. 5309(n), the Applicant certifies that it will not seek reimbursement for interest and other financing costs unless its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

12. Intelligent Transportation Systems

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the ''National ITS Architecture,'' must provide the following assurance. FTA may not award any Federal assistance for an ITS project until the Applicant provides this assurance by selecting Category ''12.''

As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the ''National ITS Architecture.''

A. In accordance with section 5206(e) of TEA–21, 23 U.S.C. 502 note, the Applicant assures it will comply with all applicable requirements of Section V (Regional ITS Architecture and Section VI (Project Implementation) of FTA Notice, ''FTA National ITS Architecture Policy on Transit Projects,'' at 66 FR 1455 *et seq.*, January 8, 2001, and other FTA requirements that may be issued in connection with any ITS project it undertakes financed with Highway Trust Funds (including funds from the mass transit account) or funds made available for the Intelligent Transportation Systems Program authorized by TEA–21, title V, subtitle C, 23 U.S.C. 502 note.

B. With respect to any ITS project financed with Federal assistance derived from a source other than Highway Trust Funds (including funds from the Mass Transit Account) or TEA–21, title V, subtitle C, 23 U.S.C. 502 note, the Applicant assures that is will use its best efforts to ensure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region.

13. Urbanized Area, JARC, and Clean Fuels Programs

Each Applicant for Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, each Applicant for Job Access and Reverse Commute Program assistance authorized by section 3037 of the Transportation Equity Act for the 21st Century, 49 U.S.C. 5309 note, and each Applicant for Clean Fuels Formula Program assistance authorized by 49 U.S.C. 5308 must provide the following certifications. FTA may not award Federal assistance for those programs until the Applicant provides these certifications and assurances by selecting Category ''13.'' A state or other Applicant providing certifications and assurances that require the compliance of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

Each Applicant that received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1) must list the projects carried out during that Federal fiscal year with those funds in its quarterly report for the fourth quarter of the preceding Federal fiscal year. That list constitutes the report of transit enhancement projects carried out during that fiscal year, which report is required to be submitted as part of the Applicant's annual certifications and assurances, in accordance with 49 U.S.C. 5307(k)(3), and is therefore incorporated by reference and made part of the Applicant's annual certifications and assurances. FTA may not award Urbanized Area Formula Program assistance to any Applicant that has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list.

A. Certifications Required for the Urbanized Area Formula Program

(1) As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies and assures as follows:

(a) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(b) It has or will have satisfactory continuing control over the use of Project equipment and facilities;

(c) It will adequately maintain the equipment and facilities;

(d) It will ensure that elderly and handicapped persons, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, or for the Job Access and Reverse Commute Program at section 3037 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5309 note, not more than fifty (50) percent of the peak hour fare;

(e) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program, 49 U.S.C. 5307, or the Job Access and Reverse Commute Program, section 3037 of TEA–21, 49 U.S.C. 5309 note, it: (1) will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications, and (3) will comply with applicable Buy America laws;

(f) It has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) Has made available, or will make available, to the public information on the amounts available for the Urbanized Area Formula Program, 49 U.S.C. 5307 and, if applicable, the Job Access and Reverse Commute Grant Program, 49 U.S.C. 5309 note, and the program of projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, a proposed program of projects for activities to be financed; (3) has published or will publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has ensured or will ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;

(g) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(h) It will comply with: 49 U.S.C. 5301(a) (requirements for transportation systems that maximize mobility and minimize fuel consumption and air pollution); 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); 49 U.S.C. 5303 through 5306 (planning requirements); and 49 U.S.C. 5301(d) (special efforts to design and provide mass transportation for the elderly and persons with disabilities);

(i) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(j) As required by 49 U.S.C. 5307(d)(1)(J), unless it has determined that it is not necessary to expend one (1) percent of the amount of Federal assistance it receives for this fiscal year apportioned in accordance with 49 U.S.C. 5336 for transit security projects, it will expend at least one (1) percent of that assistance for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system.

(2) As required by 49 U.S.C. 5307(k)(3), if it has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects it has implemented during that fiscal year using those funds, and that report is incorporated by reference and made part of its certifications and assurances.

B. Certification Required for Capital Leasing

As required by FTA regulations, ''Capital Leases,'' at 49 CFR 639.15(b)(1) and 49 CFR 639.21, if the Applicant acquires any capital asset by lease financed with Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, the Applicant certifies as follows:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can provide only incremental Federal assistance unless it has adequate financial resources to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for the Sole Source Acquisition of an Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), the Applicant certifies that when it procures an associated capital maintenance item as authorized by 49 U.S.C. 5307(b)(1), it will use competition, unless the original manufacturer or supplier of the item is the only source for that item and the price of that item is no more than the price similar customers pay for that item, and that for each such procurement, it will maintain sufficient records on file and easily retrievable for inspection by FTA.

D. Clean Fuels Formula Grant Program Certification

As required by 49 U.S.C. 5308(c)(2), the Applicant certifies that vehicles financed with Federal assistance provided for the

Clean Fuels Formula Program, 49 U.S.C. 5308, will be operated only with clean fuels.

14. Elderly and Persons With Disabilities Program

An Applicant that intends to administer the Elderly and Persons With Disabilities Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting Category ''14.''

The Applicant administering, on behalf of the state, the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The state assures that, before issuing the state's formal approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects to be implemented in urbanized areas recommended for approval are included in the metropolitan Transportation Improvement Program in which the subrecipient is located; and any prospective subrecipient of capital assistance that is a public body has provided an opportunity for a public hearing.

F. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment financed with Federal assistance awarded for its project;

(2) The subrecipient has coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(3) The subrecipient has complied or will comply with all applicable civil rights requirements;

(4) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(5) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(6) The subrecipient has complied or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(8) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1E, ''Third Party Contracting Requirements,'' as amended and revised, and other Federal requirements that may be applicable;

(9) The subrecipient has complied or will comply with the requirement that its project provide for the participation of private mass transportation companies to the maximum extent feasible;

(10) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(12) The subrecipient has complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(13) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(14) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements to the extent required by FTA; and

(15) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements.

G. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that, until the required Federal environmental finding is made, financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c). The state further certifies that, until the required Federal conformity finding has been made, no financial assistance will be provided for a project requiring a Federal conformity finding in accordance with the U.S. Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93.

H. The state assures that it will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

15. Nonurbanized Area Formula Program

An Applicant that intends to administer the Nonurbanized Area Formula Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Categories ''1 through 11'' and ''15.''

The Applicant administering, on behalf of the state, the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; and projects are included in a metropolitan Transportation Improvement Program, to the extent applicable.

D. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

E. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has or will have, by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment financed with Federal assistance awarded for its project;

(2) The subrecipient has coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(3) The subrecipient has complied or will comply with all applicable civil rights requirements;

(4) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(5) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(6) The subrecipient has complied or will comply with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (a) signing the Special Warranty for the Nonurbanized Area Formula Program, (b) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (c) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL;

(7) The subrecipient has complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(8) The subrecipient has complied or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(9) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(10) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1E, ''Third Party Contracting Requirements,'' as amended and revised, and other Federal requirements that may be applicable;

(11) The subrecipient has complied or will comply with the requirement that its project provide for the participation of private enterprise to the maximum extent feasible;

(12) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(13) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(14) The subrecipient has complied or will comply with all applicable nonprocurement suspension and debarment requirements;

G. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that, until the required Federal environmental finding is made, financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c). The state further certifies that, until the required Federal conformity finding has been made, no financial assistance will be provided for a project requiring a Federal conformity finding in accordance with the U.S. Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93.

H. The state assures that it will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

15. Nonurbanized Area Formula Program

An Applicant that intends to administer the Nonurbanized Area Formula Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Categories ''1 through 11'' and ''15.''

The Applicant administering, on behalf of the state, the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; and projects are included in a metropolitan Transportation Improvement Program, to the extent applicable.

D. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

E. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has or will have, by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment financed with Federal assistance awarded for its project;

(2) The subrecipient has coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(3) The subrecipient has complied or will comply with all applicable civil rights requirements;

(4) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(5) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(6) The subrecipient has complied or will comply with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (a) signing the Special Warranty for the Nonurbanized Area Formula Program, (b) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (c) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL;

(7) The subrecipient has complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(8) The subrecipient has complied or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(9) Viewing its demand responsive service to the general public in its entirety, the

subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(10) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1E, ''Third Party Contracting Requirements,'' as amended and revised, and other Federal requirements that may be applicable;

(11) The subrecipient has complied or will comply with the requirement that its project provide for the participation of private enterprise to the maximum extent feasible;

(12) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(13) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(14) The subrecipient has complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(15) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(16) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements;

(17) The subrecipient has complied with or will comply with all assurances FTA requires for projects involving real property;

(18) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements, to the extent required by FTA; and

(19) The subrecipient has complied or will comply with applicable prevention of alcohol misuse and prohibited drug use program requirements, to the extent required by FTA.

F. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that, until the required Federal environmental finding is made, financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c). The state further certifies that, until the required Federal conformity finding has been made, no financial assistance will be provided for a project requiring a Federal conformity finding in accordance with the U.S. Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93.

G. The state assures that it will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

H. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

I. In compliance with the requirements of 49 U.S.C. 5311(f), the state assures that it will expend not less than fifteen (15) percent of the amounts of Federal assistance as provided in 49 U.S.C. 5311(f) and apportioned during this Federal fiscal year to carry out a program within the State to develop and support intercity bus transportation, unless the chief executive officer of the state, or his or her designee, duly authorized under state law, regulations or procedures, certifies to the Federal Transit Administrator that the intercity bus service needs of the state are being adequately met.

16. State Infrastructure Bank Program

An Applicant for a grant of Federal assistance for deposit in its State Infrastructure Bank (SIB) must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the SIB program to the Applicant until the Applicant provides these certifications and assurances by selecting Categories ''1'' through 11,'' and ''16.''

The state, serving as the Applicant for Federal assistance for its State Infrastructure Bank (SIB) program authorized by either section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, certifies and assures that the following requirements and conditions concerning any transit Project financed with Federal assistance derived from its SIB have been or will be fulfilled:

A. The state organization, which is serving as the Applicant (state) for Federal assistance for its SIB, agrees and assures the agreement of its SIB and the agreement of each recipient of Federal assistance derived from the SIB within the state (subrecipient) that each transit Project financed with Federal assistance derived from SIB will be administered in accordance with:

(1) Applicable provisions of section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or of the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, and any further amendments thereto;

(2) The provisions of any applicable Federal guidance that may be issued;

(3) The terms and conditions of Department of Labor Certification(s) of Transit Employee Protective Arrangements that are required by Federal law or regulations;

(4) The provisions of the FHWA and FTA cooperative agreement with the state to establish the state's SIB program; and

(5) The provisions of the FTA grant agreement with the state that provides Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or section 1511 of TEA–21, as amended, 23 U.S.C. 181 note, Federal guidance pertaining to the SIB program, the provisions of the cooperative agreement establishing the SIB program within the state, or the provisions of the FTA grant agreement.

B. The state agrees to comply with, and assures the compliance of the SIB and each subrecipient of assistance provided by the SIB with, all applicable requirements for the SIB program, as those requirements may be amended from time to time. Pursuant to subsection 1511(h)(2) of TEA–21, 23 U.S.C. 181 note, the state understands and agrees that any previous cooperative agreement entered into with FHWA and FTA under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, has been or will be revised to comply with the requirements of TEA–21.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note or under section 1511 of TEA–21, 23 U.S.C. 181 note, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the SIB to amounts that do not exceed the limitations specified in the grant agreement or the approved project budget for that grant agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the SIB, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

G. The state recognizes that the SIB, rather than the State itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance by the SIB, the state assures, on behalf of the SIB, that:

(1) The SIB has complied or will comply with all applicable civil rights requirements;

(2) The SIB has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(3) The SIB will provide Federal assistance only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project;

(4) Before the SIB enters into an agreement with a subrecipient to disburse Federal assistance for a project, the subrecipient's project is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the metropolitan Transportation Improvement Program in which the subrecipient is located; and the requisite certification that an opportunity for a public hearing has been provided;

(5) The SIB will not provide Federal financial assistance for any project that does not qualify for a categorical exclusion as described in 23 CFR 771.117(c) until the required Federal environmental finding has been made. Moreover, the SIB will provide no financial assistance for a project requiring a Federal conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until the required Federal conformity finding has been made;

(6) Before the SIB provides Federal assistance for a transit project, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project; and

(7) The SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument that the SIB may issue shall contain an express statement that the security or debt financing instrument does not constitute a commitment, guarantee, or obligation of the United States.

H. The state also recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance of each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has complied or will comply with all applicable civil rights requirements;

(2) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(3) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(4) The subrecipient has complied or will comply with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project;

(5) The subrecipient has complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(6) The subrecipient has complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(8) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1E, ''Third Party Contracting Requirements,'' as amended and revised, and other implementing requirements FTA may issue;

(9) The subrecipient has complied or will comply with the requirement that its project provides for the participation of private mass transportation companies to the maximum extent feasible;

(10) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(12) The subrecipient has complied or will comply with all nonprocurement suspension and debarment requirements;

(13) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(14) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements;

(15) The subrecipient has complied with or will comply with all assurances FTA requires for projects involving real property;

(16) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements, to the extent required by FTA; and

(17) The subrecipient has complied or will comply with applicable prevention of alcohol misuse and prohibited drug use program requirements, to the extent required by FTA.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the SIB and its subrecipients, as well as the states, will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by the SIB and its subrecipients to assure compliance with applicable Federal requirements.

Selection and Signature Page(s) follow.

Federal Fiscal Year 2004 Certifications and Assurances for Federal Transit Administration Assistance Programs

(Signature page alternative to providing Certifications and Assurances in TEAM-Web)

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories 01—16._____

(The Applicant may make this selection in lieu of individual selections below.)

OR

The Applicant agrees to comply with the applicable requirements of the following Categories it has selected:

Category	Description	
01.	Required of Each Applicant	_____
02.	Lobbying	_____
03.	Private Mass Transportation Companies	_____
04.	Public Hearing	_____
05.	Acquisition of Rolling Stock	_____
06.	Bus Testing	_____
07.	Charter Service Agreement	_____
08.	School Transportation Agreement	_____
09.	Demand Responsive Service	_____
10.	Alcohol Misuse and Prohibited Drug Use	_____
11.	Interest and Other Financing Costs	_____
12.	Intelligent Transportation Systems	_____
13.	Urbanized Area, JARC, and Clean Fuels Programs	_____
14.	Elderly and Persons with Disabilities Program	_____
15.	Nonurbanized Area Formula Program	_____

Category	Description	
16.	State Infrastructure Bank Program	_____
(Both sides of this Signature Page must be appropriately completed and signed as indicated.)		

Federal Fiscal Year 2004 FTA Certifications and Assurances Signature Page

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

Affirmation of Applicant

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and Federal requirements applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2004.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2004.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, ''Program Fraud Civil Remedies,'' 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature _____

Date: _____

Name _____

Authorized Representative of Applicant

Affirmation of Applicant's Attorney

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature _____

Date: _____

Name _____

Attorney for Applicant _____

Each Applicant for FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

[FR Doc. 04–924 Filed 1–14–04; 8:45 am]

BILLING CODE 4910–57–P

Federal Register

Thursday,
January 15, 2004

Part V

Environmental Protection Agency

Fifty-Third Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0068; FRL–7335–2]

Fifty-Third Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Fifty-Third Report to the Administrator of the EPA on December 2, 2003. In the 53rd ITC Report, which is included with this notice, the ITC is revising the *Priority Testing List* by adding 3 pyridinamines and 20 tungsten compounds. The ITC is requesting that EPA add the 3 pyridinamines and 20 tungsten compounds to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule. In addition, the ITC is soliciting voluntary use, exposure, and effects information for 3 pyridinamines, 20 tungsten compounds, and 43 vanadium compounds through its Voluntary Information Submissions Innovative Online Network (VISION).

DATES: Comments, identified by docket ID number OPPT–2003–0068, must be received on or before February 17, 2004.

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: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: John D. Walker, Director, TSCA Interagency Testing Committee (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7527; fax: (202) 564–7528; e-mail address: *walker.johnd@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals. Potentially affected entities may include, but are not limited to:

- Chemical Industry, e.g., NAICS 325, Manufacturers.
- Petroleum Industry, e.g., NAICS 32411, Refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical 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–2003–0068. 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.* This **Federal Register** document may be accessed electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. You may also access additional information about the ITC at *http://www.epa.gov/opptintr/itc/* and VISION at *http://www.epa.gov/opptintr/itc/vision.htm*.

An electronic version of the public docket is available through EPA's electronic public docket at *http://www.epa.gov/edocket/*. EPA's electronic public docket may be used to submit or view public comments, access the index of the docket's contents, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, any of the publicly available docket materials may be accessed 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. 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?

Comments may be submitted electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID 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–2003–0068. 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–2003–0068. 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), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0068. 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?

We invite you to provide your views and comments on the 53rd ITC Report. 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. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this notice.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 260l*et seq.*) authorizes the Administrator of the EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical mixtures in order to develop data relevant to determining the risks that such chemicals and chemical mixtures may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical mixtures to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

A. The ITC's 53rd Report

The 53rd ITC Report was transmitted to the EPA's Administrator on December 2, 2003, and is included in this notice. In the 53rd ITC Report, the ITC revises the *Priority Testing List* by adding 3 pyridinamines and 20 tungsten compounds, requests that EPA add the pyridinamines and tungsten compounds to the TSCA section 8(a) PAIR rule and solicits voluntary use, exposure, and effects information for pyridinamines, tungsten compounds, and vanadium compounds.

B. Status of the Priority Testing List

The current TSCA 4(e) *Priority Testing List* as of November 2003 can be found in Table 1 of the 53rd ITC Report, which is included in this notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: January 8, 2004.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Fifty-Third Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

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Summary

In this 53rd Report, the ITC is revising the *Priority Testing List* by adding 3 pyridinamines and 20 tungsten compounds. The ITC is requesting that EPA add the 3 pyridinamines and 20 tungsten compounds to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule.

The TSCA section 4(e) *Priority Testing List* follows as Table 1 of this unit.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (NOVEMBER 2003)

ITC Report	Date	Chemical name/Group	Action
31	January 1993	13 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	16 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	4-tert-Butylphenol and Branched nonylphenol (mixed isomers)	Recommended
41	November 1997	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole	Recommended
42	May 1998	Glycoluril	Recommended
47	November 2000	9 Indium compounds	Recommended
48	May 2001	Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-	Recommended
49	November 2001	Stannane, dimethylbis[(1-oxoneodecyl)oxy]-	Recommended
50	May 2002	Benzene, 1,3,5-tribromo-2-(2-propenyloxy)-	Recommended
50	May 2002	1-Triazene, 1,3-diphenyl-	Recommended
51	November 2002	43 Vanadium compounds	Recommended
53	November 2003	3 Pyridinamines	Recommended
53	November 2003	20 Tungsten compounds	Recommended

I. Background

The ITC was established by section 4(e) of the Toxic Substances Control Act (TSCA) ''to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of rules for testing under section 4(a).... At least every six months ..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions'' (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). ITC Reports are available from the ITC's web site (*http://www.epa.gov/opptintr/itc*) within a few days of submission to the Administrator and from the EPA's web site *http://www.epa.gov/fedrgstr/* after publication in the **Federal Register**. The ITC produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC Staff, ITC Members and their U.S. Government organizations, and contract support provided by EPA. ITC Members and Staff are listed at the end of this report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Reporting Rules

Following receipt of the ITC's Report (and the revised *Priority Testing List*) by the EPA Administrator, the EPA's Office of Pollution Prevention and Toxics (OPPT) adds the chemicals from the revised *Priority Testing List* to the TSCA section 8(a) PAIR and TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rules. The PAIR rule requires producers and importers of Chemical Abstract Service (CAS)-numbered chemicals added to the *Priority Testing List* to submit production and exposure reports (*http://www.epa.gov/opptintr/chemtest/pairform.pdf*). The HaSDR rule requires producers, importers, and processors of all chemicals added to the *Priority Testing List* to submit unpublished health and safety studies under TSCA section 8(d) that must be in compliance with the revised HaSDR rule (Ref. 1). All submissions must be received by the EPA within 90 days of the reporting rules **Federal Register** publication date.

B. ITC's Use of TSCA Section 8 and Other Information

The ITC's use of TSCA section 8 and other information is described in previous ITC Reports (*http://www.epa.gov/opptintr/itc/rptmain.htm*).

C. New Requests to Add Chemicals to the TSCA Section 8(a) PAIR Rule

The ITC is requesting that EPA add 3 pyridinamines and 20 tungsten compounds to the TSCA section 8(a) PAIR rule. The 3 pyridinamines and 20 tungsten compounds are discussed in Units IV.A.1. and IV.A.2. of this report.

D. Previous Requests to Add Chemicals to the TSCA Section 8(d) HaSDR Rule

In previous ITC Reports it was requested that the following chemicals be added to the TSCA section 8(d) HaSDR rule: 3H-1,2,4-triazole-3-thione, 5-amino-1,2-dihydro- (3-amino-5-mercapto-1,2,4-triazole) (CAS No. 16691–43–3) and imidazo[4,5-d]imidazole-2,5(1H,3H)-dione, tetrahydro- (glycoluril) (CAS No. 496–46–8) (42nd ITC Report, Ref. 2), 9 indium compounds (47th ITC Report, Ref. 3); benzenamine, 3-chloro-2, 6-dinitro-N,N-dipropyl-4-(trifluoromethyl)- (CAS No. 29091–20–1) (48th ITC Report, Ref 4); and stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7), benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl- (CAS No.136–35–6) (50th ITC Report, Ref. 5). The TSCA section 8(d) studies requested for these chemicals were listed in the ITC's 51st Report (Ref. 6).

III. ITC's Activities During this Reporting Period (May to November 2003)

During this reporting period, the ITC received voluntary information submissions from the Color Pigments Manufacturers Association (CPMA) and the Vanadium Producers and Reclaimers Association (VPRA) in response to solicitations for the 43 vanadium compounds listed in the ITC's 51st Report (Ref. 6). The procedures for submitting voluntary information through the ITC's Voluntary Information Submissions Innovative Online Network (VISION) are described on the ITC's web site (*http://www.epa.gov/opptintr/itc/vision.htm).*

During this reporting period, the ITC reviewed the PAIR reports submitted in response to the June 11, 2003, PAIR rule (Ref. 7). This PAIR rule required submission of reports for benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)- (CAS No. 29091–20-1); stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7); benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5); and 1-triazene, 1,3-diphenyl- (CAS No. 136–35–6) and the 43 vanadium compounds listed in the ITC's 51st Report. The ITC is continuing to analyze the data in those reports as well as data submitted voluntarily.

For the 43 vanadium compounds listed in the ITC's 51st Report (Ref. 6), the ITC is still soliciting voluntary submissions of:

1. Recent non-CBI estimates of annual production or importation volume data and trends, and use information, including percentages of production or importation that are associated with different uses.

2. Estimates of the number of humans and concentrations of vanadium compounds to which humans may be exposed during manufacturing or processing.

3. Health effects data including pharmacokinetics, genotoxicity, subchronic toxicity, reproductive and developmental toxicity, and any human data from occupationally exposed workers.

The ITC is soliciting this information in order to adequately assess the extent and degree of exposure and potential hazard associated with the various forms of vanadium.

In addition, the ITC is soliciting voluntary information submissions for the 3 pyridinamines and 20 tungsten compounds being added to the *Priority Testing List* to meet U.S. Government data needs. The information being solicited is summarized in Unit IV.A.1.c. and IV.A.2.c. of this report.

IV. Revisions to the TSCA Section 4(e) Priority Testing List

A. Chemicals Added to the Priority Testing List

1. *Pyridinamines*—a. *Recommendation*. Pyridinamines are being added to the *Priority Testing List* to obtain importation, production, use, exposure, and health effects information to meet U.S. Government data needs. Three pyridinamines are being recommended: 2-Pyridinamine (CAS No. 504–29–0), 3-pyridinamine (CAS No. 462–08–8) and 4-pyridinamine (CAS No. 504–24–5).

b. *Rationale for recommendation*. Pyridinamines are readily absorbed through the skin and the gastrointestinal tract and widely distributed in the body, including the brain. They are not metabolized and are completely excreted through the kidneys. Studies in animals and humans have shown that pyridinamines are acutely toxic compounds. Part of this toxic response may be due to their ability to block K+ channels causing, among other effects, convulsions. The chronic toxicity of these compounds has not received adequate evaluation. To determine a priority for testing members of the pyridinamine class of compounds, additional information is needed to characterize human exposure potential.

c. *Information needs*. For each individual pyridinamine: Recent data or estimates of annual production and importation volume and trends; information on specific uses, including percentages of production or importation volume associated with each of these uses; estimates of the number of persons potentially exposed to each pyridinamine during its manufacture and use and health effects, including chronic toxicity data.

d. *Supporting information*. Pyridinamines are chemicals in commerce. The annual production volume of 2-pyridinamine exceeded 1 million pounds in 1998; it is used in hair colorants and as an intermediate in the manufacture of pharmaceuticals. 3-Pyridinamine is an intermediate in the production of agrochemicals and pharmaceuticals; it may have end-uses. In addition to its use as a chemical intermediate, 4-pyridinamine is the active ingredient in the registered pesticide Avitrol® and has been evaluated as an experimental drug to treat several neurological syndromes. Under the Food and Drug Administration (FDA) Modernization Act of 1997 (*http://www.fda.gov/opacom/7modact.html*), 4-pyridinamine was nominated for inclusion on the list of bulk substances for use in pharmacy compounding but was not included by the FDA on the initial list. Human exposure data are limited for pyridinamines. A survey conducted between 1981 and 1983 by the National Institute for Occupational Safety and Health estimated that 4,618 workers in 452 facilities representing 3 industries were potentially exposed to 4-pyridinamine.

2. *Tungsten compounds*—a. *Recommendation*. Twenty tungsten compounds are being added to the *Priority Testing List* to obtain importation, production, use, exposure, and health effects information to meet U.S. Government data needs (Table 2). The ITC believes the list of tungsten compounds in Table 2 includes those most likely to be in current use.

TABLE 2.—TUNGSTEN COMPOUNDS BEING ADDED TO THE TSCA SECTION 8(A) PAIR RULE

CAS No.	Chemical name
1314–35–8	Tungsten oxide (WO_3)
7440–33–7	Tungsten
7783–82–6	Tungsten fluoride (WF_6), (OC–6–11)-
7790–85–4	Cadmium tungsten oxide ($CdWO_4$)
7790–60–5	Tungstate (WO_4^{2-}), dipotassium, (T-4)-

TABLE 2.—TUNGSTEN COMPOUNDS BEING ADDED TO THE TSCA SECTION 8(A) PAIR RULE—Continued

CAS No.	Chemical name
7783–03–1	Tungstate (WO_4^{2-}), dihydrogen, (T-4)-
10213–10–2	Tungstate (WO_4^{2-}), disodium, dihydrate, (T-4)-
11105–11–6	Tungsten oxide (WO_3), hydrate
11120–01–7	Sodium tungsten oxide
11120–25–5	Tungstate ($W_{12}(OH)_2\ O_{40}^{10-}$), decaammonium
12067–99–1	Tungsten hydroxide oxide phosphate
12028–48–7	Tungstate ($W_{12}(OH)_2\ O_{38}^{6-}$), hexaammonium
12027–38–2	Tungstate(4-),[.mu.12-[orthosilicato(4-)-.kappa.O:.kappa.O:.kappa.O:.kappa.O':.kappa.O':.kappa.O':.kappa.O''.kappa.O'':.kappa.O'':.kappa.O''':kappa.O''':.kappa.O'''] tetracosa-.mu.-oxododecaoxododeca-, tetrahydrogen
12036–22–5	Tungsten oxide (WO_2)
12141–67–2	Tungstate ($W_{12}(OH)_2\ O_{38}^{6-}$), hexasodium
12138–09–9	Tungsten sulfide (WS_2)
13283–01–7	Tungsten chloride (WCl_6), (OC–6–11)-
13472–45–2	Tungstate (WO_4^{2-}), disodium, (T-4)-
14040–11–0	Tungsten carbonyl ($W(CO)_6$), (OC–6–11)-
23321–70–2	Tungsten oxide (WO_3), dihydrate

b. *Rationale for recommendation.* Tungsten was recently nominated for toxicology and carcinogenicity studies to the National Toxicology Program by the Centers for Disease Control and Prevention's National Center for Environmental Health (*http://ntp-server.niehs.nih.gov/NomPage/2003Noms.html*). The nomination was based on recent data showing elevated tungsten body burdens in residents of Fallon, NV, and the limited data available to assess the potential long-term adverse health effects of tungsten exposure (*http://www.cdc.gov/nceh/clusters/Fallon*). The source and pathways of exposure, and the form of tungsten to which Fallon, NV, residents are exposed is presently poorly understood. The Agency for Toxic Substances and Disease Registry (ATSDR) has completed community exposure and health investigations in Churchill County, NV (*http://www.atsdr.cdc.gov/HAC/PHA/region_9.html#nevada*) and is developing a toxicological profile for tungsten (*http://www.atsdr.cdc.gov/toxprofiles/tp186.html*). Tungsten and tungsten compounds have numerous important industrial uses. Other than workplace exposure limits, there are few regulatory controls on the use, emission, and disposal of tungsten compounds and few data on which to assess the ecological effects and human health impacts resulting from environmental and general population exposures. Further information is needed to more fully evaluate human and environmental exposures and health effects.

c. *Information needs.* To meet U.S. Government data needs, the ITC needs:

1. Recent non-CBI estimates of annual production or importation volume data and trends, and chemical-specific use information, including percentages of production or importation that are associated with different uses.
2. Environmental release and monitoring information, including occurrence and concentrations in environmental media.
3. Fate and transport data.
4. Ecological effects data, especially for aquatic and sediment organisms, if there is evidence that tungsten compounds are mobilized and transported to groundwater, surface water, and sediments.
5. Estimates of the number of exposed humans and concentrations of tungsten compounds to which humans may be exposed in each relevant manufacturing, processing, or other occupational scenario.
6. Case studies from occupationally exposed workers and pharmacokinetics, dermal, inhalation, and oral acute toxicity, subchronic toxicity, chronic toxicity, genotoxicity, carcinogenicity, neurotoxicity, reproductive and developmental toxicity, and epidemiology studies.

The ITC is soliciting this information in order to adequately assess the extent and degree of exposure and potential hazard associated with the various forms of tungsten and to determine if additional test data are needed.

d. *Supporting information.* Tungsten compounds are naturally released to the atmosphere by windblown dusts. Tungsten compounds can be released to surface waters from sources of human origin (e.g., water effluents from tungsten mining). Deposition of tungsten aerosols or dusts from both natural and anthropogenic sources is also a source of tungsten in surface waters. Individuals who work in manufacturing, fabricating, and reclaiming industries, especially individuals using hard-metal materials or tungsten carbide machining tools, may be exposed to higher levels of tungsten compounds than the general population. Occupational exposure is primarily via inhalation of dust particles of elemental (metallic) tungsten and/or its compounds.

Pulmonary fibrosis, memory and sensory deficits, and increased mortality due to lung cancer have been associated with occupational exposure to dusts generated in the hard-metal industry. Historically, the respiratory and neurological effects observed in hard-metal workers have been attributed to cobalt, not tungsten. However, based on the presence of tungsten oxide fibers in air samples taken at some hard-metal facilities and demonstrations that tungsten oxide fibers are capable of generating hydroxyl radicals in human lung cells *in vitro*, it has been suggested that tungsten oxide fibers may contribute to the development of pulmonary fibrosis in hard-metal workers. Limited reports associate tungsten exposure with reproductive and developmental effects such as decreased sperm motility, increased embryotoxicity, and delayed fetal skeletal ossification in animals. Tungsten has been observed to cross the placental barrier and enter the fetus. Dermal or ocular exposure to tungsten may result in localized irritation.

V. References

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VI. The TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

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Vacant

Department of Commerce

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Barbara C. Levin, Alternate

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Daphne Moffett, Alternate

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Jacqueline Ferrante, Alternate

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NIEHS, FDA, and NIOSH Members

Technical Support Contractor
Syracuse Research Corporation

ITC Staff
John D. Walker, Director
Norma S. L. Williams, Executive Assistant

TSCA Interagency Testing Committee, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7527; fax number: (202) 564–7528; e-mail address: *williams.norma@epa.gov*; url: *http://www.epa.gov/opptintr/itc*.

[FR Doc. 04–894 Filed 1–14–04; 8:45 am]

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Federal Register

Thursday,
January 15, 2004

Part VI

The President

Presidential Determination No. 2004–20 of January 5, 2004—Eligibility of the Regional Security System (RSS) to Receive Defense Articles and Services under the Foreign Assistance Act and the Arms Export Control Act

Federal Register
Vol. 69, No. 10
Thursday, January 15, 2004

Presidential Documents

Title 3—

The President

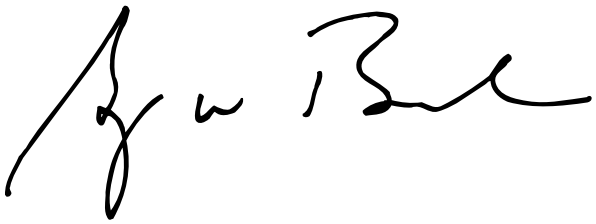
Presidential Determination No. 2004–20 of January 5, 2004

Eligibility of the Regional Security System (RSS) to Receive Defense Articles and Services under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Consistent with the provisions of section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the RSS will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 5, 2004.

[FR Doc. 04–1027
Filed 1–14–04; 8:58 am]
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