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Friday, April 2, 2004

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16983; Airspace Docket No. 04–ACE–1]

Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Farmington, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area at Farmington, MO. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Farmington, MO by correcting discrepancies in the Farmington Regional Airport airport reference point.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft executing instrument approach procedures to Farmington Regional Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, June 10, 2004.

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

SUPPLEMENTARY INFORMATION:

History

On Thursday, February 19, 2004, the FAA proposed to amend 14 CFR part 71 to establish a Class E surface area and to modify other Class E airspace at Farmington, MO (69 FR 7715). The proposal was to establish a Class E surface area at Farmington, MO. It was also to modify the Class E5 airspace and its legal description by revising the Farmington Regional Airport airport reference point used in the Class E airspace legal description. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace designated as a surface area for an airport at Farmington, MO. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. Weather observations will be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications will be direct with St. Louis Automated Flight Service Station.

This rule also revises the Class E airspace area extending upward from 700 feet above the surface at Farmington, MO. An examination of this Class E airspace area for Farmington, MO revealed discrepancies in the Farmington Regional Airport airport reference point used in the Class E airspace legal description. This action corrects these discrepancies. The areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9L, Airspace Designations and Reporting Points, 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 Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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).

Adoption of the Amendment

■ In consideration of the foregoing, 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.

Sec. 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 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E2 Farmington, MO

Farmington Regional Airport, MO
(Lat. 37°45′40″ N., long. 90°25′43″ W.)
Perrine NDB
(Lat. 37°45′54″ N. long. 90°25′45″ W.)

Within a 3.9-mile radius of Farmington Regional Airport and within 2.6 miles each side of the 034° bearing from the Perrine NDB extending from the 3.9-mile radius of the airport to 7 miles northeast of the NDB and within 2.6 miles each side of the 191° bearing from the Perrine NDB extending from the 3.9-mile radius of the airport to 7 miles south of the NDB.

* * * * *

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

* * * * *

ACE MO E5 Farmington, MO

Farmington Regional Airport, MO
(Lat. 37°45'40" N., long. 90°25'43" W.)
Farmington VORTAC
(Lat. 37°40'24" N., long. 90°14'03" W.)
Perrine NDB
(Lat. 37°45'54" N., long. 90°25'45" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Farmington Regional Airport, and within 2.6 miles each side of the 034° bearing from the Perrine NDB extending from the 6.4-mile radius to 7.9 miles northeast of the airport and within 2.6 miles each side of the 191° bearing from the Perrine NDB, extending from the 6.4-mile radius to 7.9 miles south of the airport and within 1.3 miles each side of the Farmington VORTAC 300° radial extending from the 6.4-mile radius of the airport to the VORTAC.

* * * * *

Issued in Kansas City, MO, on March 24, 2004.

Anthony D. Roetzel,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–7489 Filed 4–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30409; Amdt. No. 3093]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 2, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 2004.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this 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. For the same

reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on March 26, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective June 10, 2004*

Akiak, AK, Akiak, RNAV (GPS) RWY 3, Orig
Akiak, AK, Akiak, RNAV (GPS) RWY 21, Orig
Kwigillingok, AK, Kwigillingok, RNAV (GPS) RWY 15, Orig
Kwigillingok, AK, Kwigillingok, RNAV (GPS) RWY 33, Orig
Enterprise, AL, Enterprise Muni, VOR RWY 5, Amdt 3
Enterprise, AL, Enterprise Muni, RNAV (GPS) RWY 5, Orig
Bunnell, FL, Flagler County, RNAV (GPS) RWY 6, Orig
Bunnell, FL, Flagler County, RNAV (GPS) RWY 11, Orig
Bunnell, FL, Flagler County, RNAV (GPS) RWY 24, Orig
Bunnell, FL, Flagler County, RNAV (GPS) RWY 29, Orig
Bunnell, FL, Flagler County, VOR–A, Amdt 1
Augusta, GA, Augusta Regional at Bush Field, VOR/DME RWY 17, Amdt 3
Augusta, GA, Augusta Regional at Bush Field, NDB RWY 17, Amdt 16
Augusta, GA, Augusta Regional at Bush Field, NDB RWY 35, Amdt 29
Augusta, GA, Augusta Regional at Bush Field, ILS OR LOC RWY 17, Amdt 8
Augusta, GA, Augusta Regional at Bush Field, RADAR–1, Amdt 8
Augusta, GA, Augusta Regional at Bush Field, RNAV (GPS) RWY 17, Orig
Augusta, GA, Augusta Regional at Bush Field, RNAV (GPS) RWY 26, Orig
Augusta, GA, Augusta Regional at Bush Field, RNAV (GPS) RWY 35, Orig
Augusta, GA, Augusta Regional at Bush Field, RNAV (GPS) RWY 8, Orig
Fort Wayne, IN, Fort Wayne Intl, VOR OR TACAN RWY 23, Amdt 12
Detroit, MI, Willow Run, ILS OR LOC RWY 5R, Amdt 15
Detroit, MI, Willow Run, NDB RWY 5R, Amdt 12
Detroit, MI, Willow Run, RNAV (GPS) RWY 5L, Orig
Detroit, MI, Willow Run, RNAV (GPS) RWY 5R, Orig
Detroit, MI, Willow Run, RNAV (GPS) RWY 9L, Orig
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Detroit, MI, Willow Run, RNAV (GPS) RWY 23R, Orig
Detroit, MI, Willow Run, RNAV (GPS) RWY 32, Orig
Richmond, VA, Richmond International, RNAV (GPS) RWY 34, ORIG–A
Richmond, VA, Richmond International, VOR RWY 2, AMDT 5C
Richmond, VA, Richmond International, VOR RWY 16, AMDT 27A
Richmond, VA, Richmond International, VOR RWY 20, AMDT 1A
Richmond, VA, Richmond International, VOR RWY 25, AMDT 16A
Richmond, VA, Richmond International, VOR RWY 34, AMDT 23A
Merrill, WI, Merrill Muni, NDB RWY 7, Amdt 3
Merrill, WI, Merrill Muni, NDB RWY 16, Amdt 7
Merrill, WI, Merrill Muni, RNAV (GPS) RWY 7, Orig
Merrill, WI, Merrill Muni, RNAV (GPS) RWY 25, Orig

[FR Doc. 04–7337 Filed 4–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0142]

21 CFR Chapter I

Removal of Delegations of Authority and Conforming Changes to Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this final rule to amend the regulations by removing the delegations of authority, to update the regulations to reflect the agency's organization, and to make other conforming changes. Because FDA makes information on delegations of authority available on FDA's Internet Web site, the regulations on delegations of authority are no longer necessary. The availability of the information on delegations of authority through the agency's Web site provides the public with more current and up-to-date information.

DATES: This rule is effective April 2, 2004.

FOR FURTHER INFORMATION CONTACT: Donna G. Page, Management Programs and Analysis Branch (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816; or

Rudy Guillen, Management Programs and Analysis Branch (HFA–340), 5600 Fishers Lane, Rockville, MD 20857, 301–827–4806.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is issuing this final rule to amend its regulations by removing the delegations of authority previously published in part 5 (21 CFR part 5) and to update the organizational information in part 5. The delegation of authority information is now available on the Internet at *http://www.fda.gov/smg/default.htm.* Attached to this final rule is an appendix that cross-references the previously used CFR citations to the Internet-based system. The agency last updated part 5 in a final rule published on June 8, 2001 (66 FR 30992). In the preamble of that final rule, FDA stated its plan to move to an Internet-based system and remove the delegations of authority from part 5. The use of an Internet-based system allows FDA to provide more current and up-to-date information to the public on delegations of authority.

The agency has also made conforming changes to several other parts to remove the references to the delegations of authority in part 5 and to make other conforming changes. The agency has made these changes to the following regulations: 21 CFR 7.45(a), 10.1(a), 10.3(a), 16.26(a), 16.40, 25.5(b)(5), 25.40(e), 25.45(a), 500.80(a), and 1002.3. Additionally, the agency has updated the references to part 5, subpart M in the following regulations: 21 CFR 21.43(a)(2), 106.120(b), 107.50(e)(2), 107.230(e), 107.240(b) and (c)(1), 107.250, 203.11(a), and 800.55(g)(4).

The portion of this final rule removing the part 5 delegations of authority and updating the organizational information in part 5, subpart M is a rule of agency organization, procedure, or practice. FDA is issuing these provisions as a

final rule without publishing a general notice of proposed rulemaking because such notice is not required for rules of agency organization, procedure, or practice under 5 U.S.C. 553(b)(3)(A). For the conforming changes to the other regulations, the agency finds good cause under 5 U.S.C. 553(b)(3)(B) to dispense with prior notice and comment, and good cause under 5 U.S.C. 553(d)(3) to make these conforming changes effective less than 30 days after publication because such notice and comment and delayed effective date are unnecessary and contrary to the public interest. As discussed previously, these conforming changes merely remove references to part 5, update the references to part 5, subpart M, and make other minor conforming changes. These changes do not result in any substantive change to the regulations.

II. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). 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). The agency believes that this final rule is consistent with the principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule simply removes the part 5 delegations of authority, updates the organizational information, and makes conforming changes to other regulations, it does not impose any additional costs on industry. Consequently, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The current threshold after adjustment for inflation is $112.3 million. As stated previously, this final rule does not impose any additional costs on industry. Therefore, this final rule will not result in any 1-year expenditure that would meet or exceed this amount.

III. Paperwork Reduction Act of 1995

This 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.

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Federalism

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

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 7

Administrative practice and procedure, Consumer protection, Reporting and recordkeeping requirements.

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 21

Privacy.

21 CFR Part 25

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21 CFR Part 106

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21 CFR Part 107

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21 CFR Part 203

Labeling, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCBs).

21 CFR Part 800

Administrative practice and procedure, Medical devices, Ophthalmic goods and services, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 1002

Electronic products, Radiation protection, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority of the Commissioner of Food and Drugs, 21 CFR Chapter I is amended as follows:

■ 1. Part 5 is revised in its entirety to read as follows:

PART 5—ORGANIZATION

Subparts A–L—[Reserved]

Subpart M—Organization

Sec

Authority: 5 U.S.C. 552; 21 U.S.C. 301–397.

Subparts A–L—[Reserved]

Subpart M—Organization

§ 5.1100 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

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Office of the Administrative Law Judge.
Office of External Relations.
Office of Executive Secretariat.
Office of Public Affairs.
Office of the Ombudsman.
Office of Special Health Issues.
Office of Policy and Planning.
Office of Policy.
Office of Planning.
Office of Management.
Office of the Chief Information Officer.
Office of Financial Management.
Office of Shared Services.[3]
Office of Management Programs.
Office of Executive Operations.
Office of Science and Health Coordination.
Office of Orphan Products Development.
Office of Women's Health.
Office of International Activities and Strategic Initiatives.
Office of International Programs.
Office of Pediatric Therapeutics.
Office of Combination Products.
Office of Legislation.
Office of Crisis Management.
Office of Emergency Operations.
Office of Security Operations, Policy and Planning.
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH.[4]
Office of the Center Director.
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Quality Assurance Staff.
CFSAN Staff College.
Microbial Research and Risk Assessment Staff.
JIFSAN Liaison Staff.
CFSAN Food Advisory Committee Staff.
Office of Applied Research and Safety Assessment.
Muirkirk Technical Operations Staff.
Division of Molecular Biology.
Division of Virulence Assessment.
Division of Toxicology.
Office of Regulations and Policy.
Regulations Management Staff.
Office of Constituent Operations.
Consumer Education Staff.
International Activities Staff.
Industry Activities Staff.
Office of Management Systems.
Safety Management Staff.
Division of Information Resources Management.
Division of Planning and Financial Resources Management.
Division of Program Support Services.
Office of Operations.
Equal Employment Opportunity Staff.
Executive Operations Staff.
Office of Cosmetics and Colors.
Division of Color Certification and Technology.
Division of Cosmetics and Compliance.
Office of Nutritional Products, Labeling and Dietary Supplements.
Infant Formula and Medical Foods Staff.
Division of Dietary Supplement Programs and Compliance.
Division of Food Labeling, Standards and Compliance.
Division of Nutrition Programs and Labeling.
Division of Research and Applied Technology.
Office of Food Additive Safety.
Division of Petition Review.
Division of Chemistry Research and Environmental Review.
Division of Food Contact Notifications.
Division of Biotechnology and GRAS Notice Review.
Office of Plant and Dairy Foods and Beverages.
Division of Pesticides and Industrial Chemicals.
Division of Natural Products.
Division of Food Processing and Packaging.
Division of Plant Product Safety.
Division of Dairy and Egg Safety.
Division of Risk Assessment.
Division of Microbiological Studies.
Office of Seafood.
Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.
Office of Compliance.
Emergency Coordination and Response Staff.
Division of Enforcement.
Division of Field Programs.

[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

[2] The Office of the Chief Counsel (also known as the Food and Drug Division, Office of the General Counsel, Department of Health and Human Services), while administratively within the Office of the Commissioner, is part of the Office of the General Counsel of the Department of Health and Human Services.

[3] Mailing address: 5630 Fishers Lane, Rockville, MD 20852.

[4] Mailing address: 1401 Rockville Pike, Rockville, MD 20852–1448.

[5] Mailing address: 5100 Paint Branch Pkwy., College Park, MD 20740–3835.

Division of Cooperative Programs.
Office of Scientific Analysis and Support.
CFSAN Adverse Events Reporting System Staff.
Division of General Scientific Support.
Division of Mathematics.
Division of Market Studies.
CENTER FOR DRUG EVALUATION AND RESEARCH.[1]
Office of the Center Director.
Equal Employment Opportunity Staff.
Controlled Substance Staff.
Office of Regulatory Policy.
Division of Regulatory Policy I.
Division of Regulatory Policy II.
Division of Information Disclosure Policy.
Office of Management.[1]
Division of Management and Budget.[1]
Division of Management Services.[1]
Office of Training and Communication.[1]
Division of Training and Development.
Division of Public Affairs.
Division of Drug Information.
Division of Library and Information Services.
Office of Compliance.[1]
Division of Compliance Risk Management and Surveillance.
Division of New Drugs and Labeling Compliance.
Division of Manufacturing and Product Quality.
Office of Information Technology.[1]
Quality Assurance Staff.
Technology Support Services Staff.
Division of Applications Development and Services.
Division of Infrastructure Management and Services.
Office of Medical Policy.[1]
Division of Drug Marketing, Advertising and Communication.[1]
Division of Scientific Investigations.[6]
Office of Pharmacoepidemiology and Statistical Science.
Office of Drug Safety.
Division of Surveillance, Research and Communication Support.
Division of Medication Errors and Technical Support.
Division of Drug Risk Evaluation.
Office of Biostatistics.
Quantitative Methods and Research Staff.
Division of Biometrics I.
Division of Biometrics II.
Division of Biometrics III.
Office of Executive Programs.
Executive Operations Staff.
Quality Assurance Staff.
Advisors and Consultants Staff.[2]
Office of Counter-Terrorism and Pediatric Drug Development.
Division of Counter-Terrorism.
Division of Pediatric Drug Development.
Office of Information Management.
Business Information Staff.
Review Technology Staff.
Division of Records Management.
Office of New Drugs.[1]
Office of Drug Evaluation I.[1]
Division of Cardio-Renal Drug Products.
Division of Neuropharmacological Drug Products.
Division of Oncology Drug Products.
Office of Drug Evaluation II.[1]
Division of Metabolic and Endocrine Drug Products.
Division of Pulmonary and Allergy Drug Products.
Division of Anesthetic, Critical Care and Addiction Drug Products.
Office of Drug Evaluation III.[1]
Division of Gastrointestinal and Coagulation Drug Products.
Division of Medical Imaging and Radiopharmaceutical Drug Products.
Division of Reproductive and Urologic Drug Products.
Office of Drug Evaluation IV. [1]
Division of Anti-Infective Drug Products.
Division of Anti-Viral Drug Products.
Division of Special Pathogen and Immunologic Drug Products.
Office of Drug Evaluation V.
Division of Anti-Inflammatory, Analgesic and Ophthalmologic Drug Products.
Division of Dermatologic and Dental Drug Products.
Division of Over-The-Counter Drug Products.
Office of Drug Evaluation VI.
Division of Therapeutic Biological Oncology Products.
Division of Therapeutic Biological Internal Medicine Products.
Division of Review Management and Policy.
Office of Pharmaceutical Science.[1]
Quality Implementation Staff.[1]
Operations Staff.[1]
Informatics and Computational Safety Analysis Staff.
Office of Clinical Pharmacology and Biopharmaceutics.
Pharmacometrics Staff.
Division of Pharmaceutical Evaluation I.[1]
Division of Pharmaceutical Evaluation II.[1]
Division of Pharmaceutical Evaluation III.[1]
Office of Generic Drugs.[6]
Division of Bioequivalence.
Division of Chemistry I.
Division of Chemistry II.
Division of Labeling and Program Support.
Division of Chemistry III.
Office of New Drug Chemistry.[1]
Division of New Drug Chemistry I.[1]
Division of New Drug Chemistry II.[1]
Division of New Drug Chemistry III.[1]
Office of Testing and Research.[1]
Laboratory of Clinical Pharmacology.[7]
Division of Applied Pharmacology Research.[8]
Division of Pharmaceutical Analysis.[9]
Division of Product Quality Research.[1]
Office of Biotechnology Products.
Division of Monoclonal Antibodies.
Division of Therapeutic Protein.
OFFICE OF REGULATORY AFFAIRS.[1]
Equal Employment Opportunity Staff.
Office of Resource Management.
Strategic Initiatives Staff.
Division of Planning, Evaluation, and Management.
Division of Human Resource Development.
Division of Management Operations.
Division of Personnel Operations.
Office of Information Technology.
Office of Enforcement.
Division of Compliance Management and Operations.
Division of Compliance Policy.
Division of Compliance Information and Quality Assurance.
Office of Regional Operations.
Division of Federal-State Relations.
Division of Field Science.
Division of Import Operations and Policy.
Division of Field Investigations.
Office of Criminal Investigations.
Office of Internal Affairs.
Mid-Atlantic Area Office.[10]

[6] Mailing address: 7520 Standish Pl., Rockville, MD 20855.

[7] Mailing address: Four Research Ct., Rockville, MD 20850.

[8] Mailing address: 8301 Muirkirk Rd., Laurel, MD 20708.

[9] Mailing address: 1114 Market St., St. Louis, MO 63101.

[10] Mailing address: 900 U.S. Customhouse, Second Chestnut St., Philadelphia, PA 19106.

Midwest Area Office.[11]
Northeast Area Office.[12]
Pacific Area Office.[13]
Southeast Area Office.[14]
Southwest Area Office.[15]
CENTER FOR VETERINARY MEDICINE.[16]
Office of the Center Director.
Office of Management.
Management Services Staff.
Information Resources Management Staff.
Office of New Animal Drug Evaluation.
Division of Therapeutic Drugs for Food Animals.
Division of Biometrics and Production Drugs.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Human Food Safety.
Division of Manufacturing Technologies.
Office of Surveillance and Compliance.
Division of Surveillance.
Division of Animal Feeds.
Division of Compliance.
Division of Epidemiology.
Office of Research.
Administrative Staff.
Division of Residue Chemistry.
Division of Animal Research.
Division of Animal and Food Microbiology.
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH.[17]
Office of the Center Director.
Equal Employment Opportunity Staff.
Office of Systems and Management.
Division of Ethics and Management Operations.
Division of Information Technology.
Division of Planning, Analysis and Finance.
Office of Compliance.
Promotion and Advertising Policy Staff.
Division of Bioresearch Monitoring.
Division of Program Operations.
Division of Enforcement A.
Division of Enforcement B.
Office of Device Evaluation.
Program Management Staff.
Program Operations Staff.
Division of Cardiovascular Devices.
Division of Reproductive, Abdominal, and Radiological Devices.
Division of General, Restorative, and Neurological Devices.
Division of Ophthalmic, and Ear, Nose and Throat Devices.
Division of Anesthesiology, General Hospital, Infection Control, and Dental Devices.
Office of Science and Technology.
Division of Mechanics and Materials Science.
Division of Life Sciences.
Division of Physical Sciences.
Division of Electronics and Computer Sciences.
Division of Management, Information and Support Services.
Office of Health and Industry Programs.
Program Operations Staff.
Regulations Staff.
Staff College.
Division of Device User Programs and Systems Analysis.
Division of Small Manufacturers Assistance.
Division of Mammography Quality and Radiation Programs.
Division of Communication Media.
Office of Surveillance and Biometrics.
Issues Management Staff.
Division of Biostatistics.
Division of Postmarket Surveillance.
Division of Surveillance Systems.
Office of In Vitro Diagnostic Device Evaluation and Safety.
Division of Chemistry and Toxicology Devices.
Division of Immunology and Hematology Devices.
Division of Microbiology.
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH.[18]
Office of the Center Director.
Environmental Health and Program Assurance Staff.
Office of Research.
Technology Advancement Staff.
Division of Biochemical Toxicology.
Division of Genetic and Reproductive Toxicology.
Division of Biometry and Risk Assessment.
Division of Microbiology.
Division of Chemistry.
Division of Neurotoxicology.
Division of Veterinary Services.
Division of Molecular Epidemiology.
Office of Management.
Office of Management Services.
Division of Facilities, Engineering and Maintenance.
Division of Administrative Services.
Division of Contracts and Acquisitions.
Office of Planning, Finance and Information Technology.
Division of Planning.
Division of Financial Management.
Division of Information Technology.

§ 5.1105 Chief Counsel, Food and Drug Administration.

The Office of the Chief Counsel's mailing address is 5600 Fishers Lane, rm. 6–05, Rockville, MD 20857.[1]

§ 5.1110 FDA public information offices.

(a) *Division of Dockets Management (HFA–305).* The Division of Dockets Management public room is located in rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. Telephone: 301–827–6860.

(b) *Division of Freedom of Information (HFI–35).* The Freedom of Information public room is located in rm. 12A–30, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301–827–6567.

(c) *Press Relations Staff (HFI–40).* Press offices are located in rm. 15–A07, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301–827–6242; and at 5100 Paint Branch Pkwy., College Park, MD 20740. Telephone: 301–436–2335.

§ 5.1115 Field structure.

NORTHEAST REGION
Regional Field Office: 158–15 Liberty Ave., Jamaica, NY 11433.
Northeast Regional Laboratory: 158–15 Liberty Ave., Jamaica, NY 11433.
New York District Office: 158–15 Liberty Ave., Jamaica, NY 11433.
New England District Office: One Montvale Ave., Stoneham, MA 02180.
Winchester Engineering and Analytical Center: 109 Holton St., Winchester, MA 01890.
CENTRAL REGION
Regional Field Office: U.S. Customhouse, Second and Chestnut Sts., rm. 900, Philadelphia, PA 19106.

[11] Mailing address: 901 Warrenville Rd., suite 360, Lisle, IL 60532.
[12] Mailing address: 850 Third Ave., Brooklyn, NY 11232.
[13] Mailing address: 13301 Clay St., Oakland, CA 94512.
[14] Mailing address: 60 Eighth St. NE., Atlanta, GA 30309.
[15] Mailing address: 7920 Elmbrook Rd., Dallas, TX 75247.
[16] Mailing address: 7500 Standish Pl., MPN–2, Rockville, MD 20855.
[17] Mailing address: 9200 Corporate Blvd., Rockville, MD 20850.
[18] Mailing address: 3900 NCTR Dr., Jefferson, AR 72079.

[1] The Office of the Chief Counsel (also known as the Food and Drug Division, Office of the General Counsel, Department of Health and Human Services), while administratively within the Office of the Commissioner, is part of the Office of the General Counsel of the Department of Health and Human Services.

Philadelphia District Office: U.S. Customhouse, Second and Chestnut Sts., rm. 900, Philadelphia, PA 19106.
Baltimore District Office: 6000 Metro Dr., suite 101, Baltimore, MD 21215.
Cincinnati District Office: 6751 Steger Dr., Cincinnati, OH 45237–3097.
Forensic Chemistry Center: 6751 Steger Dr., Cincinnati, OH 45237–3097.
New Jersey District Office: Waterview Corporate Center, 10 Waterview Blvd., 3d floor, Parsippany, NJ 07054.
Chicago District Office: 550 West Jackson Blvd., suite 1500, South Chicago, IL 60661.
Detroit District Office: 300 River Pl., suite 5900, Detroit, MI 48207.
Minneapolis District Office: 212 Third Ave. South, Minneapolis, MN 55401.
SOUTHEAST REGION
Regional Field Office: 60 Eighth St. NE., Atlanta, GA 30309.
Southeast Regional Laboratory: 60 Eighth St. NE., Atlanta, GA 30309.
Atlanta District Office: 60 Eighth St. NE., Atlanta, GA 30309.
New Orleans District Office: 6600 Plaza Dr., suite 400, New Orleans, LA 70122.
Florida District Office: 555 Winderley, suite 200, Maitland, FL 32751.
San Juan District Office: 466 Fernandez Juncos Ave., San Juan, PR 00901–3223.
SOUTHWEST REGION
Regional Field Office: 4040 North Central Expressway, suite 900, Dallas, TX 75204.
Dallas District Office: 4040 North Central Expressway, suite 300, Dallas, TX 75204.
Denver District Office: Bldg. 20, Denver Federal Center, Sixth and Kipling Sts., P.O. Box 25087, Denver, CO 80225–0087.
Kansas City District Office: 11630 West 80th St., Lenexa, KS 66214–3338.
St. Louis Branch: 12 Sunnen Dr., suite 122, St. Louis, MO 63143–3800.
Arkansas Regional Laboratory: 3900 NCTR Rd., Bldg. 26, Jefferson, AR 72079–9502.
Southwest Import District Office: 4040 North Central Expressway, suite 300, Dallas, TX 75204.
PACIFIC REGION
Regional Field Office: 1301 Clay St., suite 1180–N, Oakland, CA 94512–5217.
San Francisco District Office: 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070.
Los Angeles District Office: 19701 Fairchild, Irvine, CA 92612.
Seattle District Office: 22201 23rd Dr. SE., Bothell, WA 98021–4421.
Pacific Regional Laboratory, SW: 19701 Fairchild, Irvine, CA 92612.
Pacific Regional Laboratory, NW: 22201 23rd Dr. SE., Bothell, WA 98021-4421.

PART 7—ENFORCEMENT POLICY

■ 2. The authority citation for 21 CFR part 7 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 241, 262, 263b–263n, 264.

■ 3. Section 7.45 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 7.45 Food and Drug Administration-requested recall.

(a) The Commissioner of Food and Drugs or designee may request a firm to initiate a recall when the following determinations have been made: * * *

* * * * *

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

■ 4. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706, 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

■ 5. Section 10.1 is amended by revising paragraph (a) to read as follows:

§ 10.1 Scope.

(a) Part 10 governs practices and procedures for petitions, hearings, and other administrative proceedings and activities conducted by the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and other laws which the Commissioner of Food and Drugs administers.

* * * * *

■ 6. Section 10.3 is amended in paragraph (a) by revising the definition for "*The laws administered by the Commissioner*" to read as follows:

§ 10.3 Definitions.

(a) * * *

The laws administered by the Commissioner or *the laws administered by the Food and Drug Administration* means all the laws that the Commissioner is authorized to administer.

* * * * *

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

■ 7. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

■ 8. Section 16.26 is amended by revising paragraph (a) to read as follows:

§ 16.26 Denial of hearing and summary decision.

(a) A request for a hearing may be denied, in whole or in part, if the Commissioner or the FDA official to whom authority is delegated to make the final decision on the matter determines that no genuine and substantial issue of fact has been raised by the material submitted. If the Commissioner or his or her delegate determines that a hearing is not justified, written notice of the determination will be given to the parties explaining the reason for denial.

* * * * *

■ 9. Section 16.40 is revised to read as follows:

§ 16.40 Commissioner.

Whenever the Commissioner has delegated authority on a matter for which a regulatory hearing is available under this part, the functions of the Commissioner under this part may be performed by any of the officials to whom the authority has been delegated, e.g., a center director.

PART 21—PROTECTION OF PRIVACY

■ 10. The authority citation for 21 CFR part 21 continues to read as follows:

Authority: 21 U.S.C. 371; 5 U.S.C. 552, 552a.

■ 11. Section 21.43 is amended by revising paragraph (a)(2) to read as follows:

§ 21.43 Access to requested records.

(a) * * *

(2) Permitting the requesting individual to review the records in person between 9 a.m. and 4 p.m. at the office of the FDA Privacy Act Coordinator, at the Freedom of Information Staff public room at the address shown in § 20.30 of this chapter, or at any Food and Drug Administration field office, listed in part 5, subpart M of this chapter, or at another location or time upon which the Food and Drug Administration and the individual agree. Arrangement for such review can be made by consultation between the FDA Privacy Act Coordinator and the individual. An individual seeking to review records in person shall generally be permitted access to the file copy, except that where the records include nondisclosable information, a copy shall be made of that portion of the records, with the nondisclosable information blocked out. Where the individual is not given a copy of the record to retain, no charge shall be made for the cost of copying a record to make it available to

an individual who reviews a record in person under this paragraph.

* * * * *

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

■ 12. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., 356–360.

■ 13. Section 25.5 is amended by revising paragraph (b)(5) to read as follows:

§ 25.5 Terminology.

* * * * *

(b) * * *

(5) *Responsible agency official* means the agency decisionmaker designated in the delegated authority for the underlying actions.

* * * * *

■ 14. Section 25.40 is amended by revising paragraph (e) to read as follows:

§ 25.40 Environmental assessments.

* * * * *

(e) The agency evaluates the information contained in an EA and any public input to determine whether it is accurate and objective, whether the proposed action may significantly affect the quality of the human environment, and whether an EIS or a FONSI will be prepared. The responsible agency official examines the environmental risks of the proposed action and the alternative courses of action, selects a course of action, and ensures that any necessary mitigating measures are implemented as a condition for approving the selected course of action.

■ 15. Section 25.45 is amended by revising paragraph (a) to read as follows:

§ 25.45 Responsible agency official.

(a) The responsible agency official prepares the environmental documents or ensures that they are prepared.

* * * * *

PART 106—INFANT FORMULA QUALITY CONTROL PROCEDURES

■ 16. The authority citation for 21 CFR part 106 continues to read as follows:

Authority: 21 U.S.C. 321, 350a, 371.

■ 17. Section 106.120 is amended by revising paragraph (b) to read as follows:

§ 106.120 New formulations and reformulations.

* * * * *

(b) The manufacturer shall promptly notify the Food and Drug Administration when the manufacturer has knowledge (as defined in section 412(c)(2) of the act) that reasonably supports the conclusion that an infant formula that has been processed by the manufacturer and that has left an establishment subject to the control of the manufacturer may not provide the nutrients required by section 412(g) of the act and by regulations promulgated under section 412(a)(2) of the act, or when there is an infant formula that is otherwise adulterated or misbranded and that may present risk to human health. This notification shall be made, by telephone, to the Director of the appropriate Food and Drug Administration district office specified in part 5, subpart M of this chapter. After normal business hours (8 a.m. to 4:30 p.m.) the FDA emergency number, 301–443–1240, shall be used. The manufacturer shall send a followup written confirmation to the Center for Food Safety and Applied Nutrition (HFS–605), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, and to the appropriate Food and Drug Administration district office specified in part 5, subpart M of this chapter.

PART 107—INFANT FORMULA

■ 18. The authority citation for 21 CFR part 107 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 350a, 371.

■ 19. Section 107.50 is amended by revising paragraph (e)(2) to read as follows:

§ 107.50 Terms and conditions.

* * * * *

(e) * * *

(2) The manufacturer shall promptly notify FDA when the manufacturer has knowledge (as defined in section 412(c)(2) of the act) that reasonably supports the conclusion that an exempt infant formula that has been processed by the manufacturer and that has left an establishment subject to the control of the manufacturer may not provide the nutrients required by paragraph (b) or (c) of this section, or when there is an exempt infant formula that may be otherwise adulterated or misbranded and if so adulterated or misbranded presents a risk of human health. This notification shall be made, by telephone, to the Director of the appropriate FDA district office specified in part 5, subpart M of this chapter. After normal business hours (8 a.m. to 4:30 p.m.), the FDA emergency number, 301–443–1240, shall be used. The manufacturer shall send a followup written confirmation to the Center for Food Safety and Applied Nutrition (HFS–605), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, and to the appropriate FDA district office specified in part 5, subpart M of this chapter.

■ 20. Section 107.230 is amended by revising paragraph (e) to read as follows:

§ 107.230 Elements of an infant formula recall.

* * * * *

(e) The recalling firm shall furnish promptly to the appropriate Food and Drug Administration district office listed in part 5, subpart M of this chapter, as they are available, copies of the health hazard evaluation, the recall strategy, and all recall communications (including, for a recall under § 107.200, the notice to be displayed at retail establishments) directed to consignees, distributors, retailers, and members of the public.

■ 21. Section 107.240 is amended by revising paragraphs (b) and (c)(1) to read as follows:

§ 107.240 Notification requirements.

* * * * *

(b) *Method of notification.* The notification made pursuant to § 107.240(a) shall be made, by telephone, to the Director of the appropriate Food and Drug Administration district office listed in part 5, subpart M of this chapter. After normal business hours (8 a.m. to 4:30 p.m.), FDA's emergency number, 301–443–1240, shall be used. The manufacturer shall send written confirmation of the notification to the Center for Food Safety and Applied Nutrition (HFS–605), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, and to the appropriate Food and Drug Administration district office listed in part 5, subpart M of this chapter.

(c) * * * (1) *Telephone report.* When a determination is made that an infant formula is to be recalled, the recalling firm shall telephone within 24 hours the appropriate Food and Drug Administration district office listed in part 5, subpart M of this chapter and shall provide relevant information about the infant formula that is to be recalled.

* * * * *

■ 22. Section 107.250 is amended by revising the introductory paragraph to read as follows:

§ 107.250 Termination of an infant formula recall.

The recalling firm may submit a recommendation for termination of the

recall to the appropriate Food and Drug Administration district office listed in part 5, subpart M of this chapter for transmittal to the Center for Food Safety and Applied Nutrition (HFS–605), for action. Any such recommendation shall contain information supporting a conclusion that the recall strategy has been effective. The agency will respond within 15 days of receipt by the Center for Food Safety and Applied Nutrition (HFS–605), of the request for termination. The recalling firm shall continue to implement the recall strategy until it receives final written notification from the agency that the recall has been terminated. The agency will send such a notification unless it has information, from FDA's own audits or from other sources, demonstrating that the recall has not been effective. The agency may conclude that a recall has not been effective if:

* * * * *

PART 203—PRESCRIPTION DRUG MARKETING

■ 23. The authority citation for 21 CFR part 203 continues to read as follows:

Authority: 21 U.S.C. 331, 333, 351, 352, 353, 360, 371, 374, 381.

■ 24. Section 203.11 is amended by revising paragraph (a) to read as follows:

§ 203.11 Applications for reimportation to provide emergency medical care.

(a) Applications for reimportation for emergency medical care shall be submitted to the director of the FDA District Office in the district where reimportation is sought (addresses found in part 5, subpart M of this chapter).

* * * * *

PART 500—GENERAL

■ 25. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371.

■ 26. Section 500.80 is amended by revising paragraph (a) to read as follows:

§ 500.80 Scope of this subpart.

(a) The Federal Food, Drug, and Cosmetic Act requires that sponsored compounds intended for use in food-producing animals be shown to be safe and that food produced from animals exposed to these compounds be shown to be safe for consumption by people. The statute prohibits the use in food-producing animals of any compound found to induce cancer when ingested by people or animals unless it can be determined by methods of examination prescribed or approved by the Secretary (a function delegated to the Commissioner of Food and Drugs) that no residue of that compound will be found in the food produced from those animals under conditions of use reasonably certain to be followed in practice. This subpart identifies the steps a sponsor of a compound shall follow to secure the approval of the compound. FDA guidance documents contain the procedures and protocols FDA recommends for the implementation of this subpart. These guidance documents are available from the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests for these guidance documents should be identified with Docket No. 1983D–0288.

* * * * *

PART 800—GENERAL

■ 27. The authority citation for 21 CFR part 800 continues to read as follows:

Authority: 21 U.S.C. 321, 334, 351, 352, 355, 360e, 360i, 360k, 361, 362, 371.

■ 28. Section 800.55 is amended by revising paragraph (g)(4) to read as follows:

§ 800.55 Administrative detention.

* * * * *

(g) * * *

(4) The presiding officer of a regulatory hearing on an appeal of a detention order, who also shall decide the appeal, shall be a regional food and drug director (i.e., a director of an FDA regional office listed in part 5, subpart M of this chapter) who is permitted by § 16.42(a) of this chapter to preside over the hearing.

* * * * *

PART 1002—RECORDS AND REPORTS

■ 29. The authority citation for 21 CFR part 1002 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 360hh–360ss, 371, 374.

■ 30. Section 1002.3 is revised to read as follows:

§ 1002.3 Notification to user of performance and technical data.

The Director and Deputy Director of the Center for Devices and Radiological Health, as authorized under delegated authority, may require a manufacturer of a radiation emitting electronic product to provide to the ultimate purchaser, at the time of original purchase, such performance data and other technical data related to safety of the product as the Director or Deputy Director finds necessary.

Dated: March 29, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

Note: This appendix will not appear in the Code of Federal Regulations.

APPENDIX A—PART 5; CORRESPONDING FORMER SUBPARTS, SECTION NUMBERS, AND SUBJECTS AND NEW ALTERNATE INTERNET-BASED SYSTEM FDA STAFF MANUAL GUIDE NUMBERS

Former CFR Subpart, Section No., and Subject	Alternate Internet-Based System FDA Staff Manual Guide (SMG) Numbers (Subject remains, unless otherwise stated)
Subpart Key: Subpart A, § 5.10 to § 5.19—Delegations of Authority to the Commissioner Subpart B, § 5.20 to § 5.99—General Redelegations of Authority Subpart C, § 5.100 to § 5.199—Human Drugs; Redelegations of Authority Subpart D, § 5.200 to § 5.299—Biologics; Redelegations of Authority Subpart E, § 5.300 to § 5.399—Foods and Cosmetics; Redelegations of Authority Subpart F, § 5.400 to § 5.499—Medical Devices and Radiological Health; Redelegations of Authority Subpart G, § 5.500 to § 5.599—Animal Drugs; Redelegations of Authority Subpart H, § 5.600 to § 5.699—Radiation Control; Redelegations of Authority Subpart I, § 5.700 to § 5.799—Product Designation; Redelegations of Authority Subpart J, § 5.800 to § 5.899—Imports and Exports; Redelegations of Authority Subpart K, § 5.900 to § 5.999—Orphan Products; Redelegations of Authority Subpart L, § 5.1000—Mammography Facilities; Redelegations of Authority Subpart M, § 5.1100—Organization	SMG Index: SMG 1410.10—Delegations of Authority to the Commissioner of Food and Drugs SMG 1410.20—General Redelegations of Authority SMG 1410.100—Human Drugs SMG 1410.200—Biologics SMG 1410.300—Foods and Cosmetics SMG 1410.400—Medical Devices and Radiological Health SMG 1410.500—Animal Drugs SMG 1410.600—Radiation Control SMG 1410.700—Product Designation SMG 1410.800—Imports and Exports SMG 1410.900—Orphan Products SMG 1410.1000—Mammography Facilities
Subpart A, § 5.10—Delegations From the Secretary of Health and Human Services to the Commissioner of Food and Drugs. Subpart A, § 5.11—Reservation of authority.	SMG 1410.10—Delegations of Authority to The Commissioner of Food and Drugs (Note: Paragraph 2 of this SMG contains the Reservation of Authority.)
Subpart B, § 5.20—General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.	SMG 1410.21
Subpart B, § 5.21—Emergency functions.	SMG 1410.22
Subpart B, § 5.22—Certification of true copies and use of Department seal.	SMG 1410.23
Subpart B, § 5.23—Disclosure of official records and authorization of testimony.	SMG 1410.24
Subpart B, § 5.24—Authority relating to technology transfer.	SMG 1410.25
Subpart B, § 5.25—Research, investigation, and testing programs and health information and promotion programs.	SMG 1410.26—Research, Investigation, and Testing Programs and Health Promotion Programs
Subpart B, § 5.26—Service fellowships.	SMG 1410.27
Subpart B, § 5.27—Patent term extensions for human drug products, medical devices, and food and color additives; and authority to perform due diligence determinations and informal hearings.	SMG 1410.18
Subpart B, § 5.28—Hearings.	SMG 1410.29
Subpart B, § 5.29—Petitions under part 10.	SMG 1410.30—Petitions Under Title 21, Code of Federal Regulations (21 CFR), Part 10
Subpart B, § 5.30—Authority to select temporary voting members for advisory committees and authority to sign conflict of interest waivers.	SMG 1410.31
Subpart B, § 5.31—Enforcement activities.	SMG 1410.32
Subpart B, § 5.32—Certification following inspections.	SMG 1410.33
Subpart B, § 5.33—Issuance of reports of minor violations.	SMG 1410.34

APPENDIX A—PART 5; CORRESPONDING FORMER SUBPARTS, SECTION NUMBERS, AND SUBJECTS AND NEW ALTERNATE INTERNET-BASED SYSTEM FDA STAFF MANUAL GUIDE NUMBERS—Continued

Former CFR Subpart, Section No., and Subject	Alternate Internet-Based System FDA Staff Manual Guide (SMG) Numbers (Subject remains, unless otherwise stated)
Subpart B, § 5.34—Issuance of notices relating to proposals and orders for debarment and denial of an application to terminate debarment.	SMG 1410.35
Subpart B, § 5.35—Officials authorized to make certification under 5 U.S.C. 605(b) for any proposed and final rules.	SMG 1410.36
Subpart C, § 5.100—Issuance of notices implementing the provisions of the Drug Amendments of 1962.	SMG 1410.101
Subpart C, § 5.101—Termination of exemptions for new drugs for investigational use in human beings.	SMG 1410.102
Subpart C, § 5.102—Authority to approve and to withdraw approval of a charge for investigational new drugs.	SMG 1410.103
Subpart C, § 5.103—Approval of new drug applications and their supplements.	SMG 1410.104
Subpart C, § 5.104—Responses to Drug Enforcement Administration temporary scheduling notices.	SMG 1410.105
Subpart C, § 5.105—Issuance of notices relating to proposals to refuse approval or to withdraw approval of new drug applications and their supplements.	SMG 1410.106
Subpart C, § 5.106—Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.	SMG 1410.107
Subpart C, § 5.107—Extensions or stays of effective dates for compliance with certain labeling requirements for human prescription drugs.	SMG 1410.108
Subpart C, § 5.108—Authority relating to waivers or reductions of prescription drug user fees.	SMG 1410.109
Subpart C, § 5.109—Issuance of written notices concerning patent information, current good manufacturing practices and false or misleading labeling of new drugs.	SMG 1410.110
Subpart D, § 5.200—Functions pertaining to safer vaccines.	SMG 1410.201
Subpart D, § 5.201—Redelegation of the Center for Biologics Evaluation and Research Director's program authorities.	SMG 1410.202
Subpart D, § 5.202—Issuance of notices of opportunity for a hearing on proposals for denial of approval of applications for licenses, suspension of licenses, or revocation of licenses and certain notices of revocation of licenses.	SMG 1410.203
Subpart D, § 5.203—Issuance and revocation of licenses for the propagation or manufacture and preparation of biological products.	SMG 1410.204
Subpart D, § 5.204—Notification of release for distribution of biological products.	SMG 1410.205
Subpart E, § 5.300—Food standards, food additives, generally recognized as safe (GRAS) substances, color additives, nutrient content claims, and health claims.	SMG 1410.301—Food Standards, Food Additives, Generally Recognized As Safe (GRAS) Substances, Color Additives, Nutrient Claims, and Health Claims
Subpart E, § 5.301—Issuance of initial emergency permit orders and notices of confirmation of effective date of final regulations on food for human and animal consumption.	SMG 1410.302
Subpart E, § 5.302—Detention of meat, poultry, eggs, and related products.	SMG 1410.303
Subpart E, § 5.303—Establishing standards and approving accrediting bodies under the National Laboratory Accreditation Program.	SMG 1410.304

APPENDIX A—PART 5; CORRESPONDING FORMER SUBPARTS, SECTION NUMBERS, AND SUBJECTS AND NEW ALTERNATE INTERNET-BASED SYSTEM FDA STAFF MANUAL GUIDE NUMBERS—Continued

Former CFR Subpart, Section No., and Subject	Alternate Internet-Based System FDA Staff Manual Guide (SMG) Numbers (Subject remains, unless otherwise stated)
Subpart E, § 5.304—Approval of schools providing food-processing instruction.	SMG 1410.305
Subpart F, § 5.400—Issuance of Federal Register documents to recognize or to withdraw recognition of a standard to meet premarket submission requirements.	SMG 1410.401
Subpart F, § 5.401—Issuance of Federal Register documents pertaining to exemptions from premarket notification.	SMG 1410.402—Issuance of Federal Register Documents Pertaining to Premarket Submission Requirements and Exemption from Premarket Notification
Subpart F, § 5.402—Detention of adulterated or misbranded medical devices	SMG 1410.403
Subpart F, § 5.403—Authorization to use alternative evidence for determination of the effectiveness of medical devices.	SMG 1410.404
Subpart F, § 5.404—Notification to petitioners of determinations made on petitions for reclassification of medical devices.	SMG 1410.405
Subpart F, § 5.405—Determination of classification of devices.	SMG 1410.406
Subpart F, § 5.406—Notification to sponsors of deficiencies in petitions for reclassification of medical devices.	SMG 1410.407
Subpart F, § 5.407—Approval, disapproval, or withdrawal of approval of product development protocols and applications for premarket approval for medical devices.	SMG 1410.408
Subpart F, § 5.408—Determinations concerning the type of valid scientific evidence submitted in a premarket approval application.	SMG 1410.409
Subpart F, § 5.409—Determinations that medical devices present unreasonable risk of substantial harm.	SMG 1410.410
Subpart F, § 5.410—Orders to repair or replace, or make refunds for, medical devices.	SMG 1410.411
Subpart F, § 5.411—Medical device recall authority.	SMG 1410.412
Subpart F, § 5.412—Temporary suspension of a medical device application.	SMG 1410.413
Subpart F, § 5.413—Approval, disapproval, or withdrawal of approval of applications and entering into agreements for investigational device exemptions.	SMG 1410.414
Subpart F, § 5.414—Postmarket surveillance.	SMG 1410.415
Subpart F, § 5.415—Authority relating to medical device reporting procedures.	SMG 1410.416
Subpart F, § 5.416—Medical device tracking.	SMG 1410.417
Subpart F, § 5.417—Authority pertaining to accreditation functions for medical devices.	SMG 1410.418
Subpart G, § 5.500—Issuance of Federal Register documents pertaining to the determination of safe levels, notice of need for development of an analytical method, notice of availability of a developed analytical method, and prohibition of certain extralabel drug use.	SMG 1410.501
Subpart G, § 5.501—Approval of new animal drug applications, medicated feed mill license applications and their supplements.	SMG 1410.502
Subpart G, § 5.502—Issuance of notices, proposals, and orders relating to new animal drugs and medicated feed mill license applications.	SMG 1410.503

APPENDIX A—PART 5; CORRESPONDING FORMER SUBPARTS, SECTION NUMBERS, AND SUBJECTS AND NEW ALTERNATE INTERNET-BASED SYSTEM FDA STAFF MANUAL GUIDE NUMBERS—Continued

Former CFR Subpart, Section No., and Subject	Alternate Internet-Based System FDA Staff Manual Guide (SMG) Numbers (Subject remains, unless otherwise stated)
Subpart G, § 5.503—Submission of and effective approval dates for abbreviated new animal drug applications and certain new animal drug applications.	SMG 1410.504
Subpart G, § 5.504—Issuance of written notices concerning patent information, current good manufacturing practices and false or misleading labeling of new animal drugs and feeds bearing or containing new animal drugs.	SMG 1410.505
Subpart G, § 5.505—Termination of exemptions for new drugs for investigational use in animals.	SMG 1410.506
Subpart H, § 5.600—Variances from performance standards for electronic products.	SMG 1410.601
Subpart H, § 5.601—Exemption of electronic products from performance standards and prohibited acts.	SMG 1410.602
Subpart H, § 5.602—Testing programs and methods of certification and identification for electronic products.	SMG 1410.603
Subpart H, § 5.603—Notification of defects in, and repair or replacement of, electronic products.	SMG 1410.604
Subpart H, § 5.604—Manufacturers requirement to provide data to ultimate purchasers of electronic products.	SMG 1410.605
Subpart H, § 5.605—Dealer and distributor direction to provide data to manufacturers of electronic products.	SMG 1410.606
Subpart H, § 5.606—Acceptance of assistance from State and Local authorities for enforcement of radiation control legislation and regulations.	SMG 1410.607
Subpart I, § 5.700—Authority relating to determination of product primary jurisdiction.	SMG 1410.701
Subpart I, § 5.701—Premarket approval of a product that is or contains a biologic, a device, or a drug.	SMG 1410.702
Subpart J, § 5.800—Imports and exports.	SMG 1410.801
Subpart J, § 5.801—Export of unapproved drugs.	SMG 1410.802
Subpart J, § 5.802—Manufacturer's resident import agents.	SMG 1410.803
Subpart K, § 5.900—Orphan products.	SMG 1410.901
Subpart L, § 5.1000—Authority to ensure that mammography facilities meet quality standards.	SMG 1410.1000
Subpart M—Organization	(Note: Subpart M will remain in the CFR and it is updated in this final rule.)

[FR Doc. 04–7398 Filed 4–1–04; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 2002F–0181]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of cetylpyridinium chloride as an antimicrobial agent in poultry processing. This action is in response to a petition filed by Safe Foods Corp.

DATES: This rule is effective April 2, 2004. Submit written or electronic objections and requests for a hearing by May 3, 2004. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 173.375 as of April 2, 2004.

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

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3071.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of May 7, 2002 (67 FR 30716), FDA announced that a food additive petition (FAP 2A4736) had been filed by Safe Foods Corp., c/o Keller and Heckman LLP, 1001 G St. NW., Washington, DC 20001. The petition proposed to amend the food additive regulations in part 173 (21 CFR part 173) to provide for the safe use of cetylpyridinium chloride as an antimicrobial agent in poultry processing.

II. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe and the additive will achieve its intended technical effect as an antimicrobial agent in poultry processing. Therefore, part 173 is amended as set forth in this document.

The agency is including as a condition of use in this regulation the requirement that cetylpyridinium chloride be captured and recycled during poultry processing. Because byproducts resulting from poultry processing are typically recycled back into animal feed, the additive could also become a component of animal feed unless controls to prevent such a situation are established. In situations where human food additives become components of animal feed, possibly in substantially higher amounts than in human food, FDA estimates the amount of additive likely to be consumed by the animals and assesses the safety of such additives for the animals themselves and of the human food that may be produced by such animals. To mitigate any potential concerns associated with the possibility of the additive becoming a component of animal feed, the petitioner proposed a system which ensures capture and recycling of the additive and disposal of residual cetylpyridinium chloride in an appropriate manner. The agency agrees with this approach. Therefore, as stated in paragraph (c) in the codified section of this document, the agency is requiring use of a capture and recycle technology to limit the potential for bioaccumulation of cetylpyridinium chloride in animal feed and thus to avoid the possibility of additional exposure to humans who consume poultry.

The petitioner proposes to apply cetylpyridinium chloride as an aqueous solution at a level not to exceed 0.3 gram of cetylpyridinium chloride per pound of poultry. As a further condition of use, the regulation provides that the applied solution contain propylene glycol at a level 1.5 times that of cetylpyridinium chloride. The propylene glycol is included as part of the applied solution in order to: (1) Maintain the solubility and stability of the cetylpyridinium chloride solution, and (2) reduce the absorption of cetylridinium chloride on the treated poultry (Ref. 1).

III. Public Disclosure

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the contact person listed in this document (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

V. Paperwork Reduction Act of 1995

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

VI. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may at any time file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections (see **DATES**). Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which the objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested must state that a hearing is requested. Failure to request a hearing for any particular objection will constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested must include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents must be submitted and must be identified with the docket number found in the brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following reference has 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. Memorandum from the Chemistry Review Group to the Regulatory Group II, "Cetylpyridinium Chloride (CPC) For Use as an Antimicrobial Treatment for Use on Poultry," dated November 19, 2002.

List of Subjects in 21 CFR Part 173

Food additives, Incorporation by reference.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 173 continues to read as follows:

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

■ 2. Section 173.375 is added to read as follows:

§ 173.375 Cetylpyridinium chloride.

Cetylpyridinium chloride (CAS Reg. No. 123–03–5) may be safely used in food in accordance with the following prescribed conditions:

(a) The additive meets the specifications of the United States Pharmacopeia (USP)/National Formulary (NF) methods described in USP 24/NF 19, p. 370, January 2000, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852, or you may examine a copy 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.

(b) The additive is used in food as an antimicrobial agent as defined in § 170.3(o)(2) of this chapter to treat the surface of raw poultry carcasses. The additive is applied as a fine mist spray of an ambient temperature aqueous solution to raw poultry carcasses prior to immersion in a chiller, at a level not to exceed 0.3 gram cetylpyridinium chloride per pound of raw poultry carcass. The aqueous solution shall also contain propylene glycol (CAS Reg. No. 57–55–6) complying with § 184.1666 of this chapter, at a concentration of 1.5 times that of the cetylpyridinium chloride.

(c) The additive shall be used in systems that collect and recycle solution that is not carried out of the system with the treated poultry carcasses.

Dated: March 26, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–7399 Filed 4–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Treasury Inspector General for Tax Administration; Privacy Act of 1974; Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury exempts the following six systems of records from provisions of the Privacy Act: DO .303–TIGTA General Correspondence; DO.306–TIGTA Recruiting and Placement; DO .307–TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files; DO .308–TIGTA Data Extracts; DO .309–TIGTA Chief Counsel Case Files; and, DO .310–TIGTA Chief Counsel Disclosure Section Records.

EFFECTIVE DATE: April 2, 2004.

FOR FURTHER INFORMATION CONTACT: Lori Creswell, Assistant Chief Counsel, Treasury Inspector General for Tax Administration, 1125 15th Street, Room 700A, Washington, DC 20005, 202–622–4068.

SUPPLEMENTARY INFORMATION: The Department of Treasury published a notice of a proposed rule on September 22, 2003, at 68 FR 55016–55020 exempting six systems of records from certain provisions of the Privacy Act of 1974, as amended. The Department of Treasury published the systems notices in their entirety at 68 FR 55086–55098 (September 22, 2003).

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, as amended, if the system contains investigatory material and is maintained by an agency which performs as its principal function activities pertaining to the enforcement of criminal laws. The following systems contain investigatory material compiled by TIGTA, an agency that performs activities pertaining to the enforcement of criminal laws:

DO .303–TIGTA General Correspondence;
DO .307–TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files;
DO .308–TIGTA Data Extracts;
DO .309–TIGTA Chief Counsel Case Files; and,
DO .310–TIGTA Chief Counsel Disclosure Section Records.

The provisions of the Privacy Act from which these systems of records are exempt pursuant to 5 U.S.C. 552a(j)(2) are as follows: 5 U.S.C. 552a(c)(3), (c)(4), (d), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, as amended, if the system is investigatory material compiled for law enforcement purposes. The following systems contain investigatory material compiled for law enforcement purposes:

DO .303–TIGTA General Correspondence;
DO .307–TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files;
DO .308–TIGTA Data Extracts;
DO .309–TIGTA Chief Counsel Case Files; and,
DO .310–TIGTA Chief Counsel Disclosure Section Records.

The provisions of the Privacy Act from which these systems of records are exempt pursuant to 5 U.S.C. 552a(k)(2) are as follows: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H) and (e)(4)(I), and (f).

Under 5 U.S.C. 552a(k)(5), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, as amended, if the system is investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. DO. 306 TIGTA–Recruiting and Placement Records contains investigatory material compiled for use in determining suitability, eligibility or qualifications for Federal employment, Federal contracts, or access to classified information. The provisions of the Privacy Act from which this system of records is exempt pursuant to 5 U.S.C. 552a(k)(5) are as follows: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

Under 5 U.S.C. 552a(k)(6), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system is material used solely to determine individual qualifications for appointment or promotion in the Federal service. DO. 306 TIGTA–Recruiting and Placement Records contains material used to determine an individual's qualification for appointment or promotion in the Federal service. The provisions of the Privacy Act from which this system of records is exempt pursuant to 5 U.S.C. 552a(k)(6) are as follows: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

The proposed rule requested that public comments be sent to the Office of Chief Counsel, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Suite 700A, Washington, DC 20005, no later than October 22, 2003.

TIGTA did not receive comments on the proposed rule. Accordingly, the Department of the Treasury is hereby giving notice that the following systems of records are exempt from certain provisions of the Privacy Act: DO .303–TIGTA General Correspondence; DO.306–TIGTA Recruiting and Placement; DO .307–TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files; DO .308–TIGTA Data Extracts; DO .309–TIGTA Chief Counsel Case Files; and, DO .310–TIGTA Chief Counsel Disclosure Section Records.

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal 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.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

■ Part 1 Subpart C of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301, 31 U.S.C. 321, subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Section 1.36 is amended as follows:

■ a. Paragraph (c)(1)(i) is amended by adding "DO .303–TIGTA General Correspondence; DO .307–TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files; DO .308–TIGTA Data Extracts; DO .309–TIGTA Chief Counsel Case Files; DO .310–TIGTA Chief Counsel Disclosure Section Records" to the table in numerical order.

■ b. Paragraph (g)(1)(i) is amended by adding "DO .303–TIGTA General Correspondence; DO .307–TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files; DO .308–TIGTA Data Extracts; DO .309–TIGTA Chief Counsel Case Files; DO .310–TIGTA Chief Counsel Disclosure Section Records" to the table in numerical order.

■ c. Paragraph (m)(1)(i) is amended by adding "DO .306–TIGTA Recruiting and Placement" to the table in numerical order.

■ d. Paragraph (o)(1) is amended by adding "DO .306–TIGTA Recruiting and Placement" to the table in numerical order. The additions to Sec. 1.36 read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(c) * * *

(1) * * *

(i) * * *

Number	System name
DO .303	TIGTA General Correspondence.
DO .307	TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.
DO .308	TIGTA Data Extracts.
DO .309	TIGTA Chief Counsel Case Files.
DO .310	TIGTA Chief Counsel Disclosure Section Records.

* * * * *

(g) * * *

(1) * * *

(i) * * *

Number	System name
DO .303	TIGTA General Correspondence.
DO .307	TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.
DO .308	TIGTA Data Extracts.
DO .309	TIGTA Chief Counsel Case Files.
DO .310	TIGTA Chief Counsel Disclosure Section Records.

* * * * *

(m) * * *

(1) * * *

(i) * * *

Number	System name
DO .306	TIGTA Recruiting and Placement.

* * * * *

(O) * * *

(1) * * *

Number	System name
DO .306	TIGTA Recruiting and Placement.

* * * * *

Dated: March 25, 2004.

Mary Beth Shaw,

Acting Deputy Assistant Secretary for Headquarters Operations.

[FR Doc. 04–7413 Filed 4–1–04; 8:45 am]

BILLING CODE 4810–04–P

DEPARTMENT OF COMMERCE

37 CFR Part 401

[Docket No. 950615153–3312–03]

RIN 0692–AA14

Assistant Secretary for Technology Policy; Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements; Special Agreements To Provide Services for a Government Laboratory Under a Cooperative Research and Development Agreement (CRADA) With a Collaborating Party

AGENCY: Assistant Secretary for Technology Policy, Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The Under Secretary for Technology, United States Department of Commerce, is today issuing a final rule amending regulations to authorize Federal agencies to use an alternate patent rights clause in certain agreements with nonprofit organizations and small business firms to provide services at Government-owned and Government-operated and Government-owned and contractor-operated laboratories in connection with a CRADA between the laboratory and a collaborating party. A proposed rule, with a request for public comment, was published in the **Federal Register** on September 11, 2000 (65 FR 54826). This final rule responds to comments received in response to this **Federal Register** notice. The changes in this final rule include clarifications and editorial corrections.

DATES: This rule is effective on May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. John Raubitschek, Patent Counsel, at telephone (202) 482–8010.

SUPPLEMENTARY INFORMATION: Under the authority of 35 U.S.C. 206 and the delegation by the Secretary of Commerce in section 3(g) of DOO 10–18, the Assistant Secretary of Commerce for Technology Policy may issue revisions to 37 CFR part 401.

Background

Under the Bayh-Dole Act (Pub. L. 96–517), nonprofit and small business contractors and grantees have the option to retain rights in their inventions in order to facilitate the commercialization of the results of federally funded research. However, this option may be limited if an "exceptional circumstances" determination is made by the funding agency under 37 CFR 401.3(a)(2). The criteria for such a determination are exacting and the contractor or grantee may appeal such a determination within the agency. There is a need to limit the rights of certain contractors and grantees in their inventions when they are performing research for the Government under a cooperative research and development agreement (CRADA) with a collaborating party as authorized by the Federal Technology Transfer Act (Pub. L. 99–502) (FTTA). If these rights are not limited, the collaborating party would not receive the rights to which it would normally be entitled under a CRADA, which includes the option for an exclusive license to any CRADA invention made by a Government employee. Contractors are now being used at certain federally-owned laboratories of various agencies such as the Department of Defense and the Environmental Protection Agency. The contracts are not usually entered into for securing research expertise of a particular company or individual but rather to provide general support to the operation of the laboratories.

Presently, some agencies using contractors for CRADAs have notified their collaborating parties that they will endeavor to acquire the necessary rights from their contractors but cannot promise that those rights will be obtained. Other agencies preclude their contractors from working on CRADAs or permit them to own their inventions whether or not made under a CRADA. When the Department of Defense proposed several years ago a special clause for their contractors limiting rights in their inventions, DOC was concerned that the exception was too broad and that the clause should encourage negotiation.

Since the laboratory's obligations under the FTTA do not technically apply to the inventions of its contractors or grantees, DOC does not consider that there is an actual conflict between the Bayh-Dole Act and the FTTA. Nevertheless, we do believe that the situation presents a conflict between the general policies of the Bayh-Dole Act and the specific directives of the FTTA. We think that allowing a contractor or grantee to work under a CRADA in such circumstances might be a negative factor or disincentive to the participation by private parties in a CRADA because they would not be assured of receiving rights in all CRADA inventions as mandated by the FTTA.

DOC published a proposed rule in the **Federal Register** on September 11, 2000 (65 FR 54826), seeking public comment on a proposal to add an alternate new subparagraph to paragraph (b) of the basic patent rights clause (37 CFR 401.14). The comment period closed October 11, 2000. The new subparagraph encourages the contractor or grantee to negotiate with the collaborating party but, in the absence of an agreement, provides certain minimum rights for the collaborating party in inventions made by the contractor or grantee. The provision of those minimum rights in the agreement constitutes an "exceptional circumstances" determination by the agency pursuant to 37 CFR 401.3(a)(2) and would be appealable under § 401.4. The rights would be of the same scope and terms the collaborating party would receive in an invention made by a Government laboratory employee under the CRADA, which is typically an option for an exclusive license. Although negotiation should occur prior to the contractor or grantee starting work under the CRADA, it could be postponed with the permission of the Government until an invention is made by the contractor or grantee under the CRADA. The procedures for using the alternate clause are provided in new § 401.3(a)(5). The alternate clause is optional and laboratories may allow contractors or grantees to own their inventions made under a CRADA.

Summary of Public Comments Received by DOC in Response to the September 11, 2000 Proposed Rule and DOC's Response to Those Comments

DOC received four responses to the request for comments. Two responses were from Federal government agencies. One response was from a not-for-profit association of research universities and another from a private individual. An analysis of the comments follows.

Comment: One comment supported the proposed language which clarifies that, in the absence of a separate agreement with a contractor, the contractor is obligated to grant the collaborating party an option for a license in the contractor's CRADA inventions in the same scope and terms set forth in the CRADA for inventions made by the Government. However, the comment concluded that a Federal agency's use of the alternate rights clause may be limited if a determination of "exceptional circumstances" is made by the funding agency under 37 CFR 401.3(a)(2).

Response: DOC agrees with the comment with the exception of the conclusion which appears to be based on a misunderstanding of 37 CFR 401.3(a)(2). The regulation does not require a determination of "exceptional circumstances" to limit the use of the alternate rights clause. To the contrary, the determination authorizes the use of an alternate clause.

Comment: One comment suggested the phrase "the Government may require the Contractor to try to negotiate an agreement with the CRADA collaborating party or parties, over the rights to any subject invention the Contractor makes, solely or jointly" in the proposed 37 CFR 401.14(b)(2) could better be expressed by re-wording "to try to" and "over the rights."

Response: DOC agrees with the comment and has revised the phrase to read: "the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor made, solely or jointly." In addition to the revisions suggested by the comment, the word "makes" was changed to

"made," which is defined in the Bayh-Dole Act and the FTTA and the phrase "in the course of its work" was dropped because it does not appear in these laws.

Comment: One comment noted that the proposed rule was too narrowly drawn in that it applied only to CRADAs at Government-owned Government-operated (GOGO) laboratories. The comment suggested that the proposed rule should be broadened to include CRADAs at Government-owned contractor-operated (GOCO) laboratories.

Response: DOC agrees with the comment. Accordingly, changes were made to 37 CFR 401.14(c) of the proposed rule so that the rule now applies to both GOCOs and GOGOs.

Comment: One comment questioned whether the proposed regulatory change was sufficient to achieve the desired result, without additional amendments to the Bayh-Dole Act, because the need to grant the CRADA collaborator rights to inventions made by a laboratory contractor under a CRADA does not constitute "exceptional circumstances" as required by 35 U.S.C. 202(a)(ii). This comment also suggested that "support contractor" be defined and that in order to ensure exclusivity, support contractors should be denied all rights to CRADA inventions, including non-exclusive rights, particularly in a non-CRADA environment.

Response: DOC believes that the requirement of the Federal Technology Transfer Act (Pub. L. 99–502) that Federal laboratories "shall ensure through such agreement, that the collaborating party has the option to choose an exclusive license for a pre-negotiated field of use for any such invention" (15 U.S.C. 3710a(b)(1)) is sufficient justification to merit an "exceptional circumstances" determination for contractors or grantees working on CRADAs. Such a determination is consistent with the policies and objectives of the Bayh-Dole Act. At this time, DOC does not see a need to restrict the contractor from having any rights in its inventions. However, we dropped the word "support" from the term "support contractor" because it is subject to interpretation and have made it clear that the rule also applies to grantees working under CRADAs. Since the scope of this rule change is limited to CRADAs, there is no issue of rights in inventions not made under a CRADA.

Additional Information

Classification

Administrative Procedure Act: Although the notice and comment requirements of the Administrative Procedure Act (APA) are not applicable to this rule of agency policy pursuant to 5 U.S.C. 553(a)(2), all public comments received on this policy have been considered.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866 (58 FR 51735, October 4, 1993).

Executive Order 13132

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, no final regulatory flexibility analysis is required and none has been prepared.

Paperwork Reduction Act

This rule will impose no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 37 CFR Part 401

Inventions, Nonprofit organizations, Patents, Small business firms.

■ For the reasons set forth in the preamble, 37 CFR part 401 is amended as follows:

PART 401—RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

■ 1. The authority citation for 37 CFR part 401 continues to read as follows:

Authority: 35 U.S.C. 206 and the delegation of authority by the Secretary of Commerce to the Assistant Secretary of Commerce for Technology Policy at sec. 3(g) of DOO 10–18.

■ 2. Section 401.3 is amended by adding a new paragraph (a)(5) to read as follows:

§ 401.3 Use of the standard clauses at § 401.14.

(a) * * *

(5) If any part of the contract may require the contractor to perform work on behalf of the Government at a Government laboratory under a Cooperative Research and Development Agreement (CRADA) pursuant to the statutory authority of 15 U.S.C. 3710a, the contracting officer may include alternate paragraph (b) in the basic patent rights clause in § 401.14. Because the use of the alternate is based on a determination of exceptional circumstances under § 401.3(a)(2), the contracting officer shall ensure that the appeal procedures of § 401.4 are satisfied whenever the alternate is used.

* * * * *

■ 3. A new paragraph (c) is added to § 401.14 to read as follows:

§ 401.14 Standard patent rights clauses.

* * * * *

(c) As prescribed in § 401.3, replace (b) of the basic clause with the following paragraphs (1) and (2):

(b) Allocation of principal rights. (1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, including (2) below, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

Phillip J. Bond,

Under Secretary of Commerce for Technology.

[FR Doc. 04–7487 Filed 4–1–04; 8:45 am]

BILLING CODE 3510–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP Nos. ND7–001–6882 and ND–001–0004; FRL–7641–8]

Approval and Promulgation of Air Quality Implementation Plans; North Dakota; State Implementation Plan Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: When EPA approved revisions to the North Dakota State Implementation Plan (SIP) on October 8, 1996, we inadvertently incorporated by reference some revisions to the North Dakota Century Code statute pertaining to an asbestos law. When EPA approved revisions to the North Dakota SIP on August 27, 1998, we inadvertently failed to include a subsection of one of the submitted North Dakota Air Pollution Control Rules. EPA is correcting these errors with this document.

EFFECTIVE DATE: This rule is effective on May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Amy Platt, EPA, Region 8, (303) 312–6449.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we" or "our" is used it means EPA.

Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting incorrect text in previous rulemakings. Thus notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

I. Corrections

A. Correction to ***Federal Register*** *Document Published on October 8, 1996 (61 FR 52865)*

When we approved the revisions to the North Dakota SIP and Air Pollution Control Rules on October 8, 1996 (61 FR 52865), we inadvertently incorporated by reference some revisions to the North Dakota Century Code statute pertaining to asbestos law. Specifically, we incorporated by reference revisions to North Dakota Century Code sections 23–25–01, 23–25–03, and 23–25–03.1, as in effect on August 1, 1993. It is not appropriate to approve and incorporate by reference such statutes into the SIP. Further, all implementing asbestos regulations have since been removed from the federally approved SIP making the authorizing statutes irrelevant in the context of the SIP. Therefore, we are correcting our error by revising the introductory text of 40 CFR 52.1820(c)(28) and deleting the existing 40 CFR 52.1820(c)(28)(i)(A) regarding the North Dakota Century Code legislation from the North Dakota SIP. In addition, the deletion necessitates the redesignation of the existing 40 CFR 52.1820(c)(28)(i)(B) to paragraph (A).

B. Correction to ***Federal Register*** *Document Published on August 27, 1998 (63 FR 45722)*

On August 27, 1998 (63 FR 45722) we approved revisions to the North Dakota SIP. However, we inadvertently failed to include a subsection of one of the submitted North Dakota Air Pollution Control Rules. Specifically, we failed to include the revision to Chapter 33–15–01–03, which identifies the department with the authority to provide and administer the North Dakota Air Pollution Control Rules. This revision was not substantive, *i.e.*, there was no change in authority, but simply was administrative in nature to reflect the name change of the North Dakota health department. Previously, the department was referred to as the North Dakota state department of health and consolidated laboratories. This revision, effective September 1, 1997, identifies the department as the North Dakota state department of health. Since this revision was not substantive in nature and we inadvertently failed to include it in our August 27, 1998 approval, we are correcting our error now. Therefore, we are amending 40 CFR 52.1820(c)(30)(i)(B) to incorporate by reference Air Pollution Control Rule 33–15–01–03, as in effect on September 1, 1997, into the North Dakota SIP.

II. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the October 8, 1996 rule

approving various revisions to the North Dakota SIP and Air Pollution Control Rules and the August 27, 1998 rule approving various revisions to the North Dakota SIP and Air Pollution Control Rules.

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of May 3, 2004. 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**. These corrections to the identification of plan for North Dakota are not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 19, 2004.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR part 52 is amended as follows:

PART 52—[CORRECTED]

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

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

Subpart JJ—North Dakota

■ 2. Section 52.1820 is amended by:

■ a. Revising the (c)(28) introductory text, removing the existing paragraph (c)(28)(i)(A), and redesignating the existing paragraph (c)(28)(i)(B) as (c)(28)(i)(A); and

■ b. Revising paragraph (c)(30)(i)(B).

The revisions read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(28) The Governor of North Dakota submitted revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules with a letter dated December 21, 1994. The submittal addressed revisions to air pollution control rules regarding general provisions; ambient air quality standards; new source performance standards (NSPS); and national emission standards for hazardous air pollutants (NESHAPs).

* * * * *

(30) * * *

(i) * * *

(B) Revisions to the Air Pollution Control Rules as follows: General Provisions 33–15–01–03, 33–15–01–04.49, 33–15–01–13.2(b), 33–15–01–15.2, and 33–15–01–17.3; Emissions of Particulate Matter Restricted 33–15–05–03.3.4; and Control of Organic Compound Emissions 33–15–07–01.1; effective September 1, 1997.

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[FR Doc. 04–7075 Filed 4–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 166

[OPP–2004–0039; FRL–7345–7]

RIN 2070–AD36

Pesticides; Emergency Exemption Process Revisions; Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: This document notifies the public that the Administrator of EPA has forwarded to the Secretary of Agriculture a draft proposed rule as required by section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As described in the Agency's semi-annual Regulatory Agenda, the draft proposed rule proposes several improvements to the pesticide emergency exemption process under section 18 of FIFRA. The two primary proposed improvements are currently being tested through a limited pilot, and are based on recommendations from the States which are the primary applicants for emergency exemptions. EPA has established regulations under section 18 of FIFRA which allow a Federal or State agency to apply for an emergency exemption to allow an unregistered use of a pesticide for a limited time when such use is necessary to alleviate an emergency condition.

FOR FURTHER INFORMATION CONTACT: Joseph Hogue, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–9072; e-mail address: *hogue.joe@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. It simply announces the submission of a draft proposed rule to the U.S. Department of Agriculture and does not otherwise affect any specific entities. This action may, however, be of particular interest to Federal, State, or Territorial government agencies that petition EPA for FIFRA section 18 emergency use authorization for a pesticide, not otherwise registered for the use, to address an emergency pest situation. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, 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–2004–0039. 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/. Please note that the draft proposed rule is not currently publicly available. It will only become publicly available when the proposed rule is signed, at which time it will be published in the **Federal Register**.

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.

II. What Action Is EPA Taking?

Section 25(a)(2) of FIFRA requires the Administrator to provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days before signing it for publication in the **Federal Register**. The draft proposed rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft proposed rule within 30 days after receiving it, the Administrator shall include the comments of the Secretary and the Administrator's response to those comments in the proposed rule when published in the **Federal Register**. If the Secretary does not comment in writing within 30 days after receiving the draft proposed rule, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30–day period.

III. Do Any Statutory and Executive Order Reviews Apply to This Notification?

No. This document is not a proposed rule, it is merely a notification of submission to the Secretary of Agriculture. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in 40 CFR Part 166

Environmental protection, Administrative practice and procedure, Emergency exemptions, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements

Dated: March 13, 2004.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 04–7474 Filed 4–1–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0013; FRL–7347–6]

6-Benzyladenine; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical pesticide, 6-benzyladenine (6-BA), in or on pistachio, and amends the existing exemption for apple to expand the uses and increase the application rate. Valent BioSciences Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 6-BA.

DATES: This regulation is effective April 2, 2004. Objections and requests for hearings, identified by docket ID number OPP–2004–0013, must be received on or before June 1, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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 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–2004–0013. 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/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of July 30, 2003 (68 FR 44777) (FRL–7315–7), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 3F6586) by Valent BioSciences Corporation, 870 Technology Way, Suite 100, Libertyville, IL 60048. This notice included a summary of the petition prepared by the petitioner Valent BioSciences Corporation. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1150 be amended by establishing an exemption from the requirement of a tolerance for residues of 6-BA in or on pistachio, and by amending the existing exemption under § 180.1150 for apple to expand the uses and increase the application rate.

Previously, temporary exemptions from the requirement of a tolerance, set to expire on January 31, 2005, were established by EPA for residues of 6-BA in or on apple and pistachio (February 5, 2003, 68 FR 5835) (FRL–7287–2) for the same uses as proposed above, when applied in accordance with the Experimental Use Permit (73049–EUP–2) issued on January 22, 2003 (February 26, 2003, 68 FR 8900) (FRL–7293–4).

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe " to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factor set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicological profile for 6-BA has been previously published by the Agency in the N6-Benzyladenine (synonymous with the subject active ingredient, 6-benzyladenine) Reregistration Eligibility Decision (RED) document of June 1994 (*http://www.epa.gov/oppsrrd1/REDs/old_reds/n6benzyladenine.pdf.*) The summarized values and categories for the various studies for the technical active ingredient are presented here.

1. *Acute toxicity.* Toxicity Category III was assigned to the acute oral toxicity study in the rat (lethal dose $(LD)_{50}$ = 1.3 grams/kilogram (g/kg)), and in the eye irritation study in the rabbit (moderate irritant). Toxicity Category IV (the least toxic category) was assigned to the acute dermal toxicity study in the rabbit (LD_{50} >5 g/kg), the acute inhalation toxicity study in the rat (lethal concentration $(LC)_{50}$ = 5.2 milligrams/liter (mg/L)), and in the dermal irritation study in the rabbit (slight irritant). Additionally, from a dermal sensitization study in the guinea pig, it was determined that 6-BA is not a dermal sensitizer. There have been no reported incidents of hypersensitivity directly linked to 6-BA. Nevertheless, to comply with the Agency's requirement under FIFRA section 6(a)(2), any incident of hypersensitivity associated with the use of this pesticide must be reported to the Agency.

2. *Genotoxicity.* From three mutagenicity studies (Ames test, mouse micronucleus assay, and unscheduled DNA synthesis assay in the rat), it was determined that 6-BA is not mutagenic.

3. *Developmental toxicity.* The no observed adverse effect levels (NOAEL) and the lowest observed adverse effect levels (LOAEL) for maternal and developmental toxicity in rats, respectively, were found to be 50 and 175 milligrams/kilogram body weight/day (mg/kg bwt/day), respectively. Based on these results and the Agency's assessment of dietary risk (see Units IV. and VI.) there is a reasonable certainty that no harm will be associated with this proposed pesticide use of 6-BA.

4. *Subchronic toxicity.* For rats of both sexes, the NOAEL was approximately 111 mg/kg bwt/day and the LOAEL was approximately 304 mg/kg bwt/day. Based on these results and the Agency's assessment of dietary risk (see Units IV. and VI.) there is a reasonable certainty that no harm will be associated with the proposed pesticide use of 6-BA.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Apple and pistachio field trials yielded acceptable magnitude of the residue data. Residues were below the limit of quantitation (LOQ) for pistachios treated with a total of 60 g of active ingredient (a.i.) per acre. In apples, residues of 6-BA were consistently near the LOQ. However, residues did not increase in processed commodities (relative to the levels on the raw commodity), and were below the LOQ. Thus, the apple field data are adequate to support the tolerance exemption, limited by maximum application rates ≤182 grams of active ingredient per acre per season. Also, because application precedes harvest by 2 months for pistachio and by approximately 2.5 months for apple, the potential for dietary exposure is reduced. Due to the low anticipated dietary intake of 6-BA residues relative to the chronic and acute population adjusted doses (see Unit VII.), and the fact that actual exposure will probably be considerably less because the dietary exposure analysis was based on worst-case assumptions, it is highly unlikely that the proposed new uses of 6-BA on apple and pistachio will result in adverse effects to human health.

2. *Drinking water exposure.* The proposed uses on apple and pistachio are not expected to add potential

exposure to drinking water. Soil leaching studies have suggested that 6-BA is relatively immobile, absorbing to sediment. Residues reaching surface waters from field runoff should quickly absorb to sediment particles and be partitioned from the water column. 6-Benzyladenine also has low solubility in water, 76 ±2 mg/L at 20 °C, and detections in ground water are not expected. Together, these data indicate that residues are not expected in drinking water.

B. Other Non-Occupational Exposure

The potential for non-dietary exposure to 6-BA residues for the general population, including infants and children, is unlikely because the uses are limited to applications in apple and pistachio orchards. Because 6-BA is a naturally occurring cytokinin plant regulator, it is a normal part of the human diet. The proposed use rates are well below the toxicity NOAELs (see Unit III.). The residues indicate dietary exposures that are 0.03% and 0.01% of the chronic and acute population adjusted doses, respectively. Therefore, while there exists a great likelihood of prior exposure for most, if not all, individuals to 6-BA, any increased exposure due to the proposed uses would be negligible due to the lack of residue in comparison with the toxicity NOAELs.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." These considerations include the possible cumulative effects of such residues on infants and children.

EPA does not have, at this time, available data to suggest whether 6-BA has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to 6-BA and any other substances and 6-BA does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that 6-BA has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

VI. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population.* The analysis estimated that the chronic exposures for the overall U.S. population was 0.000014 mg/kg/day (0.03% of the chronic population adjusted dose (cPAD)). The acute dietary estimated exposure was 0.000069 mg/kg/day (0.01% of the acute population adjusted dose (aPAD)) for the overall U.S. population. Critical exposure commodity analysis showed that apple juice contributed the most to dietary exposure for the overall population. Due to the low anticipated dietary intake of 6-BA residues relative to the chronic and acute population adjusted doses, and the fact that actual exposure will probably be considerably less because the dietary exposure analysis was made based on worst-case assumptions, it is reasonably certain that the proposed new uses of 6-BA on apple and pistachio will not result in adverse effects to human health.

2. *Infants and children.* FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional ten-fold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. Here, the analysis estimated that the chronic exposures for the most highly exposed subgroup, non-nursing infants, was 0.000085 mg/kg/day (0.2% of the cPAD). The acute dietary estimated exposure was 0.000361 mg/kg/day (0.07% of aPAD) for the most highly exposed subgroup, non-nursing infants. Critical exposure commodity analysis showed that apple juice contributed the most to dietary exposure for all infants. Due to the low anticipated dietary intake of 6-BA residues relative to the chronic and acute PAD, and the fact that actual exposure will probably be considerably less because the dietary exposure analysis was made based on worst-case assumptions, it is reasonably certain that the proposed new uses of 6-BA on apple and pistachio will not result in adverse effects to human health.

Accordingly, the Agency believes the data indicate there are no threshold effects of concern to infants, children, and adults when 6-BA is used as labeled, and that the provision requiring an additional margin of safety is not necessary to protect infants and children. As a result, EPA has not used a margin of exposure (safety) approach to assess the safety of 6-BA.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no scientific basis for including, as part of the program, the androgen and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, 6-BA may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption. Based on available data, no endocrine system-related effects have been identified with consumption of 6-BA. To date, there is no evidence to suggest that 6-BA affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

B. Analytical Method(s)

The Agency is establishing an exemption from the requirement of a tolerance for the reasons stated above. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purposes

for 6-BA. Nonetheless, analytical methods for apple raw agricultural and processed commodities, and pistachio, have been developed, and submitted by the registrant.

C. Codex Maximum Residue Level

Currently, there are no Codex, Canadian or Mexican maximum residue levels for residues of 6-BA in/on apple or pistachio.

VIII. Conclusions

Based on the toxicology information submitted and reviewed previously, and summarized in the June 1994 N6-Benzyladenine RED, there is a reasonable certainty that no harm will result from aggregate exposure of residues of 6-BA to the U.S. population, including infants and children, under reasonably foreseeable circumstances, when the biochemical pesticide is used in accordance with good agricultural practices. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the data submitted previously and summarized in the RED, as well as that data submitted to support this tolerance exemption, demonstrating negligible dietary exposure in comparison with the toxicity NOAELs. As a result, EPA establishes an exemption (albeit, limited by maximum application rates) from the tolerance requirements pursuant to FFDCA 408(c) and (d) for residues of 6-BA in or on apple and pistachio.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0013 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 1, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2004–0013, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance

requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 23, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1150 is amended by revising paragraph (a) to read as follows:

§ 180.1150 6-Benzyladenine; exemption from the requirement of a tolerance.

(a) The biochemical plant regulator 6-benzyladenine (6-BA) is exempt from the requirement of a tolerance in or on apple at an application rate of ≤182 grams of active ingredient per acre per season, and in or on pistachio at an application rate of ≤60 grams of active ingredient per acre per season.

(b) * * *

[FR Doc. 04–7475 Filed 4–1–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[FRL–7642–8]

Delaware and Maryland: Adequacy of State Solid Waste Landfill Permit Programs Under RCRA Subtitle D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Under section 4005(c)(1)(C) of the Resource Conservation and Recovery Act (RCRA), EPA can approve state permit programs for solid waste disposal facilities that receive hazardous waste from conditionally exempt small quantity generators (CESQGs). A CESQG is a generator that generates less than 100 kilograms of hazardous waste per month. CESQGs are subject to minimal recordkeeping and reporting requirements under RCRA, but must satisfy three basic regulatory requirements to remain exempt from the full scope of hazardous waste regulations that apply to other

generators: identification of hazardous wastes, compliance with storage quantity limits, and compliance with applicable hazardous waste treatment and disposal regulations. Federal regulations specify that CESQG hazardous waste must be disposed of in one of several ways, including either: a hazardous waste facility subject to RCRA Subtitle C, or a state licensed or permitted municipal solid waste landfill (MSWLF) subject to regulations, or a state licensed or permitted non-municipal, non-hazardous waste disposal unit subject to regulations. This action approves Maryland's regulations which require that CESQG hazardous waste must be disposed of in hazardous waste landfills, if disposed in Maryland, or in one of the three ways mentioned above, if disposed outside of Maryland. EPA is also approving Delaware's regulations which require that CESQG hazardous waste can only be disposed in hazardous waste landfills.

EPA is publishing this rule to approve applicable regulations in Delaware and Maryland without prior proposal because we believe this action is not controversial, and we do not expect comments that oppose it. Unless we receive written comments which oppose this approval during the comment period, the decision to approve the subject regulations in Delaware and Maryland will take effect as scheduled. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to approve the subject regulations for Delaware and Maryland. If EPA receives relevant adverse written comment concerning the adequacy of only one of the States' programs, EPA's withdrawal of the immediate final rule will only apply to that State's program. The approval of the other State's program will take effect as scheduled in this action.

DATES: This immediate final rule will become effective on June 1, 2004, unless EPA receives relevant adverse written comment by May 3, 2004. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this rule, or parts of this rule, will not take effect.

ADDRESSES: Send written comments to Mr. Mike Giuranna, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically to: *giuranna.mike@epa.gov*, or by facsimile at (215) 814–3163. Comments in electronic format should identify this specific notice. Documents pertaining to this regulatory docket can be viewed and copied during regular business hours at the EPA Region III office located at the address noted above.

FOR FURTHER INFORMATION CONTACT: For information on accessing documents or supporting materials related to this rule or for information on specific aspects of this rule, contact Mike Giuranna, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, phone (215) 814–3298, or by e-mail at *giuranna.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Under 40 CFR 261.5, Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators, which was promulgated on March 24, 1986 (51 FR 10174), CESQG hazardous waste could only be disposed of in an EPA or State regulated hazardous, municipal, industrial or miscellaneous waste landfill. At that time, EPA had only promulgated rules for hazardous waste landfills and MSWLFs, not for industrial or miscellaneous waste landfills which accepted CESQG waste. On July 1, 1996 (61 FR 34252–34278), EPA promulgated criteria under its solid waste program at 40 CFR part 257, subpart B, for industrial waste and other non-municipal, non-hazardous waste landfills which accept CESQG hazardous waste. In the same notice, EPA also revised its hazardous waste program regulations at 40 CFR 261.5(f)(3) and 261.5(g)(3) to allow the disposal of CESQG hazardous waste in non-municipal, non-hazardous waste landfills which meet the requirements of 40 CFR part 257, subpart B, as well as in hazardous waste landfills or MSWLFs which meet appropriate Federal regulations. Today's immediate final rule approves provisions in Delaware's regulations which prevent CESQG waste from being disposed of in any type of landfill other than a hazardous waste landfill and Maryland's regulations which only permit the disposal of CESQG waste in Maryland in hazardous waste landfills, and, in other States, also in MSWLFs which meet appropriate Federal regulations and non-hazardous, non-municipal landfills which comply with 40 CFR part 257, subpart B.

The States of Delaware and Maryland have "EPA-authorized" hazardous waste permit programs under RCRA Subtitle C (40 CFR parts 271, 124, 264 and 270). These States have regulations in place providing that CESQG hazardous waste may be lawfully managed in a RCRA Subtitle C hazardous waste facility. With the exception of State-approved hazardous waste collection activities, Delaware prohibits the disposal of CESQG waste at any type of landfill other than a permitted hazardous waste facility. Maryland only permits the disposal of CESQG waste in hazardous waste landfills (HWLFs) if disposed of in Maryland, and HWLFs, municipal solid waste landfills or non-municipal, non-hazardous waste disposal units which comply with the requirements of 40 CFR part 257, subpart B if the CESQG waste is disposed outside of Maryland. These programs in Delaware and Maryland satisfy the EPA requirements for the safe management of CESQG wastes. Therefore, pursuant to 40 CFR part 257, subpart B, EPA has determined that Delaware's and Maryland's regulations are adequate for EPA approval because they prohibit the disposal of CESQG wastes in landfills that do not meet relevant Federal requirements.

B. Decision

After reviewing the relevant regulations for the States of Delaware (listed in Delaware's Regulations for Hazardous Waste at § 261.5(f)(3)(i)–(iii) and 261.5(g)(3)(i)–(iii)), and Maryland (Title 26, Subtitle 13, Chapter 2 of the Code of Maryland Regulations at 26.13.02.05 D(2)), and finding that they are equivalent to or more stringent than the Federal regulations at 40 CFR 261.5(f)(3) and (g)(3), EPA is granting Delaware and Maryland a final determination of adequacy for their regulations pursuant to RCRA section 4005(c)(1)(C).

C. Statutory and Executive Order Reviews

This rule only approves State solid waste requirements pursuant to RCRA section 4005 and imposes no requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**, above). Therefore, this rule complies with applicable executive orders and statutory provisions as follows. 1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this rule from its review under Executive Order 12866. 2. Paperwork Reduction Act—This rule does not impose an information collection burden under the Paperwork Reduction Act. 3. Regulatory Flexibility Act—After considering the economic impacts of today's rule on small entities

under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. 4. Unfunded Mandates Reform Act—Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act. 5. Executive Order 13132: Federalism—Executive Order 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, 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). 6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—Executive Order 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes). 7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks—This rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks. 8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866. 9. National Technology Transfer Advancement Act—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advancement Act does not apply to this rule. 10. Congressional Review Act—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective June 1, 2004.

List of Subjects in 40 CFR Part 257

Environmental protection, Waste treatment and disposal.

Authority: This document is issued under the authority of sections 2002 and 4005 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912 and 6945.

Dated: January 8, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–7468 Filed 4–1–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7829]

Suspension of Community Eligibility

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

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer

that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

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

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

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

PART 64—[AMENDED]

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

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

§64.6 [Amended]

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

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective Map Date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New York:				
Blenheim, Town of, Schoharie County ..	361580	January 8, 1976, Emerg.; May 1, 1985, Reg.; April 2, 2004, Susp.	4/2/2004	4/2/2004
Broome, Town of, Schoharie County	361431	December 16, 1975, Emerg.; October 15, 1985, Reg.; April 2, 2004, Susp.	.....Do*	Do.
Cobleskill, Town of, Schoharie County	361573	February 17, 1976, Emerg.; January 19, 1983, Reg.; April 2, 2004, Susp.	.....Do*	Do.
Cobleskill, Village of, Schoharie County	360743	May 13, 1977, Emerg.; February 16, 1983, Reg.; April 2, 2004, Susp.	.....Do*	Do.
Esperance, Town of, Schoharie County	361194	October 17, 1975, Emerg.; March 2, 1983, Reg.; April 2, 2004, Susp.	.....Do*	Do.
Esperance, Village of, Schoharie County.	361542	July 27, 1976, Emerg.; September 16, 1982, Reg.; April 2, 2004, Susp.	.....Do*	Do.
Schoharie, Village of, Schoharie County	361061	September 11, 1975, Emerg.; August 1, 1987, Reg.; April 2, 2004, Susp.	.....Do*	Do.
Sharon Springs, Village of, Schoharie County.	361549	May 13, 1977, Emerg.; January 31, 1983, Reg.; April 2, 2004, Susp.	.....Do*	Do.
Wright, Town of, Schoharie County	361202	May 13, 1977, Emerg.; November 18, 1983, Reg.; April 2, 2004, Susp.	.....Do*	Do.
Region V				
Minnesota: Jackson, City of, Jackson County.	270213	March 17, 1972, Emerg.; July 16, 1980, Reg.; April 2, 2004, Susp.	.....Do*	Do.
Region X				
Oregon:				
Talent, City of, Jackson County	410100	April 7, 1975, Emerg.; February 1, 1980, Reg.; April 16, 2004, Susp.	4/16/2004	4/16/2004
Tillamook, City of, Jackson County	410202	March 30, 1973, Emerg.; May 1, 1978, Reg.; April 16, 2004, Susp.	.....Do*	Do.

* Do=Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: March 24, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–7439 Filed 4–1–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

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

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)
COLORADO	
City and County, Broomfield (FEMA Docket No.# B–7439)	
Rock Creek:	
At Brainard Drive (Country Road 19)	*5,309
Approximately 200 feet upstream of West Flatiron Bridge	+5,373
Maps are available for inspection at City Hall, One Descombes Drive, Broomfield, Colorado.	
IDAHO	
Kootenai County, (FEMA Docket No.# B–7439)	
Coeur d'Alene River:	
Approximately 1.5 miles downstream of Interstate Highway 90	*2,145
Approximately 100 feet upstream of the Abandoned Union Pacific Railroad	*2,151
Coeur d'Alene River Overflow:	
At Tamarack Ridge Road Mission Flats area north of Interstate 90	*2,145
Maps are available for inspection at the Kootenai County Planning Department, 451 Government Way, Coeur d'Alene, Idaho.	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
WYOMING		
Natrona County (FEMA Docket No.# B–7435)		
Casper Creek:		
Approximately 300 feet upstream from the confluence with North Platte River	*5,116	Natrona County (Uninc. Areas), and Town of Mills.
Approximately 4 miles upstream of State Highway 26 (West Chase Road)	*5,199	
Eastdale Creek:		
Approximately 1,250 feet downstream of East Yellowstone Highway	*5,103	Natrona County (Uninc. Areas), and City of Casper.
Approximately 100 feet downstream of Wyoming Boulevard	*5,482	
East Branch Eastdale Creek:		
At the confluence with the Eastdale Creek	*5,292	Natrona County (Uninc. Areas).
Just downstream of Wyoming Boulevard	*5,480	
Elkhorn Creek:		
At the confluence with the North Platte River	*5,077	Natrona County (Uninc. Areas), Town of Evansville, and City of Casper.
Approximately 4,500 feet upstream of Interstate 25	*5,184	
Approximately 6,500 feet upstream of Spring Creek Branch Road	*5,972	
Garden Creek:		
Approximately 100 feet upstream of Garden Creek Road	*5,619	Natrona County (Uninc. Areas).
Approximately 1,700 feet upstream of Garden Creek Road	*6,313	
Garden Creek, West Branch:		
At the confluence with Garden Creek	*5,684	Natrona County (Uninc. Areas).
Approximately 2,300 feet upstream of Garden Creek Road	*6,634	
North Platte River:		
Approximately 800 feet upstream of U.S. Highway 20 and 26	*5,116	Town of Mills.
Approximately 2,000 feet upstream of Wyoming Boulevard	*5,120	

ADDRESSES:
Unincorporated Areas Natrona County:
Maps are available for inspection at the Natrona County Annex, 120 West First Street, Suite 200, Casper, Wyoming.
Town of Evansville:
Maps are available for inspection at the Evansville Town Hall, 235 Curtis Street, Evansville, Wyoming.
City of Casper:
Maps are available for inspection at City Hall, 200 North David Street, Casper, Wyoming.
Town of Mills:
Maps are available for inspection at the Town of Mills, Town Hall, 704 4th Street, Mills, Wyoming.

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

Dated: March 24, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–7440 Filed 4–1–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 375

[Docket No. FMCSA–97–2979]

RIN 2126–AA32

Transportation of Household Goods; Consumer Protection Regulations

AGENCY: Federal Motor Carrier Safety Administration.

ACTION: Interim final rule; technical amendments; delay of compliance date.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) makes further technical amendments to the interim final rule published on June 11, 2003, governing the interstate transportation of household goods (68 FR 35064). On March 5, 2004, we issued technical amendments to the interim final rule and its appendix, the consumer pamphlet *Your Rights and Responsibilities When You Move* (69 FR 10570). On March 16, 2004, the U.S. Department of Transportation (DOT) received from the American Moving and Storage Association a petition for reconsideration and stay of compliance date of the interim final rule and technical amendments. In response to the petitioner's concerns, we are adopting clarifying technical amendments to the interim final rule and establishing a new compliance date for the rule. However, we believe that certain amendments sought in the petition are not necessary, while others are substantive in nature and will be considered along with other potential substantive amendments in a future rulemaking proceeding. Therefore, the

petition is granted in part and denied in part. Today's action is intended to ensure that the household goods regulations and consumer information are consistently accurate, clear, and unambiguous.

DATES: *Effective Dates:* The interim final rule (68 FR 35064) published on June 11, 2003, was effective September 9, 2003. The technical amendments published on March 5, 2004 (69 FR 10570) are effective April 5, 2004. Today's technical amendments are effective May 5, 2004.

Compliance Dates: The compliance date for the interim rule was delayed indefinitely at 68 FR 56208 (September 30, 2003). The technical amendments published on March 5, 2004, established a new compliance date (April 5, 2004) for the interim rule, as amended. The compliance date for the interim rule and the technical amendments published on March 5, 2004, is delayed until May 5, 2004. The compliance date for today's technical amendments is May 5, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. James Keenan, Office of Commercial Enforcement, (202) 385–2400, Federal Motor Carrier Safety Administration, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of DOT's 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 (65 FR 19477). This statement is also available at *http://dms.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

In the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, December 9, 1999, 113 Stat. 1749), which established FMCSA as a separate agency within DOT, Congress authorized the agency to regulate motor carriers transporting household goods for individual shippers. Our regulations setting forth Federal requirements for motor carriers that provide interstate transportation of household goods are found in 49 CFR part 375. The regulations governing payment of transportation charges are in 49 CFR part 377.

In May 1998, the Federal Highway Administration published a notice of proposed rulemaking (NPRM) requesting comments on its proposal to update the household goods regulations (63 FR 27126, May 15, 1998). The Federal Highway Administration is the predecessor agency to FMCSA within DOT.

The public submitted more than 50 comments to the NPRM. FMCSA subsequently modified the substance of the proposal in light of concerns raised by some of the commenters, and published an interim final rule in June 2003 (68 FR 35064, Jun. 11, 2003). We published an interim final rule rather than a final rule to allow the Office of Management and Budget (OMB) additional time to complete its review of information collection requirements.

In order to publish the rule text in the October 1, 2003, edition of the *Code of Federal Regulations* (CFR), we established the interim final rule's effective date as September 9, 2003. However, compliance was not required until March 1, 2004. On August 25, 2003, we received two petitions for reconsideration of the interim final rule. The petitioners were (1) the American Moving and Storage Association (the Association) and (2) United Van Lines, LLC and Mayflower Transit, LLC (Unigroup). On the same date, the Association submitted a separate Petition for Stay of Effective Date.

On September 30, 2003, FMCSA delayed the compliance date for the rule indefinitely in order to consider fully the petitioners' concerns (68 FR 56208). In separate letters to the petitioners dated December 23, 2003, we conveyed our decision to make some of the requested changes through technical amendments to the interim final rule and to further consider others that are substantive in nature in a future rulemaking proceeding.

On March 5, 2004, FMCSA published technical amendments to the interim final rule (69 FR 10570, Mar. 5, 2004). Some of the amendments provided uniformity between the rule text and the appendix—the consumer pamphlet *Your Rights and Responsibilities When You Move*—while others clarified certain provisions, reflected current industry practice, or corrected typographical errors. In addition, certain technical amendments revised language that was contrary to the statutory intent of the ICC Termination Act of 1995 (ICCTA) (Public Law 104–88, 109 Stat. 803), as codified at 49 U.S.C. 14104 and 14708.

The March 5, 2004, notice of technical amendments stated our intent to consider certain substantive amendments requested by the petitioners in a future rulemaking. As these substantive amendments involve changes to prescribed operational practices of movers, and in some cases have a direct impact on consumers, the public should be given an opportunity to comment.

On March 16, 2004, we received from the Association a Petition for Reconsideration and Stay of the Interim Final Rule and Technical Amendments Compliance Date. In response to the petitioner's concerns, we have made clarifying technical amendments to the interim final rule, chiefly to its appendix, and established a new compliance date for the rule.

However, as discussed in more detail below, we are not adopting all of the Association's proposed changes. Therefore, its petition is granted in part and denied in part.

All except one of the technical amendments being adopted today appear in the consumer pamphlet *Your Rights and Responsibilities When You Move* (Appendix A to Part 375). Section 375.213 requires movers to furnish the information in this pamphlet to prospective customers. For movers with Internet access, printing copies of the amended consumer pamphlet need not be burdensome. The updated pamphlet is posted on FMCSA's Web site, at *http://www.fmcsa.dot.gov/*, where it can be downloaded and printed.

Purpose of the Household Goods Regulations

The amended interim final rule, including today's technical amendments, is intended to (1) increase the public's understanding of the regulations with which movers must comply, and (2) help individual shippers and the moving industry understand the roles and responsibilities of movers, brokers, and shippers, to prevent moving disputes. Individual shippers—substantial numbers of whom are either relocating for business reasons or retired—may use for-hire truck transportation services infrequently. Thus, these consumers may be poorly informed about the regulations with which movers must comply and have little understanding of how moving companies operate. The consumer pamphlet *Your Rights and Responsibilities When You Move* is intended to help individual shippers understand the regulations so that they can make informed decisions in selecting a mover and planning a satisfactory move.

Discussion of Today's Further Amendments to the Technical Amendments

Many of the technical amendments being adopted today conform the appendix with the text of the regulations to ensure the consumer information is consistently clear and explicit. The discussion below groups the technical amendments into three subject areas—service charges and extension of credit, billing periods, and movers' tariffs.

Service Charges and Extension of Credit

The Association pointed out a number of errors in the section of the consumer pamphlet entitled *May My Mover Extend Credit to Me?*, under subpart B of the appendix (*Before Requesting Services from Any Mover*). Several paragraphs of this section, as published in the June 11, 2003, interim final rule and unchanged in the technical amendments issued on March 5, 2004, misinformed consumers both about the standard credit period for household goods movers and about the rules on service charges. This language contradicts our regulations at § 375.807. We have amended this section of the consumer pamphlet to reflect the following requirements:

- The standard credit period for household goods movers is 7 days, not 15 days.
- Movers may not establish their own standard credit period of up to 30 calendar days.
- Movers may not establish service charges since their service charge amount is prescribed by § 375.807(c)(2).
- Movers may not establish additional service charges since these too are prescribed by § 375.807(c)(2).
- No instructions apply to the movers' computation of service charges.
- Movers are not required to furnish explicit advice to shippers about service charges.

Billing Period for Additional Services

Prior to the interim final rule published on June 11, 2003, our regulations provided for a standard 15-day freight bill presentation period for household goods collect-on-delivery (COD) shipments, except for shipments moving under non-binding estimates where the transportation charges exceeded 110 percent of the non-binding estimate. Under these circumstances, the mover was required to defer billing for the additional charges for 30 days after the delivery date (see former sections 375.3(d) and 377.215).

The interim final rule retained this exception to the 15-day rule in sections 375.407(d) and 375.801(b). It also added a second exception to the 15-day rule—in sections 375.403(a)(7) and (8) and 375.405(b)(9) and (10)—by requiring carriers to wait at least 30 days before billing shippers for additional services provided after the household goods are in transit. The Association objects to this requirement, and requests it be removed.

However, amending the 30-day requirement would be a substantive change to the regulations, requiring notice-and-comment rulemaking. We will consider revisions to the billing period in a future rulemaking proceeding. At that time, we also will consider changes to §§ 375.403(a)(8) and 375.405(b)(10), related to individual shipper requests for additional services after the household goods are in transit. In the Association's view, movers have a right to payment within the standard 15-day billing period when the shipper has requested such additional services. This issue deserves careful consideration, and we will ensure the public has an opportunity to comment on any proposed changes.

In addition to its objection to the interim final rule's establishment of a 30-day billing period for charges for additional services, the Association finds the consumer pamphlet language of Subpart D (Estimating Charges) inconsistent with that of Subpart H (Collection of Charges). While Subpart D informs consumers that additional services rendered cannot be billed prior to 30 days after the date of delivery, Subpart H, under the section If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment * * *, cites a 15-day billing period for "all transportation charges." We agree that this section of the consumer pamphlet should be clearer, and have amended it by deleting the word "all" and adding the sentence: "However, charges exceeding 110 percent of a non-binding estimate, and charges for additional services requested or found necessary after the shipment is in transit, will be presented no sooner than 30 days after the date of delivery."

We made a related technical amendment to § 375.403(a)(8). The third sentence of that subparagraph now reads: "You must bill for the payment of the balance of any remaining charges for additional services no sooner than 30 days after the date of delivery."

The Association believes that §§ 375.403(a)(7) and 375.405(b)(9) are in conflict with our regulation at § 375.407(c). We disagree, and believe that § 375.407(c) is clear as written. Under the regulations, movers must defer for 30 days billing for charges in excess of 110 percent of a non-binding estimate and charges for additional services provided after the shipment was in transit. Although the latter requirement was introduced in the June 11 interim final rule, the former has been in effect for more than 25 years. Section § 375.407(c) ends with the sentence "After this 30-day period, you may demand payment of the balance of any remaining charges, as explained in § 375.405." The cross-reference to § 375.405 in this sentence makes it clear that "any remaining charges" for which movers must defer billing include not only charges in excess of 110 percent of a non-binding estimate but also charges for additional services provided after the goods are in transit. Therefore, we believe that § 375.407(c) does not require amendment.

With respect to the interim final rule's introduction of a requirement that carriers wait 30 days to bill individual shippers for additional services provided after the goods are in transit, we inadvertently failed to incorporate this requirement in section 375.801 as amended March 5, 2004. We amended section 375.801 because, as originally published, it applied only to binding estimates and did not accurately reflect industry practice (*see* 69 FR 10572, Mar. 5, 2004). In making this change, however, we inadvertently eliminated the reference to the 30-day exceptions that had previously appeared in sections 377.215 and 375.801(b). We did not intend to eliminate the exception to the 15-day rule codified in 375.403(a)(7) and (8), 375.405(b)(9) and (10), and 375.407(d). Notice-and-comment rulemaking would have been required in order to make such substantive changes. Therefore, section 375.801(b) has a limited reach and should be narrowly construed consistent with sections 375.403(a)(7) and (8), 375.405(b)(9) and (1) and 375.407(d).

Finally, we made two technical amendments to clarify the regulations regarding billing periods in the consumer pamphlet *Your Rights and Responsibilities When You Move:*

(1) At several points we added a clarifying parenthetical sentence: "(Bills for charges exceeding 110 percent of a non-binding estimate, and for additional services requested or found necessary after the shipment is in transit, will be presented no sooner than 30 days after the date of delivery."). This was added in the section How Must My Mover Collect Charges? under subpart B and in three sections of subpart H (How Must My Mover Present Its Freight or Expense Bill to Me?; If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Must My Mover Collect

the Balance?; and What Actions May My Mover Take To Collect From Me the Charges Upon Its Freight Bill?).

(2) In the numbered subparagraph (7) of Binding Estimates (under the section How Must My Mover Estimate Charges Under the Regulations? of subpart D), we added to the second sentence the clarifying language "for these additional services no sooner than 30 days after delivery." The new sentence reads: "Your mover must bill you for the balance of any remaining charges for these additional services no sooner than 30 days after the date of delivery." The phrase "no sooner than 30 days after the date of delivery" also was added to the last sentence of this subparagraph.

Movers' Tariffs

The petitions for reconsideration FMCSA received from the Association and Unigroup on August 25, 2003, requested that we clarify references to movers' tariffs by prefacing "tariffs" with the adjectival phrase "applicable portions of." In the technical amendments published March 5, 2004, we made the requested change (substituting "applicable sections" for "applicable portions") in the section *What Other Information Must My Mover Provide Me?* under subpart B of the consumer pamphlet. However, as the Association noted in the petition we received on March 16, 2004, we failed to insert the requested language in the section *Non-Binding Estimates* (also under subpart B) of the pamphlet. We have amended the fifth sentence of the second paragraph of that section as follows: "That is why it is important to ask for copies of the applicable portions of the mover's tariffs before deciding on a mover."

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

We have determined these technical amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866 and within the meaning of DOT regulatory policies and procedures (44 FR 11034, Feb. 26, 1979). This document was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Public Law 104–121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As noted in the *Regulatory Flexibility Act* section of the interim final rule published on June 11, 2003, and of the technical amendments issued on March 5, 2004 (69 FR 10570), this rule does not impose a significant economic impact on a substantial number of small entities. The original rule issued by the former Interstate Commerce Commission imposed paperwork requirements (creating, duplicating, and storing records, and practicing inventory control for those records) that were estimated at 785 hours for each entity (moving company). The interim final rule published on June 11, 2003, increased this time-and-cost burden by 458 hours, to an estimated total of 1,243 burden hours per entity.

Today's further technical amendments do not increase the estimated burden hours for compliance with the household goods transportation regulations. The technical amendments respond to an industry petition, and are intended to ensure the interim final is consistently clear, unambiguous, and accurate. Most entities, including small entities, already follow the principles, practices, and procedures captured in these corrections to the technical amendments. Therefore, FMCSA certifies that these technical amendments will not have a significant impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

The *Federalism* section in our interim final rule published on June 11, 2003, and of the technical amendments published on March 5, 2004 (69 FR 10570), noted that the rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, Aug. 10, 1999). State Attorneys General and other State and local officials submitted comments to the May 1998 NPRM (63 FR 27126, May 15, 1998). We considered these comments in developing the interim final rule, and placed the comments in the rulemaking docket.

FMCSA certifies that the rule published on June 11, 2003, has federalism implications because it directly impacts the distribution of power and responsibilities among the various levels of government. Federalism implications likewise attach to today's technical amendments.

We have submitted a federalism summary impact statement for the June 11, 2003, interim final rule to the Director of the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA determined that the changes in the June 11, 2003, interim final rule will not have an impact of $100 million or more in any one year. No significant additional impact is associated with today's further technical amendments.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. FMCSA sought approval of the information collection requirements in the "Transportation of Household Goods; Consumer Protection Regulations" interim final rule published on June 11, 2003. On June 19, 2003, OMB assigned control number 2126–0025 to this information collection, and the approval expires on June 30, 2006.

OMB approved 600,000 annual responses, 4,370,037 annual burden hours, and annual costs to respondents of $37,247,000. It also approved FMCSA form number MCSA–2P to be used as part of the information collection process. Today's technical amendments do not affect this information collection.

A detailed analysis of the burden hours can be found in the OMB Supporting Statement for this rule. The Supporting Statement and its attachments are in Docket No. FMCSA–97–2979.

National Environmental Policy Act

The agency has analyzed these technical amendments for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). We have determined under our environmental procedures Order 5610.1, published March 1, 2004, that this action is categorically excluded (CE) under Appendix 2, paragraph 6.m. of the Order from further environmental documentation. This CE relates to regulations implementing procedures

applicable to the operations of household goods carriers engaged in the transportation of household goods. In addition, the agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, we believe the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this action under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. We have preliminarily determined that approval of this action would be exempt from the CAA's General Conformity requirement since it is merely a technical amendment to an existing rule. See 40 CFR 93.153(c)(2). We believe that it will not result in any emissions increase, nor will it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, we believe it is reasonably foreseeable that the rule will not increase total commercial motor vehicle mileage, change the routing of commercial motor vehicles, change how commercial motor vehicles operate, or change the commercial motor vehicle fleet-mix of motor carriers.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12988 (Civil Justice Reform)

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

List of Subjects in 49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, FMCSA amends 49 CFR part 375 as set forth below:

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 13301, 13704, 13707, 14104, 14706; and 49 CFR 1.73.

■ 2. Amend § 375.403 by revising paragraph (a)(8) to read as follows:

§ 375.403 How must I provide a binding estimate?

(a) * * *

(8) If the individual shipper requests additional services after the household goods are in transit, you must inform the individual shipper of the additional charges that will be billed. You must require full payment at destination of the original binding estimate only. You must bill for the payment of the balance of any remaining charges for additional services no sooner than 30 days after the date of delivery. For example, if your binding estimate to an individual shipper estimated total charges at delivery as $1,000, but your actual charges at destination are $1,500, you must deliver the shipment upon payment of $1,000. You must then issue freight or expense bills no sooner than 30 days after the date of delivery for the remaining $500.

* * * * *

■ 3. Amend Appendix A as published on March 5, 2004, at 69 FR 10580 as follows:

■ a. Amend subpart B by revising the second paragraph of the section *How Must My Mover Collect Charges?*, and, in the section *May My Mover Extend Credit to Me?*, by revising the second paragraph, by removing the third paragraph and numbered subparagraphs (1) and (2), and by removing the numeral (3) preceding the final paragraph and republishing that paragraph.

■ b. Amend subpart D, under the section *How Must My Mover Estimate Charges Under the Regulations?*, by revising numbered subparagraph (7) of *Binding Estimates*, and revising the second paragraph and numbered subparagraph (10) of *Non-Binding Estimates*.

■ c. Amend subpart H by revising the 9th paragraph of the section *How Must My Mover Present Its Freight or Expense Bill to Me?;* by revising the section *If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Must My Mover Collect the Balance?;* and by revising the first three paragraphs and the numbered subparagraph (1) of the section *What Actions May My Mover Take To Collect From Me the Charges Upon Its Freight Bill?*.

The revisions read as follows:

APPENDIX A TO PART 375—YOUR RIGHTS AND RESPONSIBILITIES WHEN YOU MOVE

Subpart B—Before Requesting Services From Any Mover

* * * * *

How Must My Mover Collect Charges?

* * * * *

Your mover must present its freight or expense bill to you within 15 days of the date of delivery of a shipment at its destination. The computation of time excludes Saturdays, Sundays, and Federal holidays. (Bills for charges exceeding 110 percent of a non-binding estimate, and for additional services requested or found necessary after the shipment is in transit, will be presented no sooner than 30 days after the date of delivery.) * * *

May My Mover Extend Credit to Me?

* * * * *

The credit period must begin on the day following presentation of your mover's freight bill to you. Under Federal regulation, the standard credit period is 7 days, excluding Saturdays, Sundays, and Federal holidays. Your mover must also extend the credit period to a total of 30 calendar days if the freight bill is not paid within the 7-day period. A service charge equal to one percent of the amount of the freight bill, subject to a $20 minimum, will be assessed for this extension *and* for each additional 30-day period the charges go unpaid.

* * * * *

Your failure to pay within the credit period will require your mover to determine whether you will comply with the Federal household goods transportation credit regulations in good faith in the future before extending credit again.

Subpart D—Estimating Charges

* * * * *

How Must My Mover Estimate Charges Under the Regulations?

Binding Estimates

* * * * *

(7) If you add additional services after your household goods are in transit, you will be billed for the additional services but only be expected to pay the full amount of the binding estimate to receive delivery. Your mover must bill you for the balance of any remaining charges for these additional services no sooner than 30 days after delivery. For example, if your binding estimate shows total charges at delivery should be $1,000 but your actual charges at destination are $1,500, your mover must deliver the shipment upon payment of $1,000. The mover must bill you for the remaining $500 no sooner than 30 days after the date of delivery.

* * * * *

Non-binding Estimates

* * * * *

A non-binding estimate is not a bid or contract. Your mover provides it to you to give you a general idea of the cost of the move, but it does not bind your mover to the estimated cost. You should expect the final cost to be more than the estimate. The actual cost will be in accordance with your mover's tariffs. Federal law requires your mover to collect the charges shown in its tariffs, regardless of what your mover writes in its non-binding estimates. That is why it is important to ask for copies of the applicable portions of the mover's tariffs before deciding on a mover. The charges contained in movers' tariffs are essentially the same for the same weight shipment moving the same distance. If you obtain different non-binding estimates from different movers, you must pay only the amount specified in your mover's tariff. Therefore, a non-binding estimate may have no effect on the amount that you will ultimately have to pay.

* * * * *

(10) If you add additional services after your household goods are in transit, you will be billed for the additional services. To receive delivery, however, you are required to pay no more than 110 percent of the non-binding estimate. At least 30 days after delivery, your mover must bill you for any remaining balance, including the additional services you requested. For example, if your non-binding estimate shows total charges at delivery should be $1,000 but your actual charges at destination are $1,500, your mover must deliver the shipment upon payment of $1,100. The mover must bill you for the remaining $400 no sooner than 30 days after the date of delivery.

* * * * *

Subpart H—Collection of Charges

* * * * *

How Must My Mover Present Its Freight or Expense Bill to Me?

* * * * *

On "collect" shipments, your mover must present its freight bill for transportation charges on the date of delivery, or, at its discretion, within 15 days, calculated from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays. (Bills for charges exceeding 110 percent of a non-binding estimate, and for additional services requested or found necessary after the shipment is in transit, will be presented no sooner than 30 days from the date of delivery.)

* * * * *

If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Must My Mover Collect the Balance?

On "collect-on-delivery" shipments, your mover must present its freight bill for transportation charges within 15 days, calculated from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays. (Bills for charges exceeding 110 percent of a non-binding estimate, and charges for additional services requested or found necessary after the shipment is in transit, will be presented no sooner than 30 days after the date of delivery.)

What Actions May My Mover Take To Collect From Me the Charges Upon Its Freight Bill?

Your mover must present a freight bill within 15 days (excluding Saturdays, Sundays, and Federal holidays) of the date of delivery of a shipment at your destination. (Bills for charges exceeding 110 percent of a non-binding estimate, and for additional services requested or found necessary after the shipment is in transit, will be presented no sooner than 30 days after the date of delivery.)

The credit period must be 7 days (excluding Saturdays, Sundays, and Federal holidays).

Your mover must provide in its tariffs the following three things:

(1) A provision automatically extending the credit period to a total of 30 calendar days for you if you have not paid its freight bill within the 7-day period.

* * * * *

Issued on: March 30, 2004.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 04–7553 Filed 4–1–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

RIN 1018–AJ27

Migratory Bird Subsistence Harvest in Alaska; Subsistence Harvest Regulations for Migratory Birds in Alaska During the Spring/Summer 2004 Subsistence Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is publishing spring/summer migratory bird subsistence harvest regulations in Alaska for the 2004 subsistence season. This final rule would set regulations that prescribe frameworks, or outer limits, for dates when harvesting of birds may occur, species that can be taken, and methods and means excluded from use. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. These regulations are intended to provide a framework to enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking promulgates regulations that start on April 2, 2004, and expire on August 31, 2004, for the spring/summer subsistence harvest of migratory birds in Alaska.

DATES: The amendments to Subparts A and C of this rule become effective on April 2, 2004. The amendment to Subpart D is effective April 2, 2004 through August 31, 2004.

ADDRESSES: The administrative record for this rule may be viewed at the office of the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Mail Stop 201, Anchorage, Alaska 99503.

SUPPLEMENTARY INFORMATION:

What Events Led to This Action?

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of

Migratory Birds in Canada and the United States (Canada Treaty). The treaty prohibited all commercial bird hunting and specified a closed season on the taking of migratory game birds between March 10 and September 1 of each year. In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and Game Mammals (Mexico Treaty). The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1. Neither treaty allowed adequately for the traditional harvest of migratory birds by northern peoples during the spring and summer months. This harvest, which has occurred for centuries, was and is necessary to the subsistence way of life in the north and thus continued despite the closed season.

The Canada Treaty and the Mexico Treaty, as well as migratory bird treaties with Japan (1972) and Russia (1976), have been implemented in the United States through the Migratory Bird Treaty Act (MBTA). The courts have ruled that the MBTA prohibits the Federal Government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The Canada and Mexico treaties thus prevented the Federal Government from permitting the traditional subsistence harvest of migratory birds during spring and summer in Alaska. To remedy this situation, the United States negotiated Protocols amending both the Canada and Mexico treaties to allow for spring/summer subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

What Has the Service Accomplished Under the Amended Treaty?

In 1998, we began a public involvement process to determine how to structure management bodies to provide the most effective and efficient involvement for subsistence users. This process was concluded on March 28, 2000, when we published in the **Federal Register** (65 FR 16405) the Notice of Decision "Establishment of Management Bodies in Alaska to Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds." This notice described the establishment and organization of 12 regional management bodies plus the Alaska Migratory Bird Co-management Council (Co-management Council).

Establishment of a spring/summer migratory bird subsistence harvest began on August 16, 2002, when we published in the **Federal Register** (67 FR 53511) a final rule at 50 CFR part 92 that set procedures for incorporating subsistence management into the continental migratory bird management program. These regulations established an annual procedure to develop harvest guidelines to implement a spring/summer migratory bird subsistence harvest.

The next step established the first spring/summer subsistence migratory bird harvest system. This was finalized on July 21, 2003, when we published in the **Federal Register** (68 FR 43010) a final rule at 50 CFR parts 20, 21, and 92 that created the first annual harvest regulations for the 2003 spring/summer subsistence migratory bird season in Alaska. These annual frameworks were not intended to be a complete, all-inclusive set of regulations, but were intended to regulate continuation of customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. See the August 16, 2002, and July 21, 2003, final rules for additional background information on the subsistence harvest program for migratory birds in Alaska.

Why Is This Rule Necessary and What Does It Do?

This rulemaking is necessary because the migratory bird harvest season is closed unless opened, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. The Co-management Council held meetings in April, May, and July of 2003, to develop recommendations for changes effective for the 2004 harvest season. These recommendations were presented to the Service Regulations Committee (SRC) on July 30 and 31, 2003, for action.

On January 12, 2004, we published a proposed rule in the **Federal Register** (69 FR 1686) to establish annual spring/summer subsistence migratory bird harvest regulations for Alaska for the 2004 season. We received written responses from 11 entities. One of the responses was from an individual, two from the Co-management Council, one from the National Park Service, six from nongovernmental organizations, and one from the Alaska Department of Fish and Game.

This rule establishes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring/summer of 2004. This rule lists migratory bird species that are open or closed to harvest, as well as season openings and closures by region. It also explains minor changes in the methods and means of taking migratory birds for subsistence purposes. This rule amends 50 CFR 92.5 by adding 13 new communities to the list of included areas, and adds corresponding harvest areas and season dates to 50 CFR 92.33. This rule also amends 50 CFR 92.6 to allow for permits to be issued for possession of bird parts or eggs for scientific research or educational purposes and to prohibit the use of taxidermy.

How Will the Service Continue To Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?

The Service has an emergency closure provision (§ 92.21), so that if any significant increases in harvest are documented for one or more species in a region, an emergency closure can be requested and implemented. Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (§ 92.5). These geographical restrictions open the initial spring/summer subsistence migratory bird harvest to only about 13 percent of Alaska residents. High-population areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from the eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, the Co-management Council at its April and May 2003 meetings recommended that 13 additional communities be included, starting in 2004, based on the five criteria set forth in § 92.5(c). The Upper Copper River region would include the communities of Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, and Chistochina, totaling 1,172 people. The Gulf of Alaska region would include the Chugach communities of Tatitlek, Chenega, Port Graham, and Nanwalek, totaling 541 people. The Cook Inlet region proposed to add only the community of Tyonek, population 193, and the Southeast Alaska region proposed to add only the community of Hoonah, population 860. In addition, subsistence users of Hoonah are requesting only to continue their tradition of harvesting gull eggs. The land and waters of Glacier Bay National Park are regulated to remain closed to all subsistence harvesting (50 CFR part 100.3). These new regions would increase the percentage of the State population included in the spring/

summer subsistence bird harvest to 13.5 percent.

Upon publication of the 2003 proposed harvest regulations (68 FR 6697, February 10, 2003), five Kodiak area organizations expressed a need to close the Kodiak road system starting in the 2003 season. Their primary concern was the likelihood of overharvesting, primarily by user groups that have not demonstrated customary and traditional uses of migratory birds and will have easy access to this resource. On the basis of public testimony and written comments, the Service left closed to harvesting a buffer zone around the Kodiak Island road system under § 92.33(e). The conservation concern is the nontraditional access posed by the road system in a region where the migratory bird hunting is traditionally done by boat in marine waters. In April 2003, the Co-management Council recommended extending this closure to include an additional buffer strip of 500 feet extending beyond the water's edge, to be effective during the 2004 season. Closing the road system and water's edge to the spring and summer subsistence migratory bird harvest will help ensure that local increases in harvest do not occur under the 2004 regulations.

Subsistence harvest has been monitored for the past 15 years through the use of annual household surveys in the most heavily used subsistence harvest areas, *e.g.*, Yukon-Kuskokwim Delta. Continuation of this monitoring would enable tracking of any major changes or trends in levels of harvest and user participation after legalization of the harvest. In the March 3, 2003, **Federal Register** (68 FR 10024), we published a notice of intent to submit the Alaska Subsistence Household Survey Information Collection Forms to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, with a subsequent 60-day public comment period. In the July 31, 2003, **Federal Register** (68 FR 44961), we published a notice that the Alaska Subsistence Harvest Survey Information Collection Forms were submitted to OMB for approval under the Paperwork Reduction Act, with a 30-day public comment period. OMB approved the information collection on October 2, 2003, and assigned OMB control number 1018–0124, which expires on October 31, 2006.

How Did the Service Develop the Methods and Means Prohibitions, and What Are the Changes for 2004?

In development of the initial regulations (68 FR 6697), the Co-management Council encouraged the Service to adopt the existing methods and means prohibitions that occur in the Federal (50 CFR 20.21) and Alaska (5AAC92.100) migratory bird hunting regulations. Some exceptions to the Federal regulations were made in the initial regulations and also in this rule to allow the continuation of customary and traditional spring harvest methods, but not the creation of new traditions. In this rule, we have incorporated the Bristol Bay region's request to be added to the list of areas where use of air boats is prohibited for hunting or transporting hunters.

What Is New With Establishing Bird Harvest Limits?

The Co-management Council recommended the current set of regulations to the Service without setting harvest limits, with the recognition that setting limits by area or species may become necessary. These initial years' harvest regulations provide general frameworks to enable the customary and traditional subsistence uses of migratory birds in Alaska. Within these frameworks, the first step in limiting the overall subsistence harvest was to establish a closed species list that included regional restrictions. Establishing a 30-day closed period during the breeding season also limited the harvest impacts. The eventual need to further adjust levels of harvest, either regionally or overall, is recognized and will be addressed by the Co-management Council on the basis of recommendations by the Council's Technical Committee on a species-by-species basis. These decisions will likely be based on bird population status and past subsistence harvest data. Concepts such as community harvest limits and/or designated hunters may be considered to accommodate customary and traditional subsistence harvest methods.

How Did the Service Decide the List of Birds Open to Harvest?

We believed that it was necessary to develop a list of bird species that would be open to subsistence harvest during the spring/summer season. The original list was compiled from subsistence harvest data, with several species added based on their presence in Alaska without written records of subsistence take. The original intent was for the list to be reviewed by the regional management bodies as a checklist. The list was adopted by the Co-management Council as part of the guidelines for the 2003 season. Most of the regions adopted the list as written; however, two regions created their own lists. One regional representative explained that it would take much more time than was available for his region to reduce the list and that, once a bird was removed, returning it to the list would be more difficult later. Going with the original list was viewed as protecting hunters from prosecution for the take of an unlisted bird. To understand this rationale, one must be aware that subsistence hunting is generally opportunistic and does not usually target individual species. Native language names for birds often group closely related species, with no separate names for species within these groups. Also, preferences for individual species differ greatly between villages and individual hunters. As a result, regions are hesitant to remove birds from the list open to harvest until they are certain the species are not taken for subsistence use. The list therefore contains some species that are taken infrequently and opportunistically, but this is still part of the subsistence tradition. The Co-management Council initially decided to call this list "potentially harvested birds" versus "traditionally harvested birds" because a detailed written documentation of the customary and traditional use patterns for the species listed had not yet been conducted. However, this terminology was leading to some confusion, so we renamed the list "subsistence birds" to cover the birds open to harvest.

The "customary and traditional use" of a wildlife species has been defined in Federal regulations (50 CFR 100.4) as a long-established, consistent pattern of use, incorporating beliefs and customs that have been transmitted from generation to generation. Much of the customary and traditional use information has not been documented in written form, but exists in the form of oral histories from elders, traditional stories, harvest methods taught to children, and traditional knowledge of the birds' natural history shared within a village or region. The only available empirical evidence of customary and traditional use of the harvested bird species comes from Alaska subsistence migratory bird harvest surveys conducted by Service personnel and contractors and transferred to a computerized database. Because of difficulties in bird species identification, shorebird harvest information has been lumped into "large shorebird" and "small shorebird" categories. In reality, Alaska subsistence harvests are also conducted in this manner, generally with no targeting or even recognition of individual shorebird species in most cases. In addition, Red-

faced Cormorants, Trumpeter Swans, Aleutian Terns, Whiskered Auklets, Short-eared Owls, and others have not been targeted in subsistence harvest questionnaires, so little or no numerical harvest data exists.

How Does the Service Address the Birds of Conservation Concern Relative to the Subsistence Harvest?

Birds of Conservation Concern (BCC) 2002 is the latest document in a continuing effort by the Service to assess and prioritize bird species for conservation purposes. Notice of its availability was published in the **Federal Register** on February 6, 2003 (68 FR 6179). The BCC list identifies bird species at risk because of inherently small populations, restricted ranges, severe population declines, or imminent threats. The species listed need increased conservation attention to maintain or stabilize populations. The legal authority for this effort is the Fish and Wildlife Conservation Act (FWCA) of 1980, as amended. Section 13(a)(3) of the FWCA, 16 U.S.C. 2912(a)(3), requires the Secretary of the Interior through the Service, to "identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543)."

In actuality, and fortunately, few of the species on the BCC lists are in such a precarious state that they will have to be considered for listing as endangered or threatened in the near future. Our goal is to implement preventive management measures that will serve to keep these species off the endangered species list. Proactive conservation clearly is more cost-effective than the extensive recovery efforts required once a species is federally listed under the Endangered Species Act. The BCC lists are intended to stimulate coordinated and collaborative proactive conservation actions (including research, monitoring, and management) among Federal, State, and private partners. By focusing attention on these highest priority species, the Service hopes to promote greater study and protection of the habitats and ecological communities upon which these species depend, thereby ensuring the future of healthy avian populations and communities.

Last year, of the 108 species considered for establishing regulations allowing subsistence hunting in Alaska, 22 were on BCC lists at one or more scales (*e.g.*, National, FWS Regions, or Bird Conservation Regions–Alaska). We considered one additional species not on the BCC list (Trumpeter Swan) to be "sensitive" because of its small population size and limited breeding distribution in Alaska. Of these 23 species, we authorized harvest of 14 BCC-listed species: Bar-tailed Godwits (*Limosa lapponica*), Dunlin (*Calidris alpina*), Red-legged Kittiwakes (*Rissa brevirostris*), Black Oystercatchers (*Haematopus bachmani*), Whiskered Auklets (*Aethia pygmaea*), Arctic and Aleutian Terns (*Sterna paradisaea and aleutica*), Black Turnstones (*Arenaria melanocephala*), Upland Sandpipers (*Bartramia longicauda*), Solitary Sandpipers (*Tringa solitaria*), Red-throated Loons (*Gavia stellata*), Red Knots (*Calidris canutus*), Short-eared Owls (*Asio flammeus*), and Red-faced Cormorants (*Phalacrocorax urile*). However, we stated that these species, as well as two non-BCC listed species recommended by the Alaska Department of Fish and Game, Wandering Tattler (*Heteroscelus incanus*) and the Northern Hawk-owl (*Surnia ulula*), should be given additional consideration by the Co-management Council over the coming year. We intended the Co-management Council to focus its attention on determining the importance of the harvest of these species for subsistence purposes, as well as any information on status that would be useful in future deliberations.

At a July 2003 meeting, the SRC decided to propose that 3 of the 14 BCC species (Bar-tailed Godwits [*Limosa lapponica*], Dunlin [*Calidris alpina*], and Red-legged Kittiwakes [*Rissa brevirostris*]) remain on the list of birds open to harvest in 2004. However, we continued to have conservation concerns about allowing harvest of the other 11 BCC-listed birds and the wandering tattler from last year's authorized harvest list and solicited additional public comments as well as Co-management Council documentation of past and present use and dependence on these birds. The Co-management Council pulled together regional documentation of traditional subsistence use of 9 of the 12 species in which we solicited additional comment: Black Oystercatchers, Whiskered Auklets, Arctic and Aleutian Terns, Black Turnstones, Wandering Tattlers, Upland Sandpipers, Red-throated Loons, and Red-faced Cormorants. Additional information received from the public and our decision is contained below.

Summary of Public Involvement

On January 12, 2004, we published in the **Federal Register** (69 FR 1686) a proposed rule to establish spring/summer migratory bird subsistence harvest regulations in Alaska for the 2004 subsistence season. The proposed rule provided for a public comment period of 30 days. We posted an announcement of the comment period dates for the proposed rule on the Council's internet homepage, as well as the rule itself and related historical documents. We issued a press release expressing the request for public comments and the pertinent deadlines for such comments, which was faxed to 26 members of the statewide media. By the close of the public comment period on February 11, 2004, we had received written responses from 11 entities. One of the responses was from an individual, two from the Co-management Council, one from the National Park Service, six from non-governmental organizations, and one from the Alaska Department of Fish and Game.

Response to Public Comments

Most sections of the proposed rule were addressed by commenters. This discussion addresses comments section by section, beginning with those of a general nature.

General Comments

One respondent expressed opposition to all migratory bird subsistence hunting, citing that there is no legal tradition on which to base this action and that research shows that all migratory bird species are declining.

Service Response: International migratory bird treaties clearly provide authority for migratory bird subsistence hunting, and these annual harvest regulations are the direct application of those amendments.

Two respondents urged the expeditious review of these public comments and the subsequent decisionmaking for the final rule publication. These respondents emphasized the importance to the SRC and Department of the Interior officials to open the harvest season by the scheduled April 2, 2004, date.

Service Response: We concur and are making every effort to meet the scheduled harvest opening date.

One commenter stated that the future public comment period should be expanded to 90 days to allow reasonable time for precise analysis and development of regional comments. The commenter also requested that the Secretary of the Interior ensure timely publication of the proposed rules so that these extended public comment periods can be accommodated.

Service Response: We intend to allow for a 60-day public comment period in future rulemaking processes involving

Alaska migratory bird subsistence harvest regulations.

How Will the Service Continue To Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?

One commenter expressed concern that no harvest data were collected in 2003 and said that a statistically sound plan for collecting harvest data should be implemented immediately.

Service Response: Under the Paperwork Reduction Act, 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. We applied for and received OMB approval of the associated voluntary annual household surveys used to determine levels of subsistence take in October 2003; therefore, no harvest surveys could be collected during the 2003 spring/summer harvest season. In 2004, the harvest survey program is being initiated and expanded to the subsistence eligible areas statewide based on a statistical plan developed by the Co-management Council's harvest survey committee.

How Did the Service Develop the Methods and Means Prohibitions, and What Are the Changes for 2004?

One respondent expressed appreciation for expansion of the prohibition of airboats and jet skis for subsistence hunting to include the Bristol Bay region; however, this respondent felt that these means of transportation are not traditional for subsistence hunting anywhere in Alaska, and recommended adopting this prohibition statewide.

Service Response: The Co-management Council discussed this exact issue last spring and decided it should be dealt with on a regional case-by-case basis where current problems have been identified. The Service concurs with the Co-management Council's recommendation at this time.

How Did the Service Decide the List of Birds Open to Harvest?

One commenter requested that Ivory Gulls be removed from the list of birds open to harvest. The commenter cited evidence from neighboring arctic regions that suggests subsistence harvest and global warming have caused a 90 percent population decline over the last 20 years.

Service Response: The 2002 North American Waterbird Conservation Plan cites less than 2,400 breeding Ivory Gulls in North America, all in Canada's high arctic, placing them in a category of "moderate" conservation concern. Ivory Gulls winter in the polynyas in the Chukchi and Beaufort seas and move through these areas during spring migration back to their breeding grounds in Canada. They primarily feed on small fish, but can be attracted to marine mammal carcasses such as walrus, making them available on a limited basis for subsistence harvest, primarily from St. Lawrence and Little Diomede islands. Ivory Gulls are not on the Birds of Conservation Concern list on any scale. At this time, we do not believe removal of Ivory Gulls from the list of species open to harvest is warranted. However, we will continue to seek additional information on both the biology and distribution of these gulls in Alaskan marine waters and on the customary and traditional significance of this species. Proposals to remove them from the 2005 harvest regulations can be submitted during the annual open period of November 1–December 15, 2004, and we will reconsidered them at that time.

One commenter emphasized a serious concern of a history of wasteful taking on Snowy Owls (*e.g.*, birds being shot and killed or wounded with no attempts to retrieve) in Barrow along the road system. Supporting details are provided in the letter. The commenter has contacted the Service's law enforcement division to request an investigation and stepped-up enforcement efforts. The commenter is now requesting a voluntary regulatory closure of Snowy Owls from harvest in Barrow until this issue is resolved.

Service Response: We are aware of the enforcement issue presented and are taking appropriate actions. Closing the legal subsistence harvest of Snowy Owls along the Barrow road system would not prevent the malicious shooting of these birds since they are likely not being shot with any intention of use for subsistence.

One commenter offered general recommendations on how the Service should approach management of the subsistence harvest of all shorebird species. The commenter suggested: (1) Managing shorebirds in a global, year-round context; (2) managing species at the population or local level; (3) managing species conservatively; (4) restricting harvest to customary and traditional areas; (5) confirming the identity of traditional harvested species; (6) monitoring harvest at appropriate levels of resolution; and (7) initiating outreach activities with subsistence hunters.

Service Response: We have initiated outreach with the subsistence users; however, initial efforts have focused on identification of the closed species. As this effort is expanded, efforts will focus on species groups with known hunter identification problems such as many of the shorebirds. We agree that the intention of the international migratory bird treaties is to promote species management between countries, but this regulatory process focuses primarily on Alaska at this time. Improving the harvest monitoring of subsistence-taken migratory birds in Alaska is a high priority for the Service, with a statistically sound plan being developed and implemented in 2004.

One respondent tackled the entire issue of determining which bird species should be open for harvest. The respondent pointed out that this subject has consumed a substantial amount of time over the past 2 years, and the respondent hopes that the 2004 regulations will establish a list of open species that will be generally acceptable for the next few years. The respondent expressed that the process of designating species open or closed for harvest has been inhibited by: (1) Pressure on the Co-management Council to reduce the overall number of species open to hunting; (2) a lack of population status and trends data to back conservation concerns for species in question; and (3) by the absence of species evaluation criteria based on both biology and treaty implementation guidelines. This respondent followed up with a recommendation that the Service and Co-management Council promptly develop a process and criteria for evaluating species open or closed to harvest. Criteria for evaluation should include: (1) A customary and traditional use determination; (2) species population status and trends data; (3) harvest data; and (4) other factors affecting the population such as habitat and climate changes and hunting in other portions of the species' range.

This same respondent expresses appreciation that the public in other parts of the country may not understand the full scope of subsistence in Alaska and how we can manage this traditional harvest in a sustainable manner. In the respondent's view, during the 2003 and 2004 regulatory cycles, too much pressure was placed on the regional groups to gather evidence of customary and traditional use, and then agency staff did not coordinate or supplement the largely anecdotal information that was submitted. The respondent feels that the Service needs to accept the responsibility for conducting research on traditional use, with appropriate expertise including the State, to develop thorough records from ethnographic

studies, biological data, and sources of local knowledge.

Service Response: The species selection process occurs annually in Co-management Council deliberations and the Service's regulatory process. These recommendations will be brought to the attention of the Co-management Council to develop a course of action for a more consistent deliberation process in regard to the list of bird species open to harvest. We are currently researching the best way to gather and bring together traditional ecological knowledge. A workshop on this subject is scheduled for the April 2004 meeting of the Co-management Council.

How Does the Service Address the Birds of Conservation Concern Relative to the Subsistence Harvest?

Two respondents reminded the Service that 7 of the 12 species of conservation concern are also on the Audubon Watchlist because of well-documented population declines, giving further support for removal of these species from the harvest list. However, one respondent did recognize the need to consider traditional use and dependence on these species and recommended that if they are left open to harvest, then (1) harvest lists should be regionalized and (2) the Service should specify that only traditional uses of these birds are permitted.

Service Response: The issue of regionalizing bird harvest lists has been proposed for the 2005 harvest season, and the Co-management Council will be making recommendations on this issue in April 2004. As for requiring only traditional uses of birds, the Migratory Bird Treaty Amendments and current regulations already specify that birds may be taken for human consumption only, with nonedible byproducts available to be used for other purposes, except taxidermy. In addition, no migratory birds, their parts, or their eggs may be sold, offered for sale, or purchased.

Bar-tailed Godwits, Dunlin, and Red-legged Kittiwakes: Two respondents recommended that the Service reconsider removing Bar-tailed Godwits, Dunlin, and Red-legged Kittiwakes from the list of birds open to harvest. It was pointed out that no justification was offered in the **Federal Register** documents to justify the prior decision of the SRC to keep them open to harvest. In the case of Dunlin, the primary concern is the arctic race (*Calidris alpina articola*), which is on the Audubon WatchList. The respondents also stated that for Bar-tailed Godwits, the concern is poor reproductive success and the "look-alike" issue with the other Godwits.

One additional respondent also requested reconsideration for Bar-tailed Godwits. This respondent explained that they are concerned with subsistence harvest of the Bar-tailed Godwit because of the high likelihood that the current level of harvest is above that which is sustainable. First, post-breeding surveys suggest that large-scale reproductive failures have occurred repeatedly during the past five years within the Alaska breeding population for unknown reasons. Secondly, Godwits from this population are harvested for subsistence in other portions of the flyway (*e.g.*, China and New Zealand) in addition to Alaska; the levels of such harvest and their cumulative impacts on the population are largely unknown but could be significant. In addition, allowing hunting of Bar-tailed Godwits may result in incidental harvest of closely related hudsonian and marbled godwits. This respondent further requests that the Service: (1) Develop a population-viability model to estimate the effect of the harvest on the population; (2) set up an international agreement on the level of subsistence harvest among all countries hosting significant portions of the species population; (3) acquire harvest data from the other countries involved in take of this species; and (4) acquire accurate subsistence harvest data from villages in the key staging areas in western Alaska.

Service Response: As for reconsideration for Bar-tailed Godwits, Dunlin, and Red-legged Kittiwakes, the Service decided to keep these on the list of birds open to harvest in 2004, based on a comparison of documented traditional take and subsistence importance with the population data used to place these birds on the BCC list. Red-legged Kittiwakes are of well-documented importance in the Pribilof Islands, and continued harvest actually promotes closer protection of their nesting habitat among the local residents. Bar-tailed Godwits are an important subsistence resource for a small number of villages in the Yukon-Kuskokwim Delta, where there is little overlap with the other godwit species. Dunlin are lumped with other small shorebirds in the harvest data, but this harvest is documented as locally important for some small, coastal villages in the Yukon-Kuskokwim Delta and the Bering Straits region. For all three of these species, a significant local dependence was well documented; however, their actual reported take was very low relative to the species' population size and limited in scope to only a few small communities in western Alaska. We note that proposals can be submitted to request removal of these species with further justification for future seasons, and these proposals will be reconsidered at that time.

Service Response Note: Because of the wide-ranging views and comments we received on the remainder of this subject, we have responded to these additional concerns at the end of this summary of public comments (§ 92.32).

Solitary Sandpiper: One respondent requests removal from the list of birds open to harvest. Despite having one of the largest breeding ranges of any North American sandpiper, the current continental population of the Solitary Sandpiper is estimated to be only 25,000 individuals. The respondent explains that the estimated population size of the Alaskan-breeding race, *T. s. cinnamomea,* is only 4,000 individuals. If accurate, this population estimate indicates that the Alaskan-breeding race of the Solitary Sandpiper is among the most rare shorebirds in North America. Breeding Bird Survey data from Alaska since 1980 reveal a population decline of 4.1 percent per year, suggesting that the Alaskan population today is only a third as large as it was a quarter century ago.

Black Oystercatcher: One commenter requests removal from the list of birds open to harvest. The commenter explains that the worldwide population of the Black Oystercatcher is estimated to number fewer than 11,000 individuals, with 60 percent of those residing in Alaska. Oystercatchers are completely dependent upon a narrow coastal area throughout their life cycle, where they are highly susceptible to human disturbance and oil spills. Their strong fidelity to breeding territories, easy accessibility, conspicuous behavior, and limited reproductive potential make them particularly vulnerable to local extirpation through persistent subsistence harvest of either breeding adults or eggs.

Red Knot: One commenter requests removal from the list of birds open to harvest. The commenter explains that recent evidence suggests that populations of at least three of the five subspecies of Red Knot have been declining, some precipitously so, within the past 3 years. Little is known about the distribution or status of the population occurring in Alaska (*C. c. roselaari*), but its population size is thought to total only about 20,000 individuals. This subspecies may mix on some wintering areas in South America with the subspecies *C. c. rufa,* whose population size plummeted by 47 percent 2000–02 and whose adult

survival rate dropped by 37 percent 2000–01. Knots are taken for food in some regions of South America, especially in the Guianas, and for sport in Barbados. The extent of this take is suspected to be substantial. All of the major migration staging sites and most of the major nonbreeding range are on temperate coastlines where sea level change is predicted to be greatest. Concentration of the entire population of Knots at these few staging sites also makes them vulnerable to habitat degradation.

One respondent requests that harvest should be continued for Wandering Tattlers, Upland Sandpipers and Black Turnstones only if: (1) Subsistence harvest is allowed only within the regions in which there is documented customary and traditional harvest; and (2) accurate subsistence harvest data are gathered at the regional level to monitor possible impacts of such harvest on the populations. The respondent explained that harvest of geographically restricted or isolated populations could result in local extirpation, and that accurate harvest data would be necessary to monitor potential impacts.

One commenter requests that all of the 12 birds with conservation concerns remain open to subsistence harvest except for Red-faced Cormorants and Black Oystercatchers, based on information that the indigenous people of the Bering Strait/Norton Sound continue to utilize these species for subsistence purposes. The commenter believes that regional harvests of these birds in question do not have an overall negative impact on the species' population. The commenter also explains that despite the SRC's request for customary and traditional use information on these species, funding was not made available to gather this information, so information used is of a more general nature.

One commenter requests that all of the 12 species with conservation concerns remain open to harvest in 2004 except for Wandering Tattler, because it is identified as a species of high conservation concern in the 2001 United States Shorebird Conservation Plan. The commenter also suggests that concerns about the continued harvest of the other species of concern may be mitigated by establishing regional species restrictions.

The Co-management Council responded to the Service's request for documentation of traditional use of the BCC birds by providing written testimony of traditional subsistence use of 9 of the 12 species: Black Oystercatchers, Whiskered Auklets, Arctic and Aleutian Terns, Black Turnstones, Wandering Tattlers, Upland Sandpipers, Red-throated Loons, and Red-faced Cormorants. Based on the data provided, the Co-management Council petitioned the Service to keep 5 of the 12 species in question on the list of birds open to harvest. These five species were: Red-throated Loons, Black Oystercatchers, Arctic and Aleutian Terns, and Whiskered Auklets. The Co-management Council remained silent on the remaining seven species.

Service Response: We considered the broad array of public sentiment received and carefully weighed the biological details of the conservation concerns with the information provided on the traditional use and dependence on these species and the subsistence mandates given us through the amended migratory bird treaty protocol. Based on this thorough analysis, we have determined that harvest will be allowed in 2004 on the five species petitioned by the Co-management Council. The substantial documentation provided on subsistence traditional use and dependence on these species supported allowing continued harvest at this time. In most cases, a strong, local dependence on these species was well documented; however, their actual reported take was very low relative to the species' population size and limited in scope, such as the use of oystercatchers and terns primarily for egg gathering.

Harvest will not be allowed in 2004 on the other seven species of birds with conservation concerns listed in the proposed rule: Red-faced Cormorants, Solitary Sandpipers, Wandering Tattlers, Upland Sandpipers, Black Turnstones, Red Knots, and Short-eared Owls. Due to the limited amount of documented subsistence use and dependence on these species, the conservation concerns warranted removal from the harvest list.

Section 92.5 Who Is Eligible to Participate?

The respondent endorses inclusion of the listed communities that petitioned the Co-management Council for participation in the harvest beginning in 2004. In general, the petitions were well supported with documentation of customary and traditional harvests, concurrence with basic regulations (*e.g.*, species open to hunting, methods, *etc.*), cooperative development of practical boundaries of hunt areas, and application of conservation measures for some species of concern (*i.e.*, Tule White-fronted Geese, Dusky Canada Geese).

Given that the 2004 regulations cycle provided the first examples of petitions from excluded areas, the Co-management Council gained some appreciation for the particular issues to be considered and recognized some potential problems that need further attention. The respondent, however, is concerned that, in the absence of harvest quantity regulations, the Co-management Council is faced with an "all or nothing" decision in evaluating petitions from communities that have a historic pattern of minor spring harvest, but request full participation. Although some communities have requested limited harvests of specific resources (*e.g.*, Hoonah and only gull eggs), others may request broad hunting seasons on all species regardless that most of their historic harvest has been in fall and winter. The respondent recognizes that seasonal harvest patterns are a matter of degree, and does not want to overly restrict traditional harvest patterns. However, without more detailed criteria for regulating harvest by petitioning communities, there is a potential for authorizing harvests that exceed traditional levels or that include more diverse resources than those taken in the past. The respondent recommends that the Service and Co-management Council work toward development of criteria that more specifically evaluate levels of significance of traditional spring and summer harvests in considering petitions for inclusion; regulations that result from positive findings should more precisely authorize traditional patterns of resource use.

Service Response: We concur with these observations and suggestions and, using a sub-committee from the Co-management Council, are in the initial phases of developing a draft set of inclusion/exclusion criteria to be used for future decisions.

Section 92.6 Use and Possession of Migratory Birds

The Co-management Council requested that language be added to prohibit possession of taxidermy mounts (in lifelike representations) of subsistence-taken birds, since it is not a customary and traditional use of these birds. They also stated that they do not want to restrict use of taxidermy techniques to preserve bird parts for use in traditional crafts such as the making of clothing, nor do they want to restrict birds from being used under permit for scientific research or education. One additional commenter also supported the view of the Co-management Council requesting that taxidermy be prohibited.

Service Response: We concur with this request and have added prohibitory language to this section as well as

defining taxidermy under § 92.4 Definitions.

One respondent supported allowing access to subsistence-harvested birds for research and educational purposes; however, this respondent also expressed that, given that these birds must be, by regulation, harvested as food, it may be more emphatic to word the regulation as permission to "receive portions of birds or their eggs not salvaged for human consumption * * *." We need to prevent harvest and transfer of birds by persons having no intent to consume the primary edible portions.

Service Response: We do not concur with this request for a wording change. In paragraph (a) of this section, it clearly states that birds may be taken for human consumption only. Also, the term "salvage" has very different definitions and connotations in State and Federal Harvest regulations. Currently in Federal regulations, it refers to the retrieving of birds found already dead, whereas in State regulations it refers to what animal parts constitute "edible" portions and must be retrieved from the field. Inserting this word into the possession regulations without it being clearly defined elsewhere could create an ambiguity for the reader.

Section 92.33 Region-Specific Regulations

One commenter complimented the new proposed language describing the egg collection area for Hoonah, but requested that language be added to the preamble clarifying that Glacier Bay National Park will remain closed and explain the rationale for this regulatory language.

Service Response: We concur with this request and have added this language to the preamble.

One respondent supported the additional closure of a water buffer zone around the Kodiak roaded area but expressed that the offshore islands should also be closed due to their easy access by Kodiak town residents, many of whom are nontraditional users.

Service Response: Testimony has been documented at past Co-management Council meetings expressing that use of the islands and their surrounding waters is the primary customary and traditional use zone within the Kodiak roaded area. More documentation of conservation concerns would be necessary to justify closing this customary and traditional harvest area.

One respondent requested that all the resident-zone communities of Wrangell-St. Elias National Park be included in the list of communities eligible for harvest in the Copper River Basin. The additional communities would be: Chisana, Glennallen, Gakona Junction, Kenny Lake, Lower Tonsina, McCarthy, Nebesna, Slana, and Tonsina. The respondent explained that listing only half of the area communities is unwise and goes against the spirit of the Alaska National Interest Lands Conservation Act (ANILCA).

Service Response: Development of the spring/summer subsistence migratory bird harvest regulations is guided solely by the international migratory bird treaties, and not by ANILCA legislation. New communities can be granted eligibility only by petitioning to the Co-management Council and the Service for inclusion (50 CFR Part 92.5). We have received no formal requests by the above-listed additional communities to be included in the subsistence migratory bird harvest.

Effective Date

Under the Administrative Procedure Act, our normal practice is to publish rules with a 30-day delay in effective date. However, for this rule, we are using the "good cause" exemption under 5 U.S.C. 553 (d)(3) to make this rule effective immediately upon publication in order to ensure conservation of the resource for the upcoming spring/summer subsistence harvest. The rule needs to be made effective immediately for the following reason. The amended migratory bird treaty protocol allows for an April 2 opening of the subsistence harvest season. To limit negative impacts on the subsistence users, we need to open the harvest as close as possible to the original agreed-upon opening date.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), which implements the four migratory bird treaties with Canada, Mexico, Japan, and Russia. Specifically, these regulations are issued consistent with the applicable treaties pursuant to 16 U.S.C. 712 (1), which authorizes the Secretary of the Interior, in accordance with these four treaties, to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds."

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this document is not a significant rule subject to OMB review under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The rule does not provide for new or additional hunting opportunities and therefore will have minimal economic or environmental impact. This rule benefits those participants who engage in the subsistence harvest of migratory birds in Alaska in two identifiable ways: first, participants receive the consumptive value of the birds harvested, and second, participants get the cultural benefit associated with the maintenance of a subsistence economy and way of life. The Service can estimate the consumptive value for birds harvested under this rule but does not have a dollar value for the cultural benefit of maintaining a subsistence economy and way of life. The economic value derived from the consumption of the harvested migratory birds has been estimated using the results of a paper by Robert J. Wolfe titled "Subsistence Food Harvests in Rural Alaska, and Food Safety Issues" (August 13, 1996). Using data from Wolfe's paper and applying it to the areas that will be included in this process, we determined a maximum economic value of $6 million. This is the estimated economic benefit of the consumptive part of this rule for participants in subsistence hunting. The cultural benefits of maintaining a subsistence economy and way of life can be of considerable value to the participants, and these benefits are not included in this figure.

b. This rule will not create inconsistencies with other agencies' actions. We are the Federal agency responsible for the management of migratory birds, coordinating with the State of Alaska's Department of Fish and Game on management programs within Alaska. The State of Alaska is a member of the Alaska Migratory Bird Co-management Council.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule does not affect entitlement programs.

d. This rule will not raise novel legal or policy issues. The subsistence harvest regulations will go through the same National regulatory process as the existing migratory bird hunting regulations in 50 CFR part 20.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Executive Order 12866 section above.

a. This rule does not have an annual effect on the economy of $100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition used to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. A statement containing the information required by this Act is therefore not necessary. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In the Notice of Decision (65 FR 16405, March 28, 2000), we identified 12 partner organizations to be responsible for administering the regional programs. When possible, we will make annual grant agreements available to the partner organizations to help offset their expenses. The Alaska Department of Fish and Game will incur expenses for travel to Co-management Council and regional management bodies' meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements. We have, however, received OMB approval of associated voluntary annual household surveys used to determine levels of subsistence take. The OMB control number for the information collection is 1018–0124, which expires on October 31, 2006. 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.

Federalism Effects

As discussed in the Executive Order 12866 and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. We worked with the State of Alaska on development of these regulations.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of Section 3 of the Order.

Takings Implication Assessment

This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. Therefore, in accordance with Executive Order 12630, this rule does not have significant takings implications.

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), and Executive Order 13175 (65 FR 67249, November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we have consulted with Alaska tribes and evaluated the rule for possible effects on tribes or trust resources, and have determined that there are no significant effects. The rule will legalize the subsistence harvest of migratory birds and their eggs for tribal members, as well as for other indigenous inhabitants.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of the Act" and shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *" Consequently, we consulted with the Anchorage Fish and Wildlife Field Office of the Service to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of Spectacled or Steller's Eiders or result in the destruction or adverse modification of their critical habitat. Findings from this consultation are included as an appendix to the Biological Opinion on the Effects of Legalization of a Spring and Summer Subsistence Harvest of Birds on the Threatened Steller's and Spectacled Eiders (dated March 30, 2003). The appended consultation concluded that changes from the 2003 regulations are not likely to adversely affect either the Steller's or Spectacled Eider. Additionally, any modifications

resulting from this consultation to regulatory measures previously proposed are reflected in the final rule. The complete administrative record for this consultation is on file at the Anchorage Fish and Wildlife Field Office and is also available for public inspection at the address indicated under the caption **ADDRESSES**.

National Environmental Policy Act Consideration

The annual regulations and options were considered in the Environmental Assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the First Legal Spring/Summer Harvest in 2004," issued September 16, 2003, modified, with a Finding of No Significant Impact issued February 18, 2004. Copies are available from the address indicated under the caption **ADDRESSES**.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only allows for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866. Consequently it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

■ For the reasons set out in the preamble, we amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

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

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

■ 2. In subpart A, amend § 92.4 by adding the definitions "Game Management Unit," "Seabirds," "Shorebirds," "Taxidermy," and "Waterfowl," to read as follows:

§ 92.4 Definitions

* * * * *

Game Management Unit, also referred to simply as *Unit*, means 1 of the 26 geographical areas listed in the codified State of Alaska hunting and trapping regulations and on maps of the Alaska State Game Management Units.

* * * * *

Seabirds refers to all bird species listed in § 92.32 within the families Alcidae, Laridae, Procellariidae, and Phalacrocoracidae.

* * * * *

Shorebirds refers to all bird species listed in § 92.32 within the families Charadriidae, Haematopodidae, and Scolopacidae.

* * * * *

Taxidermy refers to birds preserved and mounted in lifelike representations. Taxidermy does not include preserving bird parts to be integrated into traditional arts and crafts.

* * * * *

Waterfowl refers to all bird species listed in § 92.32 within the family Anatidae.

■ 3. In subpart A, amend § 92.5 by revising paragraph (a) to read as follows:

§ 92.5 Who is eligible to participate?

* * * * *

(a) *Included areas.* Village areas located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range are subsistence harvest areas, except that villages within these areas not meeting the criteria for a subsistence harvest area as identified in paragraph (c) of this section will be excluded from the spring and summer subsistence harvest.

(1) Any person may request the Co-management Council to recommend that an otherwise included area be excluded by submitting a petition stating how the area does not meet the criteria identified in paragraph (c) of this section. The Co-management Council will forward petitions to the appropriate regional management body for review and recommendation. The Co-management Council will then consider each petition and will submit to the U.S. Fish and Wildlife Service any recommendations to exclude areas from the spring and summer subsistence harvest. The U.S. Fish and Wildlife Service will publish any approved recommendations to exclude areas in subpart D of this part.

(2) Based on petitions for inclusion recommended by the Co-management Council in 2003, the Service is adding the following communities to the included areas under this part starting in the 2004 harvest season:

(i) Upper Copper River Region—Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina.

(ii) Gulf of Alaska Region—Chugach Community of Tatitlek, Chugach Community of Chenega, Chugach Community of Port Graham, Chugach Community of Nanwalek.

(iii) Cook Inlet Region—Tyonek.

(iv) Southeast Alaska Region—Hoonah.

* * * * *

■ 4. In subpart A, revise § 92.6 to read as follows:

§ 92.6 Use and possession of migratory birds.

You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part.

(a) *Eligible persons.* Under this part, you may take birds for human consumption only. Harvest and possession of migratory birds must be done using nonwasteful taking. Nonedible byproducts of migratory birds taken for food may be used for other purposes, except that taxidermy is not allowed.

(b) *Noneligible persons.* You may receive portions of birds or their eggs not kept for human consumption from eligible persons only if you have a valid permit issued under 50 CFR 21.27 for scientific research or education, and consistent with the terms and conditions of that permit.

Subpart C—General Regulations Governing Subsistence Harvest

■ 5. In subpart C, amend § 92.20 by revising paragraph (i) to read as follows:

§ 92.20 Methods and means.

* * * * *

(i) Using an air boat (Interior and Bristol Bay Regions only) or jet ski (Interior Region only) for hunting or transporting hunters.

Subpart D—Annual Regulations Governing Subsistence Harvest

■ 6. In Subpart D, add §§ 92.31 through 92.33 to read as follows:

§ 92.31 Migratory bird species not authorized for subsistence harvest.

(a) You may not harvest birds or gather eggs from the following species:

(1) Spectacled Eider (*Somateria fischeri*).

(2) Steller's Eider (*Polysticta stelleri*).

(3) Emperor Goose (*Chen canagica*).

(4) Aleutian Canada Goose (*Branta canadensis leucopareia*)—Semidi Islands only.

(b) In addition, you may not gather eggs from the following species:

(1) Cackling Canada Goose (*Branta canadensis minima*).

(2) Black Brant (*Branta bernicla nigricans*)—in the Yukon/Kuskokwim Delta and North Slope regions only.

§ 92.32 Subsistence migratory bird species.

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all included regions. When birds are listed only to the species level, all subspecies existing in Alaska are open to harvest.

(a) Family Anatidae.

(1) Greater White-fronted Goose (*Anser albifrons*).

(2) Snow Goose (*Chen caerulescens*).

(3) Lesser Canada Goose (*Branta canadensis parvipes*).

(4) Taverner's Canada Goose (*Branta canadensis taverneri*).

(5) Aleutian Canada Goose (*Branta canadensis leucopareia*)—except in the Semidi Islands.

(6) Cackling Canada Goose (*Branta canadensis minima*)—except no egg gathering is permitted.

(7) Black Brant (*Branta bernicla nigricans*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope regions.

(8) Tundra Swan (*Cygnus columbianus*).

(9) Gadwall (*Anas strepera*).

(10) Eurasian Wigeon (*Anas penelope*).

(11) American Wigeon (*Anas americana*).

(12) Mallard (*Anas platyrhynchos*).

(13) Blue-winged Teal (*Anas discors*).

(14) Northern Shoveler (*Anas clypeata*).

(15) Northern Pintail (*Anas acuta*).

(16) Green-winged Teal (*Anas crecca*).

(17) Canvasback (*Aythya valisineria*).

(18) Redhead (*Aythya americana*).

(19) Ring-necked Duck (*Aythya collaris*).

(20) Greater Scaup (*Aythya marila*).

(21) Lesser Scaup (*Aythya affinis*).

(22) King Eider (*Somateria spectabilis*).

(23) Common Eider (*Somateria mollissima*).

(24) Harlequin Duck (*Histrionicus histrionicus*).

(25) Surf Scoter (*Melanitta perspicillata*).

(26) White-winged Scoter (*Melanitta fusca*).

(27) Black Scoter (*Melanitta nigra*).

(28) Long-tailed Duck (*Clangula hyemalis*).

(29) Bufflehead (*Bucephala albeola*).

(30) Common Goldeneye (*Bucephala clangula*).

(31) Barrow's Goldeneye (*Bucephala islandica*).

(32) Hooded Merganser (*Lophodytes cucullatus*).

(33) Common Merganser (*Mergus merganser*).

(34) Red-breasted Merganser (*Mergus serrator*).

(b) Family Gaviidae.

(1) Red-throated Loon (*Gavia stellata*).

(2) Arctic Loon (*Gavia arctica*).

(3) Pacific Loon (*Gavia pacifica*).

(4) Common Loon (*Gavia immer*).

(c) Family Podicipedidae.

(1) Horned Grebe (*Podiceps auritus*).

(2) Red-necked Grebe (*Podiceps grisegena*).

(d) Family Procellariidae.

(1) Northern Fulmar (*Fulmarus glacialis*).

(2) [Reserved].

(e) Family Phalacrocoracidae.

(1) Double-crested Cormorant (*Phalacrocorax auritus*).

(2) Pelagic Cormorant (*Phalacrocorax pelagicus*).

(f) Family Gruidae.

(1) Sandhill Crane (*Grus canadensis*).

(2) [Reserved].

(g) Family Charadriidae.

(1) Black-bellied Plover (*Pluvialis squatarola*).

(2) Common Ringed Plover (*Charadrius hiaticula*).

(h) Family Haematopodidae.

(1) Black Oystercatcher (*Haematopus bachmani*).

(2) [Reserved].

(i) Family Scolopacidae.

(1) Greater Yellowlegs (*Tringa melanoleuca*).

(2) Lesser Yellowlegs (*Tringa flavipes*).

(3) Spotted Sandpiper (*Actitis macularia*).

(4) Bar-tailed Godwit (*Limosa lapponica*).

(5) Ruddy Turnstone (*Arenaria interpres*).

(6) Semipalmated Sandpiper (*Calidris pusilla*).

(7) Western Sandpiper (*Calidris mauri*).

(8) Least Sandpiper (*Calidris minutilla*).

(9) Baird's Sandpiper (*Calidris bairdii*).

(10) Sharp-tailed Sandpiper (*Calidris acuminata*).

(11) Dunlin (*Calidris alpina*).

(12) Long-billed Dowitcher (*Limnodromus scolopaceus*).

(13) Common Snipe (*Gallinago gallinago*).

(14) Red-necked phalarope (*Phalaropus lobatus*).

(15) Red phalarope (*Phalaropus fulicaria*).

(j) Family Laridae.

(1) Pomarine Jaeger (*Stercorarius pomarinus*).

(2) Parasitic Jaeger (*Stercorarius parasiticus*).

(3) Long-tailed Jaeger (*Stercorarius longicaudus*).

(4) Bonaparte's Gull (*Larus philadelphia*).

(5) Mew Gull (*Larus canus*).

(6) Herring Gull (*Larus argentatus*).

(7) Slaty-backed Gull (*Larus schistisagus*).

(8) Glaucous-winged Gull (*Larus glaucescens*).

(9) Glaucous Gull (*Larus hyperboreus*).

(10) Sabine's Gull (*Xema sabini*).

(11) Black-legged Kittiwake (*Rissa tridactyla*).

(12) Red-legged Kittiwake (*Rissa brevirostris*).

(13) Ivory Gull (*Pagophila eburnea*).

(14) Arctic Tern (*Sterna paradisaea*).

(15) Aleutian Tern (*Sterna aleutica*).

(k) Family Alcidae.

(1) Common Murre (*Uria aalge*).

(2) Thick-billed Murre (*Uria lomvia*).

(3) Black Guillemot (*Cepphus grylle*).

(4) Pigeon Guillemot (*Cepphus columba*).

(5) Cassin's Auklet (*Ptychoramphus aleuticus*).

(6) Parakeet Auklet (*Aethia psittacula*).

(7) Least Auklet (*Aethia pusilla*).

(8) Whiskered Auklet (*Aethia pygmaea*).

(9) Crested Auklet (*Aethia cristatella*).

(10) Rhinoceros Auklet (*Cerorhinca monocerata*).

(11) Horned Puffin (*Fratercula corniculata*).

(12) Tufted Puffin (*Fratercula cirrhata*).

(l) Family Strigidae.

(1) Great Horned Owl (*Bubo scandiacus*).

(2) Snowy Owl (*Nyctea scandiaca*).

§ 92.33 Region-specific regulations.

The 2004 season dates for the eligible subsistence regions are as follows:

(a) Aleutian/Pribilof Islands Region.

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) Yukon/Kuskokwim Delta Region.

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Alaska Regional Director or his designee, after consultation with local subsistence users and the region's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

(c) Bristol Bay Region.

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) Bering Strait/Norton Sound Region.

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) Kodiak Archipelago Region, except for the Kodiak Island roaded area, is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 20 and July 22–August 31, egg gathering: May 1–June 20.

(2) Closure: June 21–July 21.

(f) Northwest Arctic Region.

(1) Season: April 2–August 31 (in general); waterfowl egg gathering May 20–June 9; seabird egg gathering July 3–July 12; molting/non-nesting waterfowl July 1–July 31.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) North Slope Region.

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30′ S and south of the latitude line 70°45′ E to west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′ E between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30′ S and north of the latitude line 70°45′ E to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′ E between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders and April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders and June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(h) Interior Region.

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14.

(2) Closure: June 15–July 15.

(i) Upper Copper River (Harvest Area: State of Alaska Game Management Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) **Note:** The Copper River Basin communities listed in this paragraph (i) also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h)(1) of this section.

(j) Gulf of Alaska Region.

(1) Prince William Sound Area (Harvest area: Unit 6 [D]), (Eligible Chugach communities: Chenega Bay, Tatitlek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) Cook Inlet (Harvest area: portions of Unit 16[B] as specified in this paragraph (k)) (Eligible communities: Tyonek only)

(1) Season: April 2–May 31—That portion of Unit 16(B) south of the Skwentna River and west of the Yentna River and August 1–31—that portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) Southeast Alaska (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting [50 CFR 100.3]). (Eligible communities: Hoonah only).

(1) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(2) Closure: July 1–August 31.

Dated: March 25, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–7307 Filed 4–1–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0401130013–4098–02; I.D. 122403A]

RIN 0648–AR84

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Fishing Restrictions, Seasonal Area Closure, Limit on Swordfish Fishing Effort, Gear Restrictions, and Other Sea Turtle Take Mitigation Measures

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

ACTION: Final rule.

SUMMARY: NMFS has approved a regulatory amendment under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) submitted by the Western Pacific Fishery Management Council (Council) and issues this final rule to establish a number of conservation and

management measures for the fisheries managed under the FMP. This final rule is intended to achieve certain objectives of the FMP, including achieving optimum yield for FMP-managed species while avoiding the likelihood of jeopardizing the continued existence of any species listed as endangered or threatened under the Endangered Species Act (ESA). This final rule eliminates a seasonal closure for longline fishing in an area south of the Hawaiian Islands and reopens the swordfish-directed component of the Hawaii-based longline fishery. In order to minimize adverse impacts on sea turtles, the swordfish component of the Hawaii-based longline fishery will be subject to restrictions on the types of hooks and bait that may be used, annual fleet-wide limits on fishery interactions with leatherback and loggerhead sea turtles, an annual fleet-wide limit on fishing effort, and other mitigation measures.

DATES: Effective April 2, 2004, except for the amendments to § 660.22 (ii), (ll), (nn), and (oo), § 660.32 (a) and (b), and § 660.33 (f) and (g), which are effective May 3, 2004.

ADDRESSES: Copies of the Final Supplemental Environmental Impact Statement (FSEIS) for this action, the Record of Decision (ROD) for the FSEIS, the Regulatory Impact Review (RIR) and Final Regulatory Flexibility Analysis (FRFA) for this regulatory action, and the Final Environmental Impact Statement (FEIS) that the FSEIS supplements (issued by NMFS on March 30, 2001) are available from Dr. Samuel Pooley, Acting Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700. These documents are also available on the Internet at the website of PIRO, *http://swr.nmfs.noaa.gov/pir/*. The FSEIS, FRFA, and RIR are also available at the website of the Western Pacific Fishery Management Council, *http://www.wpcouncil.org/*.

FOR FURTHER INFORMATION CONTACT: Tom Graham, Fishery Management Specialist, PIRO, at 808–973–2937.

SUPPLEMENTARY INFORMATION: On January 28, 2004, NMFS published a proposed rule (69 FR 4098) in response to the urgent need to provide adequate protections for sea turtles and to the results of recent research in the Atlantic Ocean on mitigation technologies for sea turtle interactions in pelagic longline fisheries.

This final rule implements both a regulatory amendment recommended by the Western Pacific Fishery Management Council (Council) under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) and Court rulings made in Hawaii Longline Association v. NMFS (D.D.C., Civ. No. 01–0765) that vacated a June 12, 2002, rule containing protective measures for sea turtles, effective April 1, 2004, as discussed further in the proposed rule.

On January 23, 2004, the Environmental Protection Agency (EPA) published in the **Federal Register** (69 FR 3340) a notice of availability of a draft supplemental environmental impact statement (DSEIS) prepared for this action pursuant to the National Environmental Policy Act (NEPA). The public comment period for the DSEIS lasted until February 23, 2004. The abbreviated comment period, approved by the EPA, was needed to facilitate completion of the SEIS so that necessary turtle conservation measures for the Hawaii-based longline fishery could be effective by April 1, 2004, when the current turtle-related regulations will be vacated by Court Order. EPA published a notice of availability of a final supplemental environmental impact statement (FSEIS) for this action on March 19, 2004, at 69 FR 13036.

On February 23, 2004, NMFS concluded consultation and issued a biological opinion under section 7 of the Endangered Species Act on the pelagic fisheries of the western Pacific region as they would be managed under the measures implemented through this final rule. The biological opinion found that the fisheries are not likely to jeopardize the continued existence of any ESA-listed species under the jurisdiction of NMFS.

The proposed rule provides further background on the processes and analyses conducted under the NEPA and other applicable laws for this regulatory action, the ESA section 7 consultation history for the western Pacific pelagic fisheries, the history of litigation related to the western Pacific pelagic fisheries, the expected effects of this final rule, and the rationale for this final rule.

The measures contained in this final rule are summarized as follows:

Management Measures Eliminated by Court Ruling

As required by the Court rulings referred to above, this final rule eliminates: (1) the prohibition on Hawaii-based longline vessels and general longline vessels using longline gear to fish for swordfish north of the equator (as well as several restrictions intended to make this prohibition enforceable, including restrictions on gear configuration, set depth, and the number of swordfish possessed and landed); (2) the prohibition on longline fishing by Hawaii-based vessels and general longline vessels during April and May in certain waters south of the Hawaiian Islands (between the equator and 15° N. lat., and between 145° W. long. and 180° long.); (3) the requirement that operators of general longline vessels annually complete a protected species workshop and have on board a valid protected species workshop certificate; (4) the requirement that owners and operators of general longline vessels and of other vessels using hooks to target Pacific pelagic species employ specified sea turtle handling measures (the handling measures, which vary among vessel type, include carrying and using line clippers, dip nets, and wire or bolt cutters to disengage sea turtles, and handling, resuscitating, and releasing sea turtles in specified manners); and (5) the requirement that any vessel de-registered from a Hawaii longline limited access permit after March 29, 2001, may only be re-registered to a Hawaii longline limited access permit during the month of October.

New Management Measures

To implement the regulatory amendment proposed by the Council, this final rule: (1) establishes an annual effort limit on the amount of shallow-set longline fishing effort north of the equator that may be collectively exerted by Hawaii-based longline vessels (2,120 shallow-sets per year); (2) divides and distributes this shallow-set annual effort limit each calendar year in equal portions (in the form of transferable single-set certificates valid for a single calendar year) to all holders of Hawaii longline limited access permits (according to the number of permits held) that provide written notice to NMFS no later than November 1 prior to the start of the calendar year of their interest in receiving such certificates; (3) prohibits any Hawaii-based longline vessel from making more shallow-sets north of the equator during a trip than the number of valid shallow-set certificates on board the vessel; (4) requires that operators of Hawaii-based longline vessels submit to the Regional Administrator within 72 hours of each landing of pelagic management unit species, with the logbooks, one valid shallow-set certificate for every shallow-set made north of the equator during the trip; (5) requires that Hawaii-based longline vessels, when making shallow-sets north of the equator, use only circle hooks sized 18/0 or larger with a 10–degree offset; (6) requires that Hawaii-based longline vessels, when making

shallow-sets north of the equator; use only mackerel-type bait; (7) establishes annual limits on the numbers of interactions between leatherback and loggerhead sea turtles and Hawaii-based longline vessels while engaged in shallow-setting, set at 16 and 17 for leatherback and loggerhead sea turtles, respectively (the limits are equal to the annual number of turtles expected to be captured for the respective species in the shallow-set component of the Hawaii-based fishery, as established in the biological opinion issued by NMFS pursuant to section 7 of the ESA); (8) establishes a procedure for closing the shallow-setting component of the Hawaii-based longline fishery for the remainder of the calendar year when either of the two limits is reached, after giving at least one (1) week advanced notice of such closure to all holders of Hawaii longline limited access permits (the numbers of interactions will be monitored with respect to the limits using year-to-date estimates derived from data recorded by NMFS vessel observers); (9) requires that operators of Hawaii-based longline vessels notify the Regional Administrator (as defined at 50 CFR 660.236) in advance of every trip whether the longline sets made during the trip will involve shallow-setting or deep-setting and require that Hawaii-based longline vessels make sets only of the type declared (i.e., shallow-sets or deep-sets); (10) requires that operators of Hawaii-based longline vessels carry and use NMFS-approved de-hooking devices; and (11) requires that Hawaii-based longline vessels, when making shallow-sets north of 23° N. lat., start and complete the deployment of longline gear during the nighttime (specifically, no earlier than one hour after local sunset and no later than local sunrise).

Under this final rule, holders of Hawaii longline limited access permits must, in order to receive shallow-set certificates for a given calendar year, provide written notice to NMFS of their interest in receiving such certificates no later than November 1 prior to the start of the calendar year (for the 2004 fishing year, the deadline is May 1, 2004). Although NMFS intends to deliver annual reminders of this requirement to all permit holders, the permit holders will be responsible for providing notice of their interest regardless of whether they receive a reminder from NMFS. Such notice must be provided to the Regional Administrator, NMFS, Pacific Islands Regional Office (see **ADDRESSES**), and it should say "attention: swordfish certificates."

The Council's proposed regulatory amendment was accompanied by proposals to implement or continue implementing five off-site sea turtle conservation projects. These projects are aimed at protecting affected sea turtle populations on their nesting beaches and in their nearshore foraging grounds at sites in Southeast Asia, Mexico, and Japan. These projects are not part of this final rule, but they were considered and assessed by the Council in conjunction with the regulatory elements of its proposed action and were found to be important components of sea turtle conservation in the Pacific.

Comments and Responses

NMFS received and considered comments on the proposed rule from a number of interested parties. NMFS responds to these comments as follows:

Comment 1: One commenter stated that in the absence of vessel observers there is no incentive for fishermen to self-report leatherback and loggerhead takes and that the proposed measure may not protect these endangered species.

Response: Self-reporting of sea turtle interactions is not necessary to provide adequate protection to sea turtles or more specifically, to ensure compliance with the annual interaction limits. First, even without the precautionary annual limits on sea turtle interactions, the other measures in this final rule, including the required hook and bait types and the limit on shallow-set effort, are expected to adequately protect sea turtle species. Second, it is acknowledged that the sea turtle interaction limits will require substantial coverage by vessel observers in order to implemented. Although these measures do not mandate any particular minimum level of observer coverage, existing regulations require all longline fishing vessels to accept a vessel observer if required by NMFS. Further, the biological opinion issued by the NMFS Office of Protected Resources on February 23, 2004, under section 7 of the ESA for the pelagic fisheries of the western Pacific region ("2004 biological opinion") includes an incidental take statement with reasonable and prudent measures and implementing terms and conditions that mandate 100–percent observer coverage in the shallow-set component of the Hawaii-based longline fishery and a minimum of 20–percent coverage in the deep-set component. NMFS intends to implement these mandates. These levels of observer coverage will provide for reliable and timely determinations of the numbers of sea turtle interactions occurring in the fishery, which will facilitate effective enforcement of the annual limits on interactions with leatherback and loggerhead sea turtles in the shallow-set component of the fishery.

Comment 2: One commenter recommended that the number of shallow-sets made by a vessel be equated to the number of "set signatures" observed in NMFS's vessel monitoring system (VMS) program.

Response: NMFS intends to have 100–percent observer cover age in the shallow-set component of the Hawaii-based longline fishery, which will ensure compliance with the limits and restrictions related to shallow-setting, so monitoring via VMS set signatures is not necessary.

Comment 3: One commenter stated that deep-setting is proposed to be defined in 50 CFR 660.12 as the deployment of longline gear without light sticks, but there is no evidence that light sticks have any effect on sea turtle catches and there is therefore no reason for this measure. The commenter added that the proposed restriction stems from a previous NMFS rule that the Court ruled was arbitrary. The commenter also stated that there are light products designed specifically for tuna fishing (e.g., blinking lights) that can improve catches and that the proposed definition could therefore reduce the potential efficiency of fishing vessels while having no beneficial effect on sea turtles.

Response: NMFS acknowledges that certain light devices for deep-set, tuna-directed longlining may have benefits to fishing operations. However, lacking detailed information on those potential benefits, NMFS has determined the potential benefits are outweighed by the need to ensure compliance with the restrictions on shallow-setting, including the annual effort limit on shallow-set effort. Light sticks are normally used on shallow-sets to target swordfish. Although light sticks may also be used on deep-sets to target tuna, allowing them on board during deep-setting trips would provide an opportunity for vessel operators on trips without observers to reconfigure their gear at sea and illegally shallow-set to target swordfish. No Court ruled on the substance of the June 2002 turtle rule, or questioned the prohibition on light sticks; the Court invalidated the June 2002 rule on procedural grounds.

Comment 4: One commenter stated that deep-setting during the day to harvest swordfish while avoiding turtles was and is still a good idea. The limited tests conducted to date show poor swordfish catches because of operational problems, but the results were nonetheless encouraging. The commenter also stated that the longline

fleet should be allowed to explore this option.

Response: The Council and NMFS are considering research into the feasibility of deep-setting for swordfish, but until the findings of such research are available, limits on the possession and landing of swordfish by deep-setting longline vessels have been determined to be necessary to ensure compliance with the restrictions on shallow-setting.

Comment 5: One commenter stated that the proposed prohibition on the possession or landing of more than 10 swordfish in the tuna component of the Hawaii-based longline fishery is unwarranted and there is no evidence that swordfish are overfished in the region. The commenter also stated that the use of light on deep sets may increase catches of swordfish, so deep-setting for swordfish may be economical while successfully avoiding sea turtles.

Response: The commenter is correct that swordfish have not been determined to be overfished in the region. This measure is necessary to conserve sea turtles by ensuring compliance with the restrictions on shallow-setting. Without a limit on the possession and landing of swordfish by vessels engaged in deep-setting, vessel operators on trips without observers could illegally target and land unlimited quantities of swordfish and claim that they were legally caught incidentally on deep-sets. Although swordfish is sometimes caught incidentally on deep-sets, landings data show catching more than 10 swordfish on a tuna-directed trip would be a very rare event.

Comment 6: One commenter stated that the proposed measures to mitigate sea turtle interactions (the requirements to use circle hooks and mackerel-type bait in the shallow-set component of the Hawaii-based longline fishery) are not universally exportable solutions, because mackerel does not catch swordfish in some areas. The commenter also stated that it is important that industry not be handcuffed unnecessarily so that other options can be explored.

Response: One of the expected benefits of the model swordfish fishery is that valuable information will be generated regarding the effectiveness in the Pacific of circle hooks and mackerel-type bait with respect to minimizing sea turtle interactions and mortalities. Further, the results of recent research in the Atlantic indicate substantially enhanced swordfish catch rates with the hook and bait types that will be required under this final rule. NMFS and the Council will continue to explore viable options to achieve optimum yield in the longline fisheries while minimizing adverse impacts to protected species.

Comment 7: One commenter stated that the potential adverse impacts on sea turtles and seabirds of reopening this fishery are serious enough to warrant continued closure of the fishery. The commenter requested that if the fishery is opened, more effective seabird avoidance measures be implemented and seabird avoidance measures be required in all areas.

Response: The 2004 biological opinion concludes that the western Pacific pelagic fisheries, as managed under the proposed measures, are not likely to jeopardize the continued existence of sea turtle species. This final rule does not affect the existing requirements to use seabird mitigation measures in the Hawaii-based longline fishery when fishing north of 23° N. latitude, including the use of blue-dyed bait, strategic discarding of offal, and, when deep-setting with monofilament main longline, the use of weighted branch lines and a line-setting machine or line shooter. In addition, this final rule requires that the line-setting procedure take place at night when shallow-setting north of 23° N. latitude in order to avoid interactions with seabirds. The potential implementation of additional seabird avoidance measures in the longline fisheries, including the use of side-setting, setting chutes, and streamer lines, is currently being explored by the Council and NMFS and was discussed at the Council's 122nd meeting in March 2004. The Council staff is developing alternative measures, including side setting and setting chutes, for the Council's action at its 123rd meeting in June 2004. Consideration will be given to the areas in which the measures should be implemented. NMFS has initiated consultation under section 7 of the ESA with the U.S. Fish and Wildlife Service on the short-tailed albatross with respect to this action. Although the outcome of that consultation is not yet known, it is noted that the U.S. Fish and Wildlife Service issued a biological opinion on the short-tailed albatross in November 2000 for an action that was less restrictive with respect to shallow-setting than this action, and the opinion found that the Hawaii-based longline fishery was not likely to jeopardize the continued existence of the short-tailed albatross.

Comment 8: One commenter stated that the current regulations requiring blue-dyed bait, line shooters, and night setting are no longer based on the best available science. The commenter also stated that the use of setting chutes, side-setting, and streamer lines has been proven to be more effective and should be required.

Response: See the response to Comment 7 with respect to seabirds. The utility of the existing seabird avoidance measures will also be considered.

Comment 9: One commenter requested that seabird avoidance measures be required in all areas, not just those likely to be frequented by the endangered short-tailed albatross (i.e., north of 23° N lat.).

Response: See response to Comment 7 with respect to seabirds. Consideration will also be given to the areas in which those seabird avoidance measures should be implemented.

Comment 10: One commenter stated that prior to authorizing the reopening of the swordfish fishery, NMFS must insure that the fishery is not likely to jeopardize the continued existence of any endangered species or threatened species.

Response: The 2004 biological opinion concludes that the fishery, as managed under these measures, is not likely to jeopardize the continued existence of any of the ESA-listed species considered in the opinion.

Comment 11: One commenter requested that the use of straight circle hooks be made mandatory in all pelagic longline fishing, both deep and shallow.

Response: There is insufficient information available on the effectiveness of circle hooks in deep-set tuna-directed fisheries with respect to both sea turtle interactions and target species catches. Although some research has been done in the Atlantic on the use of circle hooks in tuna-directed longlining, it involved shallow-set rather than deep-set longlining, so the results are not directly applicable to the longline fisheries in the western Pacific, where tuna is generally targeted with deep-set gear. At this time, therefore, there is not an adequate basis for requiring that circle hooks be used in the deep-set component of the fishery, as it could constrain fishing efficiency and comprise the objective of achieving optimum yield. However, the Council and NMFS are considering potential research and fishery demonstration initiatives in the western Pacific in order to assess the potential effectiveness with deep-set longline gear of various hook and bait combinations.

Comment 12: One commenter requested that the fishery be closed once the limits for any species in the 2004 biological opinion's incidental take statement have been reached.

Response: Although such a measure would be more conservative with respect to sea turtles, NMFS has

determined that it would be unnecessarily conservative. The interaction limits for leatherback and loggerhead sea turtles will also limit, albeit indirectly, interactions with other protected species in the shallow-set component of the Hawaii-based longline fishery. Furthermore, under the ESA, when any of the incidental take limits is exceeded, NMFS will reinitiate consultation under section 7 of the ESA, at which point the need for more restrictive measures would be considered.

Comment 13: One commenter requested that vessel observer coverage be 100 percent for shallow-set longlining and at least 50 percent for deep-set longlining.

Response: The terms and conditions of the incidental take statement in the 2004 biological opinion mandate 100–percent observer coverage in the shallow-set component of the Hawaii-based longline fishery and at least 20–percent coverage in the deep-set component. NMFS intends to implement these levels of coverage. Given the relatively long history of the deep-set component and our understanding of patterns of fishing, catches, and interactions with protected species, NMFS has determined 20 percent to be a sufficient level of coverage in the deep-set component of the fishery.

Comment 14: One commenter stated that the comment period after the release of the 2004 biological opinion was too brief.

Response: The consultation process under section 7 of the ESA does not provide for a public comment period, but NMFS considered comments received during 30–day comment periods for both the proposed rule and the draft supplemental environmental impact statement for the action.

Comment 15: Two commenters stated that results from the NED [Northeast Distant Waters] experiments are too preliminary to form the basis for reopening the fishery.

Response: The use of modified hooks to reduce and mitigate sea turtle interactions has been a focus of research for several years. NMFS' Pascagoula Laboratory, in conjunction with the Blue Water Fishermen's Association, conducted research between 2001 and 2003 to evaluate fishing gear modifications and strategies to reduce and mitigate interactions between endangered and threatened sea turtle species and longline fishing gear. The area of operations was the NED statistical reporting zone in the Western Atlantic Ocean. This area is closed to pelagic longline fishing by U.S. flagged vessels with the exception of the experimental fishery. Between 2001 and 2002, almost 700 swordfish-directed shallow-sets were made to test potential sea turtle mitigation techniques, which yielded robust and promising experimental results. While NMFS and the Council are confident that the results from the Atlantic will be reflected to a large degree in the western Pacific longline fisheries, these measures are precautionary in including the limits on interactions with leatherback and loggerhead sea turtles, in case the hook and bait measures are not as successful as anticipated.

Comment 16: One commenter stated that the proposed regulations are far less protective of listed species than current measures.

Response: NMFS acknowledges that the expected rates of interactions with sea turtles under the proposed measures are greater than those expected under the current management regime. However, the 2004 biological opinion concludes that the western Pacific pelagic fisheries as managed under these proposed measures are not likely to jeopardize the continued existence of any of the ESA-listed species considered in the opinion. Furthermore, NMFS anticipates that the mitigative hook and bait types that will be required in the shallow-set component of the Hawaii-based fishery will serve as a model that the longline fleets of other nations may adopt, possibly resulting in net positive impacts on ESA-listed sea turtle species.

Comment 17: One commenter stated that authorizing any pelagic longline fishing violates NMFS' obligation under the ESA to avoid jeopardizing listed species.

Response: The 2004 biological opinion concludes that the western Pacific pelagic fisheries as managed under these measures is not likely to jeopardize the continued existence of any of the ESA-listed species considered in the opinion.

Comment 18: One commenter stated that Atlantic experiments did not eliminate mortality to leatherback turtles and that any mortality is unacceptable. The commenter also stated that using purported reductions in mortality as an excuse to reopen the swordfish fishery will not benefit sea turtles.

Response: NMFS acknowledges that the experiments in the Atlantic did not result in the development of mitigation measures that would eliminate mortality to leatherback sea turtles in longline fisheries, and a certain number of mortalities of leatherback turtles are anticipated to occur in the western Pacific longline fisheries under these measures. However, the best scientific and commercial information was used to predict the effects of these measures on leatherback sea turtle populations, and it was found that the number of mortalities anticipated to result from the western Pacific pelagic fisheries is small compared to other sources of mortality and the conduct of the fisheries is not likely to jeopardize the continued existence of the leatherback sea turtle. One of the measures will limit annual shallow-set longline effort at about 50 percent of the average annual effort during the 1994–1999 period. Another measure will establish annual limits on the numbers of interactions with leatherback and loggerhead sea turtles, which will ensure that the actual numbers of interactions do not exceed the expected rates, as computed in the 2004 biological opinion and established in the opinion's incidental take statement.

The measures may have indirect positive effects on leatherback sea turtles and other ESA-listed species. First, the hook and bait types that will be required when making shallow longline sets north of the equator may serve as models for the longline fleets of other nations to adopt. Since foreign fishing fleets exert the majority of longline fishing effort in the Pacific, such adoption would likely result in substantial decreases in mortalities of leatherback and other sea turtles in the Pacific. The degree to which the mitigative hook and bait types are adopted by other fleets will likely depend on how they affect the catch rates of swordfish and other target species. In the Atlantic experiments, swordfish catch rates were enhanced when using the required hook-and-bait combination, which suggests that they may well serve as attractive models for the longline fleets of other nations. Second, if reopening of the U.S. swordfish fishery results in a decrease in foreign fishing for swordfish, it is possible that fewer turtle interactions or mortalities will occur.

Comment 19: One commenter stated that eliminating the restrictions on swordfish fishing north of the equator and the longline restrictions in April and May violates the ESA.

Response: The 2004 biological opinion concludes that the western Pacific pelagic fisheries as managed under these measures are not likely to jeopardize the continued existence of any of the ESA-listed species considered in the opinion.

Comment 20: One commenter stated that the proposed regulations would violate the ESA and the MMPA with regard to marine mammals.

Response: The 2004 biological opinion found that the western Pacific pelagic fisheries, as managed under these measures, are not likely to adversely affect any ESA-listed marine mammal species. Currently, the western Pacific pelagic longline fishery is classified as a Category III fishery under the MMPA, which indicates that the fishery has a remote likelihood of or no known incidental mortality or serious injury of marine mammals. NMFS and the Council are exploring ways to reduce and mitigate fishery interactions with marine mammals.

Comment 21: One commenter stated that NMFS has not defined the "Zero Mortality Rate Goal" (ZMRG) for marine mammals, but the pelagic longline fishery exceeds it and that authorization of the fishery without a ZMRG violates the MMPA. The commenter further stated that the take of false killer whales is not only greater than the ZMRG, but also greater than the Potential Biological Removal (PBR) level.

Response: With respect to the ZMRG, it is not possible to exceed a limit not yet established. Currently, the western Pacific pelagic longline fishery is classified as a Category III fishery under the MMPA, which signifies that the fishery has a remote likelihood of incidental mortality or serious injury of marine mammals. NMFS annually reviews its categorization of all fisheries and is doing so with this fishery.

Comment 22: Two commenters stated that the take in the fishery of migratory birds such as albatross and fulmars violates the Migratory Bird Treaty Act (MBTA) because there is no take authorization.

Response: The MBTA only applies in nearshore waters, seaward to three nautical miles (nm) from the shoreline. Since the pelagic longline fishery is prohibited from fishing within 25 to 75 nm of the Hawaiian Islands (depending on time of year), the MBTA does not apply, and therefore, no take authorization is required.

Comment 23: One commenter stated that the proposed regulations would violate the High Seas Fishing Compliance Act (HSFCA) because the HSFCA requires NMFS to regulate fishing by U.S. vessels on the high seas so as to be consistent with international conservation and management measures established pursuant to various international agreements such as the Inter-American Convention for the Protection and Conservation of Sea Turtles. This Convention was ratified by the U.S. and it requires that each party to the Convention take measures to reduce, to the greatest extent practicable, the incidental capture, retention, harm, or mortality of sea turtles in the course of fishing activities, through the regulation of such activities. Presuming that NMFS intends to establish HSFCA permit conditions through these regulations, the failure of the regulations to reduce sea turtle mortality by prohibiting swordfish longlining renders NMFS in violation of the HSFCA and the underlying treaties and conventions it implements.

Response: This final rule implements additional conservation and management measures for the protection of sea turtles in fisheries managed under the FMP. These measures are consistent with the mitigation recommendations of a formal ESA section 7 consultation that NMFS underwent during the development of this final rule. The section 7 consultation for the fishery managed under the FMP covers all fishing activities on the high seas by vessels permitted under the FMP. These vessels must also have permits under the HSFCA. As such, this consultation covered the same underlying fishing operations as are permitted under the HSFCA. The consultation covers the issuance of permits for these same vessels under both the Magnuson-Stevens Act and the HSFCA. NMFS determined that the conservation and management measures implemented through this final rule meet the U.S.'s obligations under the Inter-American Convention for the Protection and Conservation of Sea Turtles to take measures to reduce, to the greatest extent practicable, the incidental capture, retention, harm, or mortality of sea turtles in the course of fishing activities.

Comment 24: One commenter expressed opposition to allowing shallow-setting north of the equator because of the killing of albatrosses and other seabirds in the Hawaii-based longline fishery.

Response: See the response to Comment 7 with respect to seabirds.

Comment 25: Three commenters requested that if the shallow set fishery is reopened, effective seabird avoidance measures be required, and also noted that recent research documents the effectiveness of streamer lines, weights, and side setting.

Response: See the response to Comment 7 with respect to seabirds.

Comment 26: One commenter stated that the invalidation of the biological opinion (issued by NMFS in 2001 and 2002) was based on procedure, not science, and that NMFS should continue the shallow-set fishery closure or adopt effective seabird avoidance measures.

Response: It is true that the previous biological opinions were invalidated on procedural, not substantive, grounds. This final rule is not being implemented in response to the invalidation of the previous biological opinions, but rather in response to the need to establish protective measures for sea turtles given that many of the existing protective measures will be eliminated by Court Order on April 1, 2004, as well as in response to the promising findings of recent research in the Atlantic on new gear technologies available for minimizing interactions with sea turtles. In order to minimize adverse impacts on seabirds, this final rule also requires that the line-setting procedure take place at night when shallow-setting north of 23° N. lat. As indicated in the response to Comment 7, additional seabird avoidance measures were discussed at the Council's 122nd meeting in March 2004.

Comment 27: One commenter stated that the January 14, 2004, biological assessment and the proposed regulations are deficient under the NEPA in their treatment of seabirds.

Response: The January 14, 2004, biological assessment, prepared by the Council and the Hawaii Longline Association, was not intended by the drafters to fulfill the requirements of NEPA, nor is it a component of consultation with the U.S. Fish and Wildlife Service concerning seabirds. In contrast, the regulations to implement the Council's proposed management measures are subject to the requirements of NEPA. Documentation prepared by the Council and NMFS to comply with NEPA included a draft supplemental environmental impact statement (DSEIS), the notice of availability for which was published in the **Federal Register** on January 23, 2004. A final SEIS (FSEIS) accompanies this final rule. The DSEIS and FSEIS both include assessments of the expected effects of the proposed measures on seabirds, using the latest available information.

Comment 28: One commenter stated that the incidental catch of seabirds in shallow sets is 51 times greater than in deep sets, and that the proposed regulations fail to address this. The commenter further stated that using circle hooks and mackerel bait will not prevent seabird mortality.

Response: NMFS acknowledges that the hook and bait types that will be required in the shallow-set component of the Hawaii-based fishery are unlikely to eliminate the mortality of seabirds, but the relatively large size of the required hooks (18/0 or larger) may make them less likely to be swallowed by seabirds than the conventionally

used hooks, and if swallowed, the shape of the required hooks (circle, with the barb curving inward toward the shank) may make them less likely to be lodged in a bird's gullet, thus reducing the severity of interactions and possibly reducing the number of resultant mortalities. Also see response to Comment 7.

Comment 29: One commenter stated that the biological assessment and proposed regulations do not use up-to-date albatross data.

Response: The DSEIS and FSEIS for the action use the best available information at the time of the assessment, including fishery interaction data. The FSEIS also includes the most recent assessments from the U.S. Fish and Wildlife Service concerning albatross populations on the Northwestern Hawaiian Islands, which are the most likely populations to interact with the Hawaii-based longline fishery.

Comment 30: Two commenters requested that section 7 consultation under the ESA be initiated with the U.S. Fish and Wildlife Service before reopening the fishery.

Response: NMFS has reinitiated ESA section 7 consultation with the U.S. Fish and Wildlife Service with respect to the effects of the Hawaii-based longline fishery on the short-tailed albatross. See also the response to Comment 7. The terms and conditions of the current U.S. Fish and Wildlife Service biological opinion, implemented through existing regulations, still apply to the fishery.

Comment 31: One commenter stated that the current action is being undertaken in response to the August 31, 2003, decision of Judge Kollar-Kotelly in HLA v. NMFS, and because the basis for that decision was explicitly procedural, the nature of the ruling makes caution the most prudent line of action.

Response: As discussed in the DSEIS, the Council and NMFS were engaged in activities relating to this proposed regulatory amendment before the August 31, 2003, decision in the HLA v. NMFS case. The identification of new data and new fishing gear technologies that have the potential to substantially reduce incidental sea turtle interaction rates prompted the Council and NMFS to consider adjustments in the regulatory regime. The 2004 biological opinion confirms that the adjustments are not likely to jeopardize the continued existence of sea turtle species.

Comment 32: The agency is under no legal obligation to take the drastic action in the Proposed Rule to undo regulations intended to prevent the longline fishery from jeopardizing the continued existence of threatened and endangered sea turtles.

Response: NMFS acknowledges that it is not obligated to implement this particular rule. The measures in this final rule are based on a regulatory amendment proposed by the Council, and they were chosen from among a range of alternatives in terms of achieving specific objectives, including avoiding the likelihood of jeopardizing the continued existence of endangered or threatened species. Like the regulations currently in place, NMFS has determined that this final rule is not likely to jeopardize the continued existence of endangered or threatened sea turtles.

Comment 33: A demonstration tuna fishery using the hook and bait combinations tested in the Atlantic should be implemented rather than the model swordfish fishery.

Response: There is insufficient information available at this time on the impacts of circle hooks in deep-set tuna longline fisheries, such as the fishery conducted around Hawaii, to move forward with such a suggestion. Although some research on the efficacy of hook and bait types with respect to sea turtle interactions and catch rates of target species has been conducted on tuna sets in the Atlantic, the sets involved were shallow-sets, so the results are not applicable to the Hawaii deep-set fishery. However, the conduct of a Pacific demonstration tuna fishery using new hook and bait combinations is being considered by NMFS and research into such modifications is a discretionary recommendation of the 2004 biological opinion.

Comment 34: Asserting that re-opening the seasonal southern area closure will likely result in increased incidental sea turtle capture in the longline fishery in that area, one commenter recommends that additional protections for sea turtles be included for the tuna fleet. Specifically, the comment suggests including at least 20–percent observer coverage during April and May in the area to the south of the Hawaiian Islands that prior to this final rule was closed to longline fishing during those months, as well as establishing a trigger mechanism for closing the area if take levels are exceeded.

Response: One condition of the incidental take statement in the 2004 biological opinion is that there must be a minimum of 20–percent observer coverage in the tuna component of the Hawaii-based longline fishery and 100–percent observer coverage in the swordfish component. NMFS intends to implement this mandate. The 2004 biological opinion concluded that the proposed action is not likely to jeopardize the continued existence of any sea turtle species if the fishery is prosecuted in accordance with its recommendations. It also established separate take levels for the swordfish and tuna components of the fishery. Should the tuna component exceed its authorized take levels, NMFS will reinitiate consultation under section 7 of the ESA, at which point the need for additional measures would be considered.

Comment 35: One commenter preferred a mechanism that would close the fishery immediately upon reaching any hard cap identified in the 2004 biological opinion, commenting that the one week advance notice of closure of the fishery upon reaching the hard cap is unnecessary and potentially harmful to the sea turtles. The "yellow-light concept" and observer reports should provide ample advance warning of any fishery closure. Similar mechanisms should also be put into place if rate of capture or mortality per set is much higher than estimated, and that should trigger re-initiation of consultation.

Response: Biological opinions do not include hard caps. This final rule includes annual limits on the annual numbers of interactions with leatherback and loggerhead sea turtles in the shallow-set component of the Hawaii-based longline fishery, and although the limits are based on the findings of the biological opinion, they are not established or mandated by the biological opinion. The purpose of establishing these limits is to address the uncertainty that exists in implementing the hook and bait modifications that have proven to be effective in the Atlantic longline fishery but are, as yet, untested in the Pacific. Although the one week advance notice of closure of the fishery could result in additional sea turtles being taken, the number is expected to be very small. The delay in effectiveness offered by the advance notice provision is necessary to give permit holders and vessel operators time to cope the logistical aspects of the closure. Providing advance, "yellow-light" warnings based on vessel observer reports is an alternative approach, but the interaction limits are so small that NMFS has determined it to be impractical. Should any of the incidental take limits, including interactions or mortalities, be exceeded, NMFS will reinitiate consultation under section 7 of the ESA, at which point the need for additional measures would be considered.

Comment 36: One commenter recommends a similar analysis and mechanism ("yellow-light concept" and hard limit trigger) for closure of the tuna fishery and supports the use of circle hooks and squid bait in the tuna fishery.

Response: This final rule does not include a hard limit for the deep-set fishery because there is a higher level of confidence in the reliability of the projected take levels. The tuna component of the fishery has its own incidental take statement and if those limits are exceeded, NMFS will reinitiate consultation under section 7 of the ESA. Additionally, experimentation with alternative gear, bait, and fishing tactics in the tuna component of the fishery could be undertaken within the existing management framework, and such experimentation is recommended under the 2004 biological opinion.

Comment 37: The commenter stated that controls on general longline permitted vessels and those operating out of American Samoa should be included in the rule and analyzed in the DSEIS.

Response: The potential impacts of the American Samoa-based longline fleet are discussed in section 10.5 of the DSEIS. A program to limit access in that fishery has already been adopted by the Council for recommendation to NMFS. NMFS is in the process of designing an observer program for the American Samoa-based longline fishery, which is consistent with a condition in the 2004 biological opinion's incidental take statement that such a program be established where feasible. The program would improve the information base for the fishery. The Council plans to consider further measures for the American Samoa-based longline fishery at the Council's March, 2004, meeting.

Comment 38: One commenter stated that the Atlantic research results do not "minimize" turtle bycatch and that more work needs to be done. The comment also stated the limit of 2,120 shallow sets per year for the action is too much, although it expressed support for additional work in the Atlantic and Azores with larger hooks and urged NMFS to promote the use of promising gear by foreign fleets.

Response: NMFS allows that further reductions in turtle takes and mortalities may be achieved with expanded experimentation on gear and fishing tactics and agrees that more work needs to be done. However, NMFS supports the proposed set limit. According to the 2004 biological opinion, the proposed number of sets is not likely to jeopardize the continued existence of any turtle species. Adaptation of the Atlantic results to the Pacific is necessary because of the different oceanographic conditions and fishing practices, and will be essential in transferring new methods to foreign fleets in the Pacific. It is likely that work in both the Atlantic and Pacific will contribute to reductions of turtle takes. The 2004 biological opinion includes several conservation recommendations aimed at increasing the export of knowledge of techniques and gear to reduce turtle interactions and mortalities.

Comment 39: A comment states that NMFS should carefully review the bycatch of other non-target species, such as seabirds and sharks. An expressed concern is historical observer data showing seasonal variations in seabird interactions, with peaks in the April-June period.

Response: The Magnuson-Stevens Act requires that FMPs establish a standardized reporting methodology for assessing bycatch, reduce bycatch to the extent practicable, and reduce mortality of unavoidable bycatch to the extent practicable. (Seabirds are not "bycatch" as defined in the Magnuson-Stevens Act but seabird interactions are nonetheless monitored and managed as bycatch is.) The Magnuson-Stevens Act does not require measures to reduce bycatch that are not practicable. In accordance with the Magnuson-Stevens Act, NMFS is in the process of establishing a bycatch protocol that describes common elements of a standardized bycatch reporting methodology for fisheries under the jurisdiction of the agency. Consistent with this developing protocol, the FMP for the western Pacific pelagic fisheries includes a review of bycatch in the fisheries and evaluates the potential and practicability of alternative approaches to reduce bycatch and bycatch mortality, as required. Existing regulations for the longline fisheries provide for bycatch data, as well as seabird data, to be collected through mandatory vessel logbooks. Data on bycatch and protected species interactions are also collected through a vessel observer program in the Hawaii-based longline fishery, and a similar program is being planned for the American Samoa-based longline fishery. NMFS will develop observer coverage levels and sampling designs following the bycatch protocol.

A new ESA section 7 consultation on the short-tailed albatross is being conducted. As indicated in the response to Comment 7, this final rule does not affect the existing requirements to employ seabird mitigation measures, and NMFS and the Council are considering additional seabird avoidance measures, some of which hold promise for virtually eliminating seabird interactions in pelagic longline fisheries. It should be noted that the April-June peak observed in seabird interactions coincided to a large extent with the April-May period of the southern area closure, which had the effect of pushing longline effort closer to the major seabird breeding colonies in the Northwestern Hawaiian Islands.

Comment 40: One commenter stated that the proposed regulatory amendment and its implementing regulations reflect dramatic progress toward a collaborative, science-based, integrated and lawful regulatory regime.

Response: Comment acknowledged.

Comment 41: One commenter stated that narrow definitions and design criteria for dehooking devices are likely to cramp NMFS's discretion in ways that may be detrimental to the fishery and to conservation interests.

Response: The design standards are based on devices and designs developed and used beneficially in research conducted in Atlantic research over the last 3 years. They are minimum design standards and in fact allow a substantial amount of flexibility in construction and design. If additional experience or research indicates the design standards should be modified, NMFS may adjust the regulations.

Comment 42: A number of commenters stated that they oppose renewed swordfish fishing east of 150° W. long.

Response: This final rule does not distinguish between waters east and west of 150° W long., as the best available scientific information does not warrant such an action. Vessels operating under Hawaii longline limited access permits will be allowed to target swordfish (make shallow longline sets) north of the equator at any longitude. Issues involving distinctions by longitude arose in the development of regulations for the West Coast-based longline fishery in the Pacific Fishery Management Council's Highly Migratory Species (HMS) Fishery Management Plan (FMP) for vessels operating primarily out of California and the biological opinion for that action. The Pacific Council reviewed the available evidence and concluded that there was insufficient evidence that turtle takes were significantly higher east 150° W long. A recent study of this issue (Carretta, 2003) concluded that, while there is some evidence that shallow sets east of 150° W long. have higher interaction rates with loggerhead and leatherback sea turtles, the difference is not statistically significant at the 95

percent level of confidence. Conversely, the interaction rate of shallow sets with olive ridley sea turtles was significantly higher west of 150° W long. Regulation of the fishery conducted under the HMS FMP is independent of this proposed action for the Western Pacific. The HMS fishery will be prohibited from making shallow-sets west of 150° W long. by the FMP and its implementing regulations and from making shallow sets east of 150° W long. by rules implemented under the ESA (for the latter, see final rule published March 11, 2004, at 69 FR 11540). The HMS FMP and its associated biological opinion assumed that any shallow-set longlining would be done using the same techniques historically used in both the Hawaii-based and the West Coast-based fisheries, specifically, J-hooks and squid bait. The action here requires the use of circle hooks and mackerel-type bait for Hawaii-based vessels making shallow sets north of the equator, hook and bait types that have been shown in the Atlantic to significantly reduce interactions with loggerhead and leatherback turtles. Waters east of 150° W long. have historically represented a relatively minor portion of the Hawaii-based longline effort, and that is expected to be the case under this final rule.

Comment 43: Several commenters stated that keeping the area east of 150° W long. closed to longline fishing for swordfish is the only measure that will help prevent extinction of the leatherback.

Response: There are a number of measures that will help reduce the risk of extinction of the leatherback including elimination or reduction of direct harvesting, nesting beach management, and egg protection. Additionally, the best available scientific information does not warrant a longitudinal separation of regulations for the Hawaii-based longline fleet. In either case, there is relatively little fishing east of 150° W long. by this fleet. Also, the 2004 biological opinion concludes that the fishery, as managed under this final rule (i.e., without longitudinal distinctions), is not likely to jeopardize the continued existence of any sea turtle species.

Comment 44: Several commenters stated that since the area east of 150° W long. was closed to shallow sets, the number of sea turtles killed has dropped significantly.

Response: It is true that shallow-set longlining generally has higher turtle interaction rates than does deep-set longlining, and prohibiting shallow-setting would likely result in fewer sea turtle interactions than an open swordfish fishery. Nevertheless, NMFS has determined that the number of interactions that is anticipated to occur under this final rule is acceptably small. It is important to note that the Hawaii-based longline fleet exerts approximately 3 percent of all Pacific pelagic longline effort. When U.S. vessels are restricted from fishing for swordfish, it is possible that foreign fleets will fill all or part of the void in supply, and since those fleets are likely to have greater interaction and mortality rates per unit catch than the Hawaii-based fleet, the result could be more interactions Pacific-wide. This final rule includes a model swordfish fishery employing methods shown in the Atlantic (circle hooks and mackerel-type bait) to dramatically reduce turtle interactions and at the same time, increase swordfish catches. If these techniques prove as effective in the Pacific as they have been found to be in the Atlantic, foreign fleets may adopt these methods to increase their swordfish landings while also reducing their turtle interaction rates. The long-term effects of exporting these techniques may far outweigh any short-term gains resulting from closing areas to Hawaii-based vessels.

Comment 45: One commenter asked why the data collected to implement the Disaster Economic Assistance Program (DEAP) for the Hawaii-based longline fishery was not used as the basis for developing an allocation based on historical participation in the swordfish fishery.

Response: Although the data from the DEAP is available and could have been used to determine a minimum baseline for participation in the historical swordfish fishery, the Council recommended that the model swordfish fishery be open to all Hawaii-based longline permit holders. The main rationale for that recommendation is that limiting participation to permit holders with historical participation in the swordfish component of the fishery would be an unjustified removal of a previous privilege and economic option from vessels that historically targeted tuna.

Comment 46: One commenter stated that the limits on the numbers of loggerhead or leatherback turtle interactions would create an incentive for each permit holder to do as much shallow-setting as possible before the fishery is closed, thereby encouraging fishermen to shallow-set under what would otherwise be sub-optimal conditions in terms of economic performance and safety.

Response: These effects could indeed occur. Their likelihood and magnitude are dependent on, among other factors, the probability of either of the interaction limits being reached in a given year. NMFS has determined that the probability is not excessively great and that these potential effects are likely to be relatively minor. However, like several other measures in this final rule, this measure is novel in the western Pacific pelagic fisheries and its effects are not certain. NMFS intends to continue to monitor the biological and socioeconomic aspects of the fishery such that these and other effects, both positive and negative, can be detected and measured, and if needed, appropriate management responses can be taken.

Comment 47: One commenter expressed support for the proposed rule and its implementing management measures. The commenter also stated that the reopening of the Hawaii-based swordfish fishery will send a positive conservation message globally.

Response: Comment acknowledged.

Comment 48: One commenter stated the agency should be doing all it can to protect what little there is left of the nation's precious natural heritage.

Response: The model swordfish fishery, if it is as successful in the Pacific as it has been in the Atlantic, is expected to have positive effects on international longline fishing practices with respects to effects on sea turtle populations, which might be considered to be part of the natural heritage of the U.S.

Comment 49: One commenter stated that leatherback turtles can withstand no additional human captures or kills and are likely to be killed at an increased rate if shallow sets are allowed.

Response: The 2004 biological opinion concluded that the action is not likely to jeopardize the continued existence of any turtle species. The model swordfish fishery, if it is as successful in the Pacific as it has been in the Atlantic, is expected to have positive effects on international longline fishing practices with respect to effects on leatherback and loggerhead turtle populations. Management alternatives that would eliminate or sharply curtail the model swordfish fishery would provide little incentive for foreign fishing vessels to change their fishing patterns.

Comment 50: One commenter stated that it is unknown whether turtles are able to survive the injury and trauma of being captured and then released.

Response: Post-release mortality is an area of active research and quite a bit is known. In 2001, NMFS established a policy and criteria for estimating

survival and mortality rates following interactions with longline gear. In 2004 (since publication of the DSEIS and described in new section 14.0 of the Final SEIS for this action), these criteria were reviewed and modified on the basis of new information. Six categories of interaction and three categories of release were defined to give a matrix of post-release mortality estimates for both leatherback and hard shell turtles. These percentages currently are used in estimating post-release mortalities. It is likely that these criteria will continue to be refined as new data become available.

Comment 51: One commenter stated that the indiscriminate use of long soak times, shallow depths, and light sticks poses a terrible threat to our oceans. It simply is too wasteful a fishing technique.

Response: The action includes a variety of measures to regulate and monitor the Hawaii-based domestic longline fishery. It includes a model swordfish fishery employing methods shown in the Atlantic (circle hooks and mackerel-type bait) to dramatically reduce turtle interactions and at the same time, increase swordfish catches. Swordfish-directed longlining results in bycatch of other fish species, and although no such species have been identified as being in poor condition as a result of swordfish-directed longlining, the Council and NMFS are continuing to explore strategies for reducing bycatch in longline fisheries. Discarding of light sticks is prohibited under U.S. law and international convention.

Comment 52: One commenter stated that harpooning would be preferable to longline fishing in terms of economics, jobs, product quality and ecosystem impact.

Response: Harpooning is not prohibited under the FMP. There are only certain places where the oceanographic conditions favor a concentration of swordfish at the sea surface where they can be harpooned. These conditions do not exist in the area fished by the Hawaii-based fleet, and this method is impractical for them to use.

Comment 53: One commenter expressed the desire that the agency stop giving commercial fishermen optimum yields, which means no fish left in our oceans for our children's world.

Response: National Standard 1 of the Magnuson-Stevens Act requires NMFS to manage fisheries for "optimum yield" (16 U.S.C. § 1851(a)(1)), which is the yield that provides the greatest overall benefit to the nation, with particular reference to food production and recreational opportunities. Optimum yield is based on maximum sustainable yield (MSY) as modified by economic, social and ecological factors. MSY is a sustainable management benchmark with respect to fish stocks and OY further reduces that benchmark to account for other relevant factors, including interactions with protected species.

Comment 54: One commenter stated that all longlining should be eliminated because swordfish are endangered.

Response: Swordfish in the Pacific are not overfished or listed as endangered or threatened under the ESA, and the stock historically fished by the Hawaii-based fishery appears to be in good condition. As reviewed in section 9.1.4.6 of the DSEIS, "The stock assessment for North Pacific swordfish by Kleiber and Yokawa (2002) suggests that the population in recent years is well above 50% of the unexploited biomass, implying that swordfish are not over-exploited and relatively stable at current levels of longline fishing effort in the North Pacific."

Comment 55: One commenter opposed the elimination of the requirement that operators of general longline vessels take an annual protected species course.

Response: The removal of this requirement will occur as a result of the Court Order vacating the regulations published June 12, 2002, that provided protective measures for sea turtles. At its March 2004 meeting, the Council is expected to consider whether this requirement should be reimplemented.

Comment 56: A commenter expressed concern over the composition of the Council, asserting that a strong commercial fishing presence on the Council may improperly influence the biological opinions produced.

Response: The Western Pacific Fishery Management Council has 13 voting and 3 non-voting members. Half of the members are appointed by the U.S. Secretary of Commerce to represent fishing and related community interests in the region. The other Council members are designated state, territorial and federal officials with fishery management responsibilities. Only one of the four Hawaii members of the Council represents commercial fishing interests. Biological opinions are issued by NMFS' Office of Protected Resources, not the Council or its staff.

Comment 57: A commenter expressed concern that results from the Atlantic may not work in the Pacific, maybe because there is too little food and too few turtles in the Atlantic.

Response: In the Atlantic experiments, the observed reductions in turtle takes were quite substantial for loggerheads and leatherbacks and it is hoped that they will be similarly successful in the Pacific. Recognizing that the efficacy of the mitigative hook and bait types has yet to be tested in the Pacific, this final rule includes annual limits on interactions with leatherback and loggerhead turtles in the shallow-set component of the fishery, which will ensure that few interactions occur regardless of the success of the hook and bait requirements. Compliance with the limits will be facilitated by a high level of observer coverage in that component. NMFS intends to have 100–percent vessel observer coverage in the shallow-set component, as mandated in the 2004 biological opinion.

Comment 58: A commenter suggested that all quotas be cut by 50 percent this year and 10 percent each subsequent year.

Response: Because the North Pacific swordfish stock is not overfished and appears to be in good condition, there are no quotas on swordfish landings. This final rule will limit the annual number of shallow (swordfish-directed) sets to about one half the annual average during the 1994–1999 period and strictly limit the number of leatherback and loggerhead turtles incidentally caught to avoid jeopardizing turtle species. The limit on shallow sets will also serve to limit the catches of other species.

Comment 59: One commenter suggested that any fishing violator lose his vessel.

Response: The appropriate vehicles for establishing penalties are the enabling statute and penalty schedules issued by the NOAA Office of Law Enforcement and NOAA General Counsel.

Comment 60: A commenter stated they would like to see marine sanctuaries established where nobody can fish.

Response: Marine sanctuaries, including "no take" areas, are being established throughout the Western Pacific by local and federal agencies. The Council has established such areas through its Coral Reef Ecosystems Fishery Management Plan, and is considering implementing more such areas for other fisheries. Establishing no-take marine sanctuaries in international waters is not feasible, as the United States may not unilaterally prohibit foreign fishing on the high seas.

Comment 61: One commenter questioned the motivation for the action, asking whether the Council

wants to fish out the area and decimate the stocks.

Response: This final rule might result in an increase in the harvest of swordfish, but swordfish in the Pacific are not overfished, as described above. The Council and NMFS are charged with protecting fishery resources while maintaining opportunities for domestic fishing at sustainable levels of effort and yield and avoiding adverse impacts to protected species. Towards this end, there is a limited access program in place for the Hawaii-based longline fleet, and this final rule will implement effort limits for the shallow-set sector of this fishery. The effect of both is to limit the catch of fish.

Comment 62: A commenter expressed the view that even a "possibility" that greater effort per set could increase relative to the no action scenario would make any plan allowing such increase too risky or wrong.

Response: There are physical constraints to how many hooks can be set in a day by a shallow-setting longline vessel. Further, the limits on interactions with leatherback and loggerhead turtles will ensure that interactions are limited regardless of the degree to which effective effort per set might increase as a result of this final rule.

Comment 63: A commenter stated that assessing for multiple years is worrisome, as a plan could be set in stone and, meanwhile, every fish in the ocean could have disappeared.

Response: The fishery management plan and implementing regulations for this fishery are reviewed annually. Due to the considerable inter-annual variability in climatic and oceanographic conditions across the western Pacific, results obtained in a single year may not represent typical conditions. Valid, representative results are necessary to formulate appropriate long-term management measures, and this typically requires data from more than a single year. The status of each stock is regularly assessed and adjustments to the respective management regimes are required if a stock is found to be overfished.

Comment 64: A commenter stated that more time, rather than an abbreviated comment period, was needed.

Response: The DSEIS for this action had a 30–day comment period, approved by the Environmental Protection Agency, in order to ensure that protective measures for sea turtles are implemented by April 1, 2004, the date that existing protective measures will be eliminated by Court Order.

Comment 65: A business should not hold more than one permit.

Response: This rule does not affect the existing requirements and restrictions related to fishing vessel permits and it does not affect the number of permits that may be held by a single business. The comment is acknowledged, but NMFS does not find reason at this time to restrict the number of permits that may be held by a single business.

Comment 66: All the catch of all vessels should be posted on the internet so the public can see what is being done to a resource that belongs to all Americans.

Response: NMFS and the Council provide aggregated catch information in the form of quarterly and annual reports that are available on their websites. (*www.nmfs.hawaii.edu* and *www.wpcouncil.org*).

Comment 67: One commenter stated the limit on shallow setting certificates should be 500, not 2,120.

Response: NMFS considered a range of limits on shallow sets from 0 to 3,179. Several considerations factored into the choice of the number of sets for the preferred alternative, including potential effects on turtle populations, adequacy of resultant data to document the effects of the model swordfish fishery, the costs of outfitting a vessel for this type of fishing, and the potential annual returns for participants. One of the objectives of the FMP is to achieve optimum yield. The preferred alternative was selected to provide the greatest economic benefits at the least cost, including the non-market costs associated with sea turtle interactions.

Comment 68: Several commenters stated the rules should not just restrict American fishermen, but level the playing field and restrict foreign longline fleets from fishing as well.

Response: The United States government cannot manage/regulate foreign fishing effort on the high seas.

Comment 69: One commenter stated that sea turtles are essential to the lure and lore of the western Pacific cultures and communities.

Response: NMFS recognizes the importance of sea turtles to the cultures and communities of the western Pacific. One objective of this rule is to avoid jeopardizing the continued existence of sea turtles. The analyses conducted in association with the rule, including those in the 2004 biological opinion, indicate that it is not likely to jeopardize the continued existence of any sea turtle species.

Comment 70: One commenter expressed views that trading, selling or giving shares should not be allowed.

Response: Depending on the number of interested permit holders, individual permit holders may receive so few shallow-set certificates that prohibiting transfers of these certificates could have the effect of making participation uneconomical due to the start-up costs. It would also result in unused effort, meaning the FMP objective of attaining optimum yield would not be furthered nor would the efficacy of the mitigative hook and bait types be tested and demonstrated to foreign fishing fleets.

Comment 71: One commenter raised concerns about blue marlin, indicating that it may be nearly fully exploited so more study is required before opening up a fishery that could further diminish the stock.

Response: In 1997, the Hawaii-based longline fishery was estimated to have caught 3.7 percent of the Pacific-wide catch of blue marlin (Boggs et al., 2000). That includes both deep and shallow set catches. Limitations inherent in this action would allow Hawaii-based shallow-set effort, with its greater rate of blue marlin catch as compared to the deep-set fishery, to 50 percent of the average annual effort seen during the 1994–1999 period.

Comment 72: A commenter suggested reducing the length of the hook leader to reduce hooking based on the fact leatherbacks are typically flipper hooked.

Response: Encounters by leatherbacks with longline gear are not completely random, but may to some extent be related to the turtles being attracted to the gear. Experiments in the Atlantic showed that hooks nearer to floats have a higher incidence of turtle interactions, however this has not been consistently observed for Pacific turtles. It would be premature to regulate this parameter without a better understanding of why leatherbacks are hooked.

Changes From the Proposed Rule

The final rule includes, in § 660.12, definitions of "circle hook" and "offset circle hook" in order to facilitate compliance with the requirement, in § 660.33(f), for Hawaii-based longline vessels to use offset circle hooks when making shallow longline sets north of the equator. For the same reason, § 660.33(f) also establishes minimum dimensions for an "offset circle hook sized 18/0 or larger," and specifies how the required 10° offset in the required circle hooks is measured.

The final rule includes, in § 660.32(a)(4), more detailed specifications of the dehookers that must be carried and used by Hawaii-based longline vessels to disengage hooked and entangled sea turtles. The dehooker specifications, expressed through minimum design and

performance standards, are based on the dehookers used in the recent research in the Atlantic on potential sea turtle mitigation measures. NMFS will provide vessel operators with further guidance on how to use the dehookers through various outreach activities, including the annual protected species workshops that owners and operators of Hawaii-based longline vessels are required to attend. The final rule also includes slight revisions to § 660.32(b) to specify that if a sea turtle is too large or hooked or entangled in a manner as to preclude safe boarding without causing further damage/injury to the turtle, the line clippers and dehookers must be used to cut and remove as much of the line as possible prior to releasing the turtle. In Table 1 is a list of the required equipment and sample models that meet the requirements.

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Table 1 - List of required equipment and sample models that meet the requirements

Required Item (see Note)	Sample
(i) Long-handled dehooker for ingested hooks	ARC Pole Model Deep-Hooked Dehooker (Model BP11)
(ii) Long-handled dehooker for external hooks	ARC Model LJ6P (6 ft (1.83 m)); ARC Model LJ36; or ARC Pole Model Deep-Hooked Dehooker (Model BP11); ARC 6 ft (1.83 m) Pole Big Game Dehooker (Model P610)
(iii) Long-handled device to pull an "inverted V"	ARC Model LJ6P (6 ft); Davis Telescoping Boat Hook to 96 inch (2.44 m) (Model 85002A); West Marine #F6H5 Hook and #F6-006 Handle
(iv) Tire	Any standard automobile tire free of exposed steel belts
(v) Short-handled dehooker for ingested hooks	ARC 17–inch (43.18–cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08)
(vi) Short-handled dehooker for external hooks	ARC Hand-Held Large J-Style Dehooker (Model LJ07); ARC Hand-Held Large J-Style Dehooker (Model LJ24); ARC 17–inch (43.18–cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08); Scotty's Dehooker
(vii) Long-nose or needle-nose pliers	12–inch (30.48–cm) S.S. NuMark Model #030281109871; any 12–inch (30.48–cm) stainless steel long-nose or needle-nose pliers
(viii) Wire or bolt cutters	H.K. Porter Model 1490 AC
(ix) Monofilament line cutters	Jinkai Model MC-T
(x) Mouth openers and gags (choose two):	
(A) Block of hard wood	Any block of hard wood meeting specifications
(B) Set of three canine mouth gags	Jorvet Model #4160, 4162, and 4164
(C) Set of two sturdy canine chew bones	Nylabone (a trademark owned by T.F.H. Publications, Inc.); Gumabone (a trademark owned by T.F.H. Publications, Inc.); Galileo (a trademark owned by T.F.H. Publications, Inc.)
(D) Set of two rope loops covered with hose	Any set of two rope loops covered with hose meeting specifications
(E) Hank of rope	Any size soft braided nylon rope, provided it creates a hank of rope 2 - 4 inches (5.08 cm - 10.16 cm) in thickness
(F) Set of four PVC splice couplings	A set of four Standard Schedule 40 PVC splice couplings (1–inch (2.54–cm), 1 1/4–inch 3.175–cm), 1 1/2 inch (3.81–cm), and 2–inch (5.08–cm)
(G) Large avian oral speculum	Webster Vet Supply (Model 85408); Veterinary Specialty Products (Model VSP 216–08); Jorvet (Model J–51z); Krusse (Model 273117)

Note: The designations preceding the required items refer to the applicable paragraphs in § 660.32(a)(4).

Figures 1, 2, 3, and 4 are diagrams of a sample hook removal device for a long-handled dehooker for ingested hooks, a sample long-handled dehooker for external hooks, a sample short-handled dehooker for ingested hooks, and a sample short-handled dehooker for external hooks, respectively.

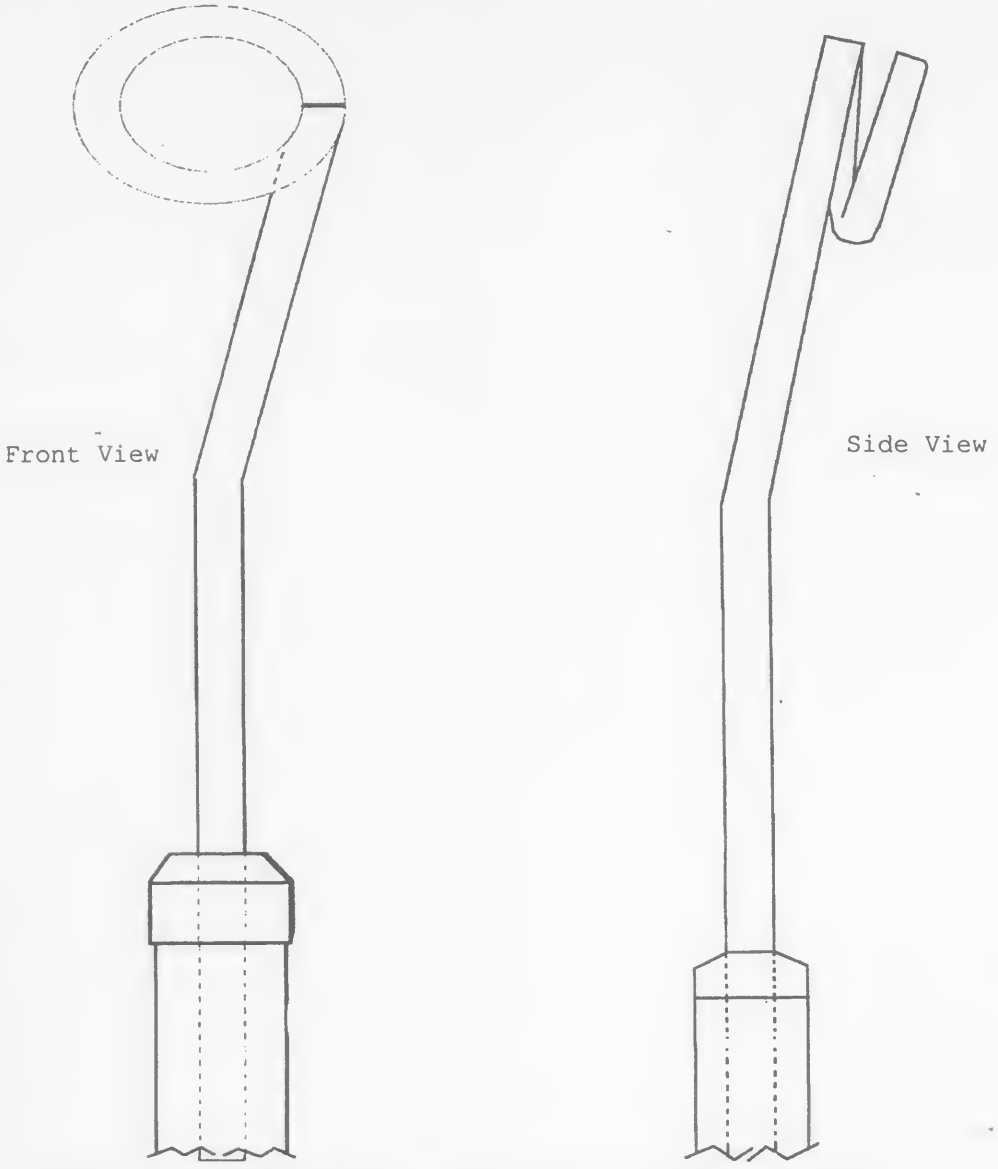

Figure 1 - Sample hook removal device for long-handled dehooker for ingested hooks. Reprinted with permission from Aquatic Release Conservation, Inc.

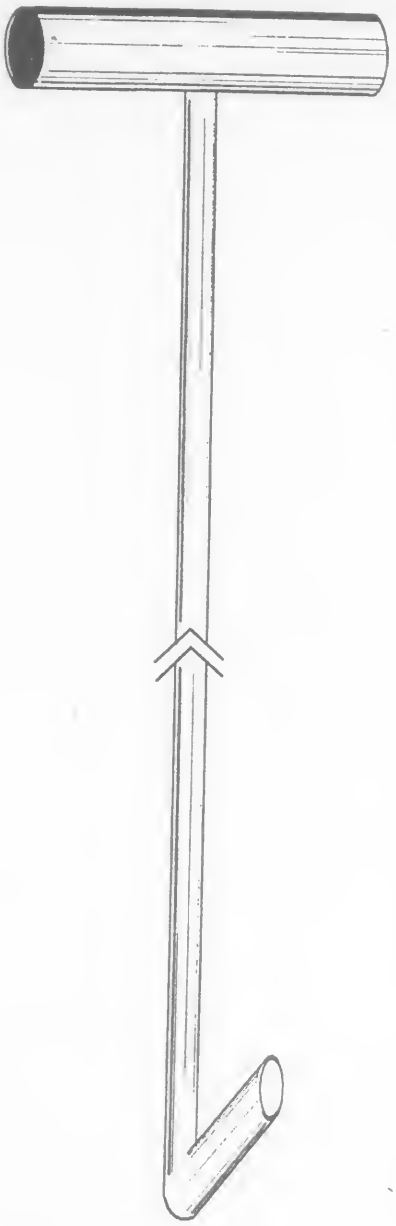

Figure 2 - Sample long-handled dehooker for external hooks

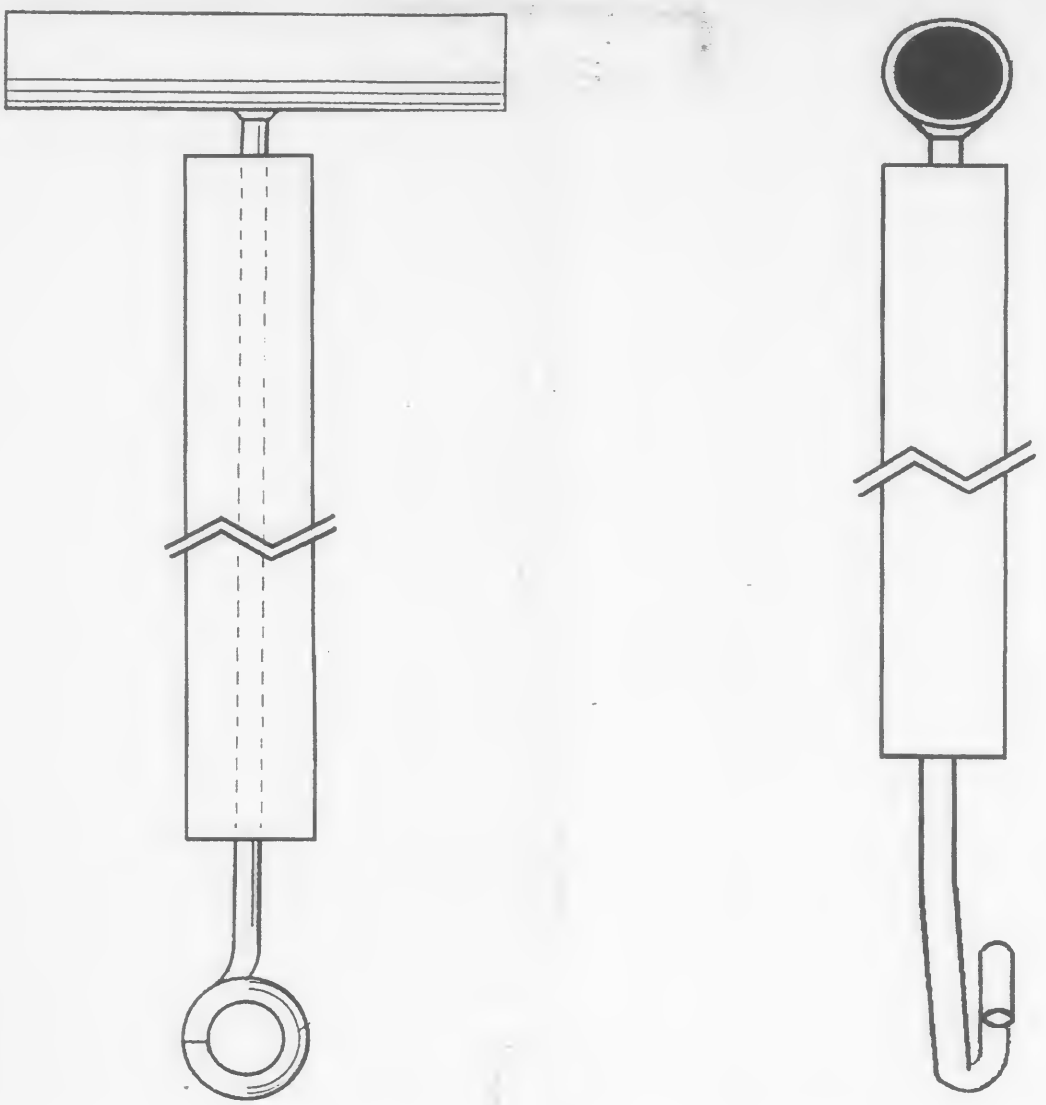

Figure 3 - Sample short-handled dehooker for ingested hooks. Reprinted with permission from Aquatic Release Conservation, Inc.

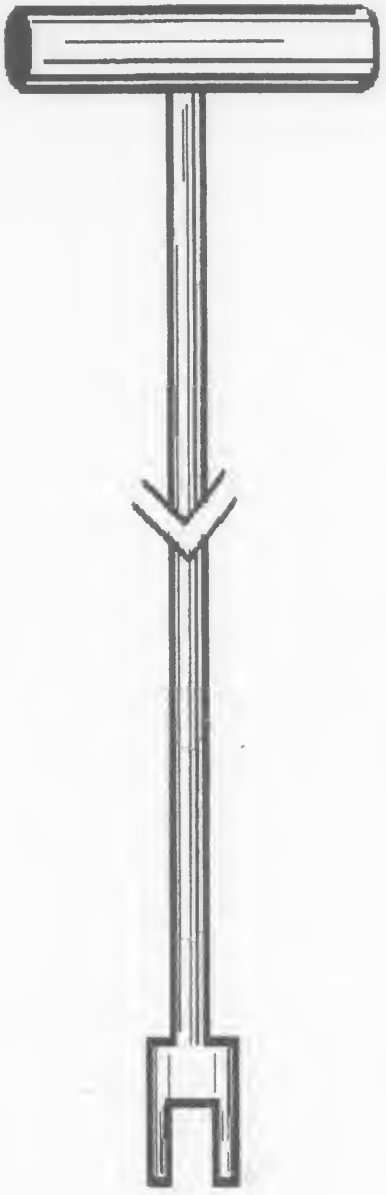

Figure 4 - Sample short-handled dehooker for external hooks

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The final rule clarifies, in § 660.33(a)(2), that each holder of a Hawaii longline limited access permit that expresses interest to NMFS in receiving shallow-set certificates for the upcoming year would receive not one share of the shallow-set certificates, but one share for each permit held.

The final rule includes, in § 660.33(b)(1), annual limits on the numbers of interactions in the shallow-set component of the Hawaii-based fishery, set at 16 and 17 for leatherback and loggerhead sea turtles, respectively. The proposed rule indicated that the limits would be set equal to the annual estimated incidental takes for the respective species in the shallow-set component of the Hawaii-based longline fishery, as indicated in the latest incidental take statement issued by NMFS in association with a biological opinion pursuant to section 7 of the ESA. Because a biological opinion with an incidental take statement has since been issued (February 23, 2004), the expected annual numbers of captures in the incidental take statement of that opinion are used to establish these interaction limits. If the numbers in the incidental take statement are modified or if a new biological opinion is issued, new rule-making will be undertaken to change the interaction limits accordingly.

The final rule includes, in § 660.33(g), a definition of "mackerel-type bait," based on form and coloration, in order to facilitate compliance with the requirement in that paragraph for Hawaii-based longline vessels to use mackerel-type bait when making shallow longline sets north of the equator.

The final rule includes, in § 660.33(j), an explicit prohibition against Hawaii-based longline vessels possessing or landing more than 10 swordfish from trips for which the pre-trip notification to NMFS under § 660.23(a) indicated the trip type to be deep-setting. This restriction will facilitate compliance with the limits and restrictions related to shallow-setting (the 10–swordfish threshold is included, in both the proposed and final rules, as one of the criteria that distinguishes the definitions of "deep-setting" and "shallow-setting").

Classification

Under 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30–day delay in effectiveness of certain measures in this final rule, finding such delay to be contrary to public interest because Court Orders (described above) will, on April 1, 2004, remove protections to sea turtles. The implementation of the turtle conservation measures in this final rule are necessary to ensure that the fishery is conducted in compliance with the ESA after the removal of existing protections on April 1, 2004. If such measures are not implemented on or after April 1, 2004, then sea turtles will not be adequately protected from adverse impacts caused by interaction with longline vessels. NMFS was unable to issue this final rule sooner because of the time needed to complete the rule-making process, including the requirements under NEPA to invite and consider input from the public, and the brief time available since the Court Orders. Certain measures related to shallow-setting by Hawaii-based vessels do not need to be effective immediately because shallow-setting will not be allowable until the shallow-set certificates for 2004 are distributed, which will not occur before May 1, 2004. Accordingly, this final rule is effective upon publication in the **Federal Register**, except for the new requirements and prohibitions regarding carrying and using dehookers (§ 660.22(ii) and § 660.32(a)), the amended requirements and prohibitions regarding sea turtle handling requirements (§ 660.22(ll) and § 660.32(b)), the new requirements and prohibitions regarding the use of specific hook types (§ 660.22(nn) and § 660.33(f)), and the new requirements and prohibitions regarding the use of specific bait types (§ 660.22(oo) and § 660.33(g)), which are effective 30 days after the date of publication in the **Federal Register**.

The Council and NMFS prepared an FSEIS for this regulatory amendment. EPA published a notice of availability of the FSEIS on March 19, 2004 at 69 FR 13036. This final rule is issued after an abbreviated comment period for the FSEIS under alternative procedures approved by the Council on Environmental Quality. The FSEIS focuses on the expected effects of the action on sea turtle species that interact with the western Pacific pelagic longline fisheries. The annual numbers of sea turtle interactions and mortalities in the Hawaii-based longline fishery resulting from the proposed rule would likely be substantially lower than those under the management regime in place in 1999, prior to the imposition of restrictions on swordfish-directed fishing and the April-May area closure (the regime to which the fishery will revert on April 1, 2004, if management action is not taken before then), and higher than the expected rates under the current management regime. During the 1994–1998 period, which represents an appropriate baseline for the no-action scenario, the estimated annual average numbers of interactions are as follows: leatherback, 112; loggerhead, 418; green, 40; and olive ridley, 146. Under this final rule, the expected numbers of annual average interactions are as follows: leatherback, 35; loggerhead, 21; green, 7; and olive ridley, 42. Under the current management regime, the expected numbers of annual average interactions are as follows: leatherback, 6; loggerhead, 19; green, 3; and olive ridley, 31. The projected annual numbers of sea turtle mortalities, which are subsets of the annual numbers of interactions, are more uncertain than the projected interactions because of the difficulty in estimating the numbers of turtles that ultimately die as a result of injuries incurred in interactions with fishing gear.

This final rule has been determined to be significant for purposes of Executive Order 12866.

The Council prepared a Final Regulatory Flexibility Analysis (FRFA) that describes the economic impact this final rule is expected to have on small entities. The Initial Regulatory Flexibility Analysis (IRFA) was summarized in the proposed rule published January 28, 2004 (69 FR 4098). A description of why action is being considered, the objectives and legal basis for the action, and a description of the action, including its reporting, recordkeeping, and other compliance requirements, are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

Number of Affected Small Entities

This final rule applies to all holders of Hawaii longline limited access permits and all holders of western Pacific longline general permits. The number of Hawaii longline limited access permit holders is 164. Not all such permits are renewed and used every year (approximately 126 were renewed in 2003). Most holders of Hawaii longline limited access permits are based in, or operate out of, Hawaii. Longline general permits are not limited by number. Approximately 67 longline general permits were issued in 2003, about 48 of which were active. In 2003 all but two holders of longline general permits were based in, or operated out of, American Samoa. The remaining two, neither of which was active in 2003, were based in the Mariana Islands.

In a few cases multiple permits are held by a single business, so the number

of businesses to whom this final rule will apply is slightly smaller than the number of permit holders. All holders of Hawaii longline limited access permits and longline general permits are believed to be small entities (i.e., they are businesses that are independently owned and operated, not dominant in their field, and have no more than $3.5 million in annual receipts). Therefore, the number of small entities to which this final rule will apply is approximately 230.

Duplicating, Overlapping, and Conflicting Federal Rules

To the extent practicable, it has been determined that there are no Federal rules that may duplicate, overlap, or conflict with this final rule.

Alternatives to the Rule

A number of alternatives to this final rule were considered. Described below are the alternatives and why they were not chosen.

The alternatives included two variations on the seasonal area longline closure, including one that would retain the current April-May closure in certain waters south of the Hawaiian Islands and one that would retain the current April-May closure with the exception of the EEZ waters around Palmyra Atoll (the preferred alternative eliminates the current April-May area closure). The alternatives were rejected because they would unnecessarily constrain the fishing activities and economic performance of holders of longline general permits and Hawaii longline limited access permits; adverse impacts to sea turtles could be adequately mitigated through other elements of the preferred alternative without having to restrict longline fishing activity by period or area.

The alternatives included five variations on the amount of shallow-setting longline effort north of the equator that would be allowed by Hawaii-based vessels. The levels of shallow-setting effort considered were zero, 1,060 sets per year, 3,179 sets per year, and unlimited, as well as one alternative that would allow only a one-time trial of 1,560 sets (the preferred alternative limits shallow-setting effort at 2,120 sets, about 50 percent of the 1994–1998 annual average level). The selection among alternatives was based on their expected impacts on sea turtles (sea turtle interactions and mortalities are expected to be strongly correlated with the amount of fishing effort) versus their expected impacts on the economic performance of the Hawaii-based longline fishery (economic benefits are expected to be strongly correlated with the amount of fishing effort). The alternatives allowing shallow-setting at levels greater than 50 percent of the 1994–1998 annual average were rejected because they might fail to keep impacts on sea turtles below those required in the biological opinion's incidental take statement. The alternatives allowing shallow-setting at levels less than 50 percent of the 1994–1998 annual average were rejected because they would unnecessarily constrain the fishing activities and economic performance of Hawaii-based longline vessels; adverse impacts to sea turtles could be adequately mitigated through other elements of the preferred alternative without having to restrict shallow-setting to the degree proposed under the rejected alternatives.

The alternatives included five variations on how the allowable level of shallow-setting effort north of the equator would be allocated among holders of Hawaii longline limited access permits. Variations included allocating the available effort by lottery, allocating it equally among all permit holders, allocating it in proportion to the permit holders' historical shallow-setting effort, and not allocating the effort in any particular way, in which case the fishery would be closed each year once the fleet-wide limit on effort (sets) is reached (provided the limits on sea turtle interactions are not reached first) (the preferred alternative divides and distributes the effort limit equally among all interested permit holders in the form of transferable shallow-set certificates). The lottery variation was rejected because it would impose a substantial amount of uncertainty on fishermen and might be considered inequitable by some fishermen. The equal-distribution variation was rejected because it would give each permit holder too few shallow sets to be able to make it worth investing and participating in the shallow-set component of the fishery, thereby constraining the economic performance of that component. The variation of allocating effort in proportion to the permit holders' historical shallow-setting effort was rejected because it would be excessively costly to implement and because it would exclude those participants who have historically targeted tuna but who were not previously barred from participating in the swordfish component of the fishery. The fleet-wide effort limit variation was rejected because it would create an incentive for each permit holder to do as much shallow-setting as possible before the fishery is closed, thereby encouraging fishermen to shallow-set under what would otherwise be sub-optimal conditions (in terms of both economic performance and safety).

The alternatives included two variations on the sea turtle interaction limit(s), including no sea turtle interaction limit and an interaction limit for each species for which there is an Incidental Take Statement issued under the ESA (the preferred alternative will close the shallow-set component of the fishery if either of two calendar-year interaction limits is reached, one for leatherback sea turtles and one for loggerhead sea turtles; the limits are 16 and 17, respectively, equal to the annual number of turtles expected to be captured for the respective species in the shallow-set component of the Hawaii-based fishery, as established in the prevailing biological opinion issued by NMFS pursuant to section 7 of the ESA). The no sea turtle interaction limit variation was rejected because it might fail to adequately minimize adverse impacts on sea turtles. The variation of establishing limits for all affected species was rejected because it would likely result in the shallow-set component of the fishery being closed more often than is needed to adequately mitigate adverse impacts on sea turtles.

Reasons for Selecting the Preferred Alternative

The preferred alternative was selected primarily in terms of how well it would be expected to achieve the objectives of the action, particularly achieving optimum yield and promoting domestic harvest and domestic fishery values while avoiding the likelihood of jeopardizing the continued existence of any endangered or threatened species. Because the target fish stocks in the Hawaii-based longline fishery are not overfished and greater fishing effort by the U.S. fleet would generally result in greater economic returns and greater benefit to the nation, the essence of the selection was one of balancing the beneficial effects of greater fishing effort against its negative impacts to ESA-listed sea turtle species, and at the same time, selecting sea turtle and seabird mitigation measures that have the promise of minimizing adverse impacts to those species without unduly comprising fishing efficiency. Another important consideration was the fairness of the scheme used to allocate the available shallow-set effort among fishery participants. The alternative that was determined to best meet these criteria was the one that would: eliminate the April-May longline closed area, limit shallow-set longline effort in the Hawaii-based longline fishery to

2,120 sets per year, distribute that annual limit in equal portions to all interested permit holders, establish annual limits on the numbers of interactions with leatherback and loggerhead sea turtles in the shallow-set component of the fishery, require that mitigative hook and bait types be used in the shallow-set component of the fishery, require that dehookers be carried and used to disengage hooked and entangled sea turtles, and require that longline gear be deployed during the nighttime when shallow-setting north of 23° N. latitude.

Effects of the Rule on Small Entities

This final rule is expected to have positive overall economic impacts on the small entities to whom the proposed rule would apply, all of which are individuals and businesses that hold permits for, and participate in, the western Pacific pelagic longline fisheries. These positive impacts will stem from the relaxation of the current restrictions on longlining, including the elimination of the April-May area closure for longlining and the elimination of the prohibition on shallow-setting north of the equator, thereby providing new fishing opportunities and potential economic benefits. These benefits will likely be very slightly offset by the need to acquire and use specified de-hooking devices.

Holders of Hawaii longline limited access permits that choose not to engage in shallow-setting are likely to further benefit each year by being able to sell their share of shallow-set certificates to other permit holders.

Holders of Hawaii longline limited access permits that choose to engage in shallow-setting are likely to benefit from the required hook-and-bait combination, as it has been found in experiments in the Atlantic Ocean to result in higher catch rates of swordfish relative to conventionally used hook and bait types. These permit holders will also be subject to new costs, which would partly offset the new benefits available from shallow-setting. These include the costs of acquiring an adequate number of shallow-set certificates each year and acquiring and using circle hooks sized 18/0 or larger, with 10–degree offset. There will also be very minor new costs associated with the requirement to notify NMFS each year if they are interested in receiving shallow-set certificates and with the requirement to submit shallow-set certificates to NMFS after each trip. There may also be new costs (relative to the costs associated with conventional practices) associated with the need to use only mackerel-type bait and to conduct the line-setting procedure during the nighttime hours when shallow-setting north of the equator.

Holders of longline general permits will have the opportunity to engage in unrestricted shallow-setting north of the equator, but because general longline vessels are not allowed to fish in the EEZ around Hawaii or land fish in Hawaii, it is unlikely to be a cost-effective option and thus unlikely to yield new economic benefits to fishery participants.

Public Comments on Initial Regulatory Flexibility Analysis

NMFS received and considered a number of comments on the IRFA, and responds as follows:

Comment 1: There is a lack of transparency in the process by which the alternative allocation methods were developed and evaluated. The economic and social impact analysis in the IRFA, in combination with those in the DSEIS and Regulatory Impact Review (RIR), is sketchy and sometimes contradictory.

Response: The participation options were discussed, and a preliminarily preferred option selected, at the Council's 121st meeting. In trying to determine the fairest alternative, the preferences of those directly affected (the holders of Hawaii longline limited access permits) were of primary importance, as explained further in the response to Comment 5. The economic and social impact analyses in the FRFA, in combination with those in the FSEIS and the RIR, have been expanded with respect to the expected impacts of the alternatives on fishery participants. Contradictions among those analyses have reconciled, particularly with respect to the relative advantages and disadvantages of the participation options (see also responses to Comments 2 and 4).

Comment 2: The IRFA, in combination with the DSEIS, is unclear if the prospect of a decrease in fishing vessel safety is a likely one and therefore a valid reason for rejecting Participation Option 1 (no allocation of shallow-set effort shares open to all).

Response: Discussions of the impacts of the participation options have been expanded and contradictory statements in the IRFA and DSEIS have been reconciled in the FRFA and FSEIS. As indicated in the FRFA, one consideration in choosing among the participation options was that Participation Option 1 could lead to safety problems because there would be an incentive to fish quickly, before the effort limit is reached, and that incentive could lead some fishermen to choose to fish in relatively hazardous weather or sea conditions.

Comment 3: The contention that Participation Option 1 may result in market gluts and shortages is not substantiated, and the information provided seems to indicate otherwise.

Response: Although Hawaii-caught swordfish has been a small part of the world market, interruptions or fluctuating availability of any product make the necessary establishment of market channels difficult. This is especially true for producers in relatively remote areas such as Hawaii who do not have easy access to the world market. These statements have been qualified to indicate that these results could happen, not that they necessarily would.

Comment 4: The DSEIS states that Participation Option 1 would be relatively easy to implement, but the IRFA states it would be difficult to monitor and administer.

Response: The discussions of the impacts of the participation options have been expanded and contradictory statements in the DSEIS and the IRFA have been reconciled in the FSEIS and FRFA. As indicated in the FRFA, one consideration in choosing among the participation options was that Participation Option 1 would require a system for monitoring fishing effort and a mechanism for closing the fishery once the effort limit is reached, both of which would be difficult to implement.

Comment 5: The DSEIS states that Participation Option 2 (allocating available shallow-set effort according to individual historical participation in the swordfish component of the fishery) may be contentious, but there is no mention that the preferred alternative, Participation Option 5 (allocate available shallow-set effort equally among all interested permit holders), may also be contentious. The potential for controversy and dissension should be examined in a balanced, objective, and comprehensive manner. Who may receive windfall gains should be carefully considered. Further, one reason Participation Option 2 was rejected is that it would exclude those who target tuna but actively participated in the development of this measure. The fact that someone who has engaged in the process of developing management measures is not rewarded does not seem to be a justifiable reason for rejecting an alternative.

Response: NMFS acknowledges that Participation Option 5, the preferred option, may indeed be contentious among the affected fishermen, as may the other options. As with any allocation scheme, it may not be

possible to formulate a scheme that is considered fair by all affected parties. In assessing the relative fairness of the allocation options, NMFS gave considerable weight to the views of the affected fishermen, and in seeking those views NMFS relied strongly on the expressed views of the Hawaii Longline Association (HLA), of which most permit holders are members. NMFS recognizes that not all permit holders are necessarily represented by HLA, and like any organization, the views of the organization as a whole do not necessarily reflect those of all its members. Nevertheless, NMFS has found that HLA's expressed support of Participation Option 5, together with an objective assessment of the likely effects of the allocation options and the public comments received on the DSEIS, IRFA, and proposed rule, indicate that the preferred allocation alternative is reasonably fair and is unlikely to result in excessive windfall gains to some fishermen at the expense of others. With respect to the reasons for rejecting Participation Option 2, the FRFA explains that restricting the allocation of available shallow-set effort to those with historical experience in the swordfish fishery would be an unjustified removal of a previous privilege and economic option from vessels that historically targeted tuna.

Comment 6: Administrative expediency and the short time line should not be used to justify rejection of Participation Option 2, especially if there are opportunities for extending the deadline or implementing an interim rule until a sound analysis of allocation alternatives can be performed.

Response: Administrative efficiency was one consideration but the refinement of the Council's preliminarily preferred option was also based on input from the interested parties (see response to Comment 5).

Comment 7: One reason given for rejecting Participation Option 2 is the inefficiencies that may result if there is no method for uninterested permit holders to transfer their effort shares to others. It is unclear why the same provision allowing the transfer of effort shares used in Participation Option 5 could not be included in Participation Option 2.

Response: Such a provision could have been included in Participation Option 2, but that alternative, with or without transferable certificates, was determined to be less preferred than Participation Option 5 for fairness reasons (see response to Comment 5).

Comment 8: The IRFA, in combination with the DSEIS and RIR, should include more explicit analysis of the costs and benefits of the allocation approach in Participation Option 5, particularly regarding the trade-offs between allocating a stable set of privileges with a long time horizon in order to promote efficiency and stability in the fishery and maintaining administrative flexibility.

Response: NMFS acknowledges that additional allocation approaches are available, including approaches that would allocate more stable and durable sets of privileges. The five allocation options considered were determined by NMFS to comprise a reasonable range of alternatives in the context of the objective of this action, particularly given the urgency of establishing protective measures for sea turtles by April 1, 2004, when the current protective measures are eliminated by Court Order. Lacking new measures, sea turtles will not be adequately protected from the adverse impacts of fishery interactions. One of the new protective measures is the annual fleet-wide limit on fishing effort in the shallow-set component of the fishery, which necessitates a system for allocating the available effort. With little time available to formulate and establish such a system, approaches that allocate short-term privileges, as in this rule, are advantageous relative to systems with more durable privileges in generally being less contentious, and also less irrevocable should adjustments be necessary in the future.

Comment 9: There is no examination of the implications of the allocation alternatives in terms of environmental justice, particularly with respect to the historical participants in the swordfish component of the fishery being predominantly Vietnamese-American.

Response: As indicated in the response to Comment 5, in trying to determine the fairest alternative, the preferences of those most affected (the permit holders) were of primary importance. Further, the preferred alternative does not dispossess any current permit holder in the Hawaii-based longline fishery.

Comment 10: The preferred participation option may or may not be the approach that maximizes net benefits, including potential economic effects, environmental effects, public health and safety, distributive impacts, and equity. Insufficient information is disclosed for policy makers or the public to make that determination.

Response: As discussed in section 10.1 of the DSEIS and FSEIS, the preferred alternative was selected because it was viewed as the most equitable one (see response to Comment 5) and the one most likely to result in the use of all allowable effort by those most able to exercise that effort.

Comment 11: The economic and social effects of the proposed action should be given as much attention in the analyses of the IRFA, DSEIS, and RIR as biological and physical effects.

Response: Efficiency in the fishery was an important factor considered in the analysis, as achieving optimum yield is part of the objective of the action. As indicated in the response to Comment 5, the relative fairness of the alternatives was also given strong consideration.

This final rule contains two collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA). These requirements have been approved by the OMB under OMB control numbers 0648–0214 and 0490. The first requires that holders of Hawaii longline limited access permits respond to annual requests from NMFS if they are interested in receiving shares of the annual limit on longline shallow-sets (in the form of shallow-set certificates). The second requires that holders of Hawaii longline limited access permits or their agents notify the Regional Administrator prior to each fishing trip whether longline shallow-sets or deep-sets will be made during the trip. The public reporting burden for the first collection-of-information requirement is estimated to average 10 minutes per response, and for the second requirement, 4 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB by e-mail at David_Rostker@omb.eop.gov or faxed to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply

with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

A formal consultation under section 7 of the Endangered Species Act was conducted for the pelagic fisheries of the western Pacific region as they would be managed under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, as modified by this regulatory amendment. In a biological opinion dated February 23, 2004, NMFS determined that fishing activities conducted under the regulatory amendment are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: March 30, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs,National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660 FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.12, the definition of "Pelagics FMP" is revised and new definitions for "Circle hook", "Deep-set or Deep-setting", "Offset circle hook", "Shallow-set or Shallow-setting", and "Shallow-set certificate", are added alphabetically to read as follows:

§ 660.12 Definitions.

* * * * *

Circle hook means a fishing hook with the point turned perpendicularly back towards the shank.

* * * * *

Deep-set or Deep-setting means the deployment of, or deploying, respectively, longline gear in a manner consistent with all the following criteria: with all float lines at least 20 meters in length; with a minimum of 15 branch lines between any two floats (except basket-style longline gear which may have as few as 10 branch lines between any two floats); without the use of light sticks; and resulting in the possession or landing of no more than 10 swordfish (Xiphias gladius) at any time during a given trip. As used in this definition "float line" means a line used to suspend the main longline beneath a float and "light stick" means any type of light emitting device, including any fluorescent "glow bead", chemical, or electrically powered light that is affixed underwater to the longline gear.

* * * * *

Offset circle hook means a circle hook in which the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

* * * * *

Pelagics FMP means the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region.

* * * * *

Shallow-set or Shallow-setting means the deployment of, or deploying, respectively, longline gear in a manner that does not meet the definition of deep-set or deep-setting as defined in this section.

Shallow-set certificate means an original paper certificate that is issued by NMFS and valid for one shallow-set of longline gear (more than one nautical mile of deployed longline gear is a complete set) for sets that start during the period of validity indicated on the certificate.

* * * * *

§ 660.21 [Amended]

■ 3. In § 660.21, paragraphs (m) and (n) are removed.

■ 4. In § 660.22, paragraphs (hh) and (ii) are added, and paragraphs (ff), (gg), (jj), (kk), (ll), (mm), (nn), (oo), (pp), (qq), (rr), (ss), and (tt) are revised, to read as follows:

§ 660.22 Prohibitions.

* * * * *

(ff) Own or operate a vessel that is registered for use under a Hawaii longline limited access permit and engaged in longline fishing for Pacific pelagic management unit species and fail to be certified for completion of a NMFS protected species workshop in violation of § 660.34(a).

(gg) Operate a vessel registered for use under a Hawaii longline limited access permit while engaged in longline fishing without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.34(d).

(hh) From a vessel registered for use under a Hawaii longline limited access permit, make any longline set not of the type (shallow-setting or deep-setting) indicated in the notification to the Regional Administrator pursuant to § 660.23(a), in violation of § 660.33(h).

(ii) Fail to carry, or fail to use, a line clipper, dip net, or dehookers on a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.32(a).

(jj) Engage in shallow-setting without a valid shallow-set certificate for each shallow-set made in violation of § 660.33(c).

(kk) Fail to attach a valid shallow-set certificate for each shallow-set to the original logbook form submitted to the Regional Administrator under § 660.14, in violation of § 660.33(c).

(ll) Fail to comply with the sea turtle handling, resuscitation, and release requirements when operating a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.32(b).

(mm) Fail to begin the deployment of longline gear at least one hour after local sunset or fail to complete the deployment of longline gear before local sunrise from a vessel registered for use under a Hawaii limited access longline permit while shallow-setting north of 23° N. lat. in violation of § 660.35(a)(10).

(nn) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with hooks other than offset circle hooks sized 18/0 or larger, with 10° offset, in violation of § 660.33(f).

(oo) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with bait other than mackerel-type bait in violation of § 660.33(g).

(pp) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the longline fishery has been closed pursuant to § 660.33(b)(3)(ii), in violation of § 660.33(i).

(qq) Have float lines less than 20 meters in length on board a vessel registered for use under a Hawaii longline limited access permit at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done, in violation of § 660.33(d).

(rr) Have light sticks on board a vessel registered for use under a Hawaii longline limited access permit at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done, in violation of § 660.33(d).

(ss) Transfer a shallow-set certificate to a person other than a holder of a

Hawaii longline limited access permit in violation of § 660.33(e).

(tt) Land or possess more than 10 swordfish on board a vessel registered for use under a Hawaii longline limited access permit on a fishing trip for which the permit holder notified NMFS under § 660.23(a) that the vessel would conduct a deep-setting trip, in violation of § 660.33(j).

* * * * *

■ 5. In § 660.23, paragraph (a) is revised to read as follows:

§ 660.23 Notifications.

(a) The permit holder for a fishing vessel subject to the requirements of this subpart, or an agent designated by the permit holder, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around Hawaii. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Administrator. The notice must provide the official number of the vessel, the name of the vessel, trip type (either deep-setting or shallow-setting), the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8 a.m. and 5 p.m. (Hawaii time) on weekdays for NMFS to contact to arrange observer placement.

* * * * *

■ 6. In § 660.32, paragraph (a)(1) is revised, paragraphs (a)(2) and (a)(3) are removed, paragraphs (a)(4) and (a)(5) are redesignated as paragraphs (a)(2) and (a)(3), respectively, new paragraph (a)(4) is added, and paragraphs (b)(1) and (b)(3) are revised, to read as follows:

§ 660.32 Sea turtle take mitigation measures.

(a) * * *

(1) Owners and operators of vessels registered for use under a Hawaii longline limited access permit must carry aboard their vessels line clippers meeting the minimum design standards as specified in paragraph (a)(2) of this section, dip nets meeting the minimum standards prescribed in paragraph (a)(3) of this section, and dehookers meeting the minimum design and performance standards prescribed in paragraph (a)(4) of this section. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles, and if it is done by cutting the line, the line must be cut as close to the hook as possible. Any hooked or entangled sea turtle must be handled, resuscitated, and released in accordance with the requirements specified in paragraphs (b) through (d) of this section.

* * * * *

(4) *Dehookers*–(i) *Long-handled dehooker for ingested hooks.* This item is intended to be used to remove ingested hooks from sea turtles that cannot be boated, and to engage a loose hook when a turtle is entangled but not hooked and line is being removed. One long-handled dehooker for ingested hooks is required on board. The minimum design and performance standards are as follows:

(A) *Hook removal device.* The hook removal device must be constructed of 5/16–inch (7.94 mm) 316 L stainless steel and have a dehooking end no larger than 1 7/8 inches (4.76 cm) outside diameter. The device must be capable of securely engaging and controlling the leader while shielding the barb of the hook to prevent the hook from re-engaging during removal. It must not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size capable of securing the range of hook sizes and styles used by the vessel.

(B) *Extended reach handle.* The hook removal device must be securely fastened to an extended reach handle or pole with a length equal to or greater than 150 percent of the vessel's freeboard or 6 ft (1.83 m), whichever is greater. It is recommended that the handle be designed so that it breaks down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

(ii) *Long-handled dehooker for external hooks.* This item is intended to be used to remove externally-hooked hooks from sea turtles that cannot be boated. The long-handled dehooker for ingested hooks described in paragraph (a)(4)(i) of this section meets this requirement. The minimum design and performance standards are as follows:

(A) *Construction.* The device must be constructed of 5/16–inch (7.94 mm) 316 L stainless steel rod. A 5–inch (12.70–cm) tube T-handle of 1–inch (2.54–cm) outside diameter is recommended, but not required. The dehooking end must be blunt with all edges rounded. The device must be of a size capable of securing the range of hook sizes and styles used by the vessel.

(B) *Handle.* The handle must have a length equal to or greater than the vessel's freeboard or 3 ft (0.91 m), whichever is greater.

(iii) *Long-handled device to pull an "inverted V".* This item is intended to be used to pull an "inverted V" in the fishing line when disentangling and dehooking entangled sea turtles. One long-handled device to pull an "inverted V" is required on board. The long-handled dehooker for external hooks described in paragraph (a)(4)(ii) of this section meets this requirement. The minimum design and performance standards are as follows:

(A) *Hook end.* It must have a hook-shaped end, like that of a standard boat hook or gaff, which must be constructed of stainless steel or aluminum.

(B) *Handle.* The handle must have a length equal to or greater than 150 percent of the vessel's freeboard or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to allow the hook end to be effectively used to engage and pull an "inverted V" in the line.

(iv) *Tire.* This item is intended to be used for supporting a turtle in an upright orientation while it is on board. One tire is required on board, but an assortment of sizes is recommended to accommodate a range of turtle sizes. The tire must be a standard passenger vehicle tire and must be free of exposed steel belts.

(v) *Short-handled dehooker for ingested hooks.* This item is intended to be used to remove ingested hooks, externally hooked hooks, and hooks in the front of the mouth of sea turtles that can be boated. One short-handled dehooker for ingested hooks is required on board. The minimum design and performance standards are as follows:

(A) *Hook removal device.* The hook removal device must be constructed of 1/4–inch (6.35–mm) 316 L stainless steel, and the design of the dehooking end must be such to allow the hook to be secured and the barb shielded without re-engaging during the hook removal process. The dehooking end must be no larger than 1 5/16 inch (3.33 cm) outside diameter. It must not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. The dehooking end must be of a size appropriate to secure the range of hook sizes and styles used by the vessel.

(B) *Sliding plastic bite block.* The dehooker must have a sliding plastic bite block, which is intended to be used to protect the sea turtle's beak and facilitate hook removal if the turtle bites down on the dehooker. The bite block

must be constructed of a 3/4–inch (1.91–cm) inside diameter high impact plastic cylinder (for example, Schedule 80 PVC) that is 10 inches (25.40 cm) long. The dehooker and bite block must be configured to allow for 5 inches (12.70 cm) of slide of the bite block along the shaft of the dehooker.

(C) *Shaft and handle.* The shaft must be 16 to 24 inches (40.64 - 60.69 cm) in length, and must have a T-handle 4 to 6 inches (10.16 - 15.24 cm) in length and 3/4 to 1 1/4 inches (1.90 - 3.18 cm) in diameter.

(vi) *Short-handled dehooker for external hooks.* This item is intended to be used to remove externally hooked hooks from sea turtles that can be boated. One short-handled dehooker for external hooks is required on board. The short-handled dehooker for ingested hooks required to comply with paragraph (a)(4)(v) of this section meets this requirement. The minimum design and performance standards are as follows:

(A) *Hook removal device.* The hook removal device must be constructed of 5/16–inch (7.94–cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used by the vessel.

(B) Shaft and handle. The shaft must be 16 to 24 inches (40.64 - 60.69 cm) in length, and must have a T-handle 4 to 6 inches (10.16 - 15.24 cm) in length and 3/4 to 1 1/4 inches (1.90 - 3.18 cm) in diameter.

(vii) *Long-nose or needle-nose pliers.* This item is intended to be used to remove deeply embedded hooks from the turtle's flesh that must be twisted in order to be removed, and also to hold in place PVC splice couplings when used as mouth openers. One pair of long-nose or needle-nose pliers is required on board. The minimum design standards are as follows: The pliers must be 8 to 14 inches (20.32 - 35.56 cm) in length. It is recommended that they be constructed of stainless steel material.

(viii) *Wire or bolt cutters.* This item is intended to be used to cut through hooks in order to remove all or part of the hook. One pair of wire or bolt cutters is required on board. The minimum design and performance standards are as follows: The wire or bolt cutters must be capable of cutting hard metals, such as stainless or carbon steel hooks, and they must be capable of cutting through the hooks used by the vessel.

(ix) *Monofilament line cutters.* This item is intended to be used to cut and remove fishing line as close to the eye of the hook as possible if the hook is swallowed or cannot be removed. One pair of monofilament line cutters is required on board. The minimum design standards are as follows: Monofilament line cutters must be 6 to 9 inches (15.24 - 22.86 cm) in length. The blades must be 1 3/4 (4.45 cm) in length and 5/8 inches (1.59 cm) wide when closed.

(x) *Mouth openers and gags.* These items are intended to be used to open the mouths of boated sea turtles, and to keep them open when removing ingested hooks in a way that allows the hook or line to be removed without causing further injury to the turtle. At least two of the seven different types of mouth openers and gags described below are required on board. The seven types and their minimum design standards are as follows.

(A) *A block of hard wood.* A block of hard wood is intended to be used to gag open a turtle's mouth by placing it in the corner of the jaw. It must be made of hard wood of a type that does not splinter (for example, maple), and it must have rounded and smoothed edges. The dimensions must be 10 to 12 inches (24.50 - 30.48 cm) by 3/4 to 1 1/4 inches (1.90 - 3.18 cm) by 3/4 to 1 1/4 inches (1.90 - 3.18 cm).

(B) *A set of three canine mouth gags.* A canine mouth gag is intended to be used to gag open a turtle's mouth while allowing hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 inches) (12.7 cm), medium (6 inches) (15.2 cm), and large (7 inches) (17.8 cm). They must be constructed of stainless steel. A 1 3/4–inch (4.45 cm) long piece of vinyl tubing (3/4 inch (1.91 cm) outside diameter and 5/8 inch (1.59 cm) inside diameter) must be placed over the ends of the gags to protect the turtle's beak.

(C) *A set of two sturdy canine chew bones.* A canine chew bone is intended to be used to gag open a turtle's mouth by placing it in the corner of the jaw. They must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5 1/2 - 8 inches (13.97 - 20.32 cm) in length) and one small (3 1/2 - 4 1/2 inches (8.89 - 11.43 cm) in length) canine chew bones.

(D) *A set of two rope loops covered with hose.* A set of two rope loops covered with a piece of hose is intended to be used as a mouth opener and to keep a turtle's mouth open during hook and/or line removal. A set consists of two 3–foot (0.91–m) lengths of poly braid rope, each covered with an 8–inch (20.32–cm) section of 1/2–inch (1.27–cm) or 3/4–inch (1.91–cm) light-duty garden hose, and each tied into a loop.

(E) *A hank of rope.* A hank of rope is intended to be used to gag open a sea turtle's mouth by placing it in the corner of the jaw. A hank of rope is made from a 6–foot (1.83–m) lanyard of braided nylon rope that is folded to create a hank, or looped bundle, of rope. The hank must be 2 to 4 inches (5.08 - 10.16 cm) in thickness.

(F) *A set of four PVC splice couplings.* PVC splice couplings are intended to be used to allow access to the back of the mouth of a turtle for hook and line removal by positioning them inside a turtle's mouth and holding them in place with long-nose or needle-nose pliers. The set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1 1/4 inches (3.18 cm), 1 1/2 inches (3.81 cm), and 2 inches (5.08 cm).

(G) *A large avian oral speculum.* A large avian oral speculum is intended to be used to hold a turtle's mouth open and control the head with one hand while removing a hook with the other hand. It must be 9 inches (22.86 cm) in length and constructed of 3/16–inch (4.76–mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (5/16–inch (7.94–mm) outside diameter, 3/16–inch (4.76–mm) inside diameter).

(b) * * *

(1) All incidentally hooked or entangled sea turtles must be handled in a manner to minimize injury and promote post-hooking or post-entangling survival.

* * * * *

(3) If a sea turtle is too large or hooked or entangled in a manner as to preclude safe boarding without causing further damage/injury to the turtle, the items specified in paragraphs (a)(2) and (a)(4) of this section must be used to cut the line and remove as much line as possible prior to releasing the turtle.

* * * * *

■ 7. Section 660.33 is revised to read as follows:

§ 660.33 Western Pacific longline fishing restrictions.

(a) *Annual Effort Limit on shallow-setting by Hawaii longline vessels.* (1) A maximum annual limit of 2,120 is established on the number of shallow-set certificates that will be made available each calendar year to vessels

registered for use under Hawaii longline limited access permits.

(2) The Regional Administrator will divide the 2,120–set annual effort limit each calendar year into equal shares such that each holder of a Hawaii longline limited access permit who provides notice of interest to the Regional Administrator no later than November 1 prior to the start of the calendar year, pursuant to paragraph (a)(3) of this section, receives one share for each permit held. If such division would result in shares containing a fraction of a set, the annual effort limit will be adjusted downward such that each share consists of a whole number of sets.

(3) Any permit holder who provides notice according to this paragraph is eligible to receive shallow-set certificates. In order to be eligible to receive shallow-set certificates for a given calendar year, holders of Hawaii longline limited access permits must provide written notice to the Regional Administrator of their interest in receiving such certificates no later than November 1 prior to the start of the calendar year, except for 2004, the notification deadline for which is May 1, 2004.

(4) No later than December 1 of each year, the Regional Administrator will send shallow-set certificates valid for the upcoming calendar year to all holders of Hawaii longline limited access permits, as of the just previous November 1, that provided notice of interest to the Regional Administrator pursuant to paragraph (a)(3) of this section. The Regional Administrator will send shallow-set certificates valid for 2004 no later than June 1, 2004, based on permit holders as of May 1, 2004.

(b) *Limits on sea turtle interactions.* (1) Maximum annual limits are established on the numbers of physical interactions that occur each calendar year between leatherback and loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-setting. The limits are based on the annual numbers of the two turtle species expected to be captured in the shallow-set component of the Hawaii-based fishery, as indicated in the incidental take statement of the biological opinion issued by the National Marine Fisheries Service pursuant to section 7 of the Endangered Species Act. If the numbers in the incidental take statement are modified or if a new biological opinion is issued, new rule-making will be undertaken to change the interaction limits accordingly. The limits are as follows:

(i) The annual limit for leatherback sea turtles (*Dermochelys coriacea*) is sixteen (16).

(ii) The annual limit for loggerhead sea turtles (*Caretta caretta*) is seventeen (17).

(2) Upon determination by the Regional Administrator that, based on data from NMFS observers, either of the two sea turtle interaction limits has been reached during a given calendar year:

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the **Federal Register** a notification of the sea turtle interaction limit having been reached. The notification will include an advisement that the shallow-set component of the longline fishery shall be closed and shallow-setting north of the equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, not earlier than 7 days after the date of filing of the notification of the closure for public inspection at the Office of the **Federal Register**, until the end of the calendar year in which the sea turtle interaction limit was reached. Coincidental with the filing of the notification of the sea turtle interaction limit having been reached at the Office of the **Federal Register**, the Regional Administrator will also provide notice that the shallow-set component of the longline fishery shall be closed and shallow-setting north of the equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, not earlier than 7 days after the date of filing of a notification of the closure for public inspection at the Office of the **Federal Register**, to all holders of Hawaii longline limited access permits via electronic mail, facsimile transmission, or post.

(ii) Beginning on the fishery closure date indicated in the notification published in the **Federal Register** under paragraph (b)(3)(i) of this section until the end of the calendar year in which the sea turtle interaction limit was reached, the shallow-set component of the longline fishery shall be closed.

(c) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may engage in shallow-setting north of the equator (0° lat.) providing that there is on board one valid shallow-set certificate for every shallow-set that is made north of the equator (0° lat.) during the trip. For each shallow-set made north of the equator (0° lat.) vessel operators must submit one valid shallow-set certificate to the Regional Administrator. The certificate must be attached to the original logbook form that corresponds to the shallow-set and that is submitted to the Regional Administrator within 72 hours of each landing of management unit species as required under § 660.14.

(d) Vessels registered for use under a Hawaii longline limited access permit may not have on board at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done any float lines less than 20 meters in length or light sticks. As used in this paragraph "float line" means a line used to suspend the main longline beneath a float and "light stick" means any type of light emitting device, including any fluorescent "glow bead", chemical, or electrically powered light that is affixed underwater to the longline gear.

(e) Shallow-set certificates may be transferred only to holders of Hawaii longline limited access permits.

(f) Owners and operators of vessels registered for use under a Hawaii longline limited access permit must use only offset circle hooks sized 18/0 or larger, with 10° offset, when shallow-setting north of the equator (0° lat.). As used in this paragraph, an offset circle hook sized 18/0 or larger is one whose outer diameter at its widest point is no smaller than 1.97 inches (50 mm) when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). As used in this paragraph, a 10° offset is measured from the barbed end of the hook and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

(g) Owners and operators of vessels registered for use under a Hawaii longline limited access permit must use only mackerel-type bait when shallow-setting north of the equator (0° lat.). As used in this paragraph, mackerel-type bait means a whole fusiform fish with a predominantly blue, green, or grey back and predominantly grey, silver, or white lower sides and belly.

(h) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may make sets only of the type (shallow-setting or deep-setting) indicated in the notification to NMFS pursuant to § 660.23(a).

(i) Vessels registered for use under Hawaii longline limited access permits may not be used to engage in shallow-setting north of the equator (0° lat.) any time during which the shallow-set component of the longline fishery is closed pursuant to paragraph (b)(3)(ii) of this section.

(j) Owners and operators of vessels registered for use under a Hawaii

longline limited access permit may land or possess no more than 10 swordfish from a fishing trip for which the permit holder notified NMFS under § 660.23(a) that the vessel would engage in a deep-setting trip.

■ 8. Section 660.34 is revised to read as follows:

§ 660.34 Protected species workshop.

(a) Each year both the owner and the operator of a vessel registered for use under a Hawaii longline limited access permit must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(c) An owner of a vessel registered for use under a Hawaii longline limited access permit must maintain and have on file a valid protected species workshop certificate issued by NMFS in order to maintain or renew their vessel registration.

(d) An operator of a vessel registered for use under a Hawaii longline limited access permit and engaged in longline fishing must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

■ 9. In § 660.35, new paragraph (a)(10) is added to read as follows:

§ 660.35 Pelagic longline seabird mitigation measures.

(a) * * *

(10) When shallow-setting north of 23° N. lat., begin the deployment of longline gear at least one hour after local sunset and complete the deployment no later than local sunrise, using only the minimum vessel lights necessary for safety.

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§ 660.36 [Removed and Reserved]

■ 10. Section 660.36 is removed and reserved.

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Proposed Rules

Federal Register
Vol. 69, No. 64
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AD13

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS or Service) is proposing to revise 36 CFR part 13, the special regulations for the NPS-administered areas in Alaska. Part 13 was first adopted in 1981 (46 FR 31836, June 17, 1981) as "interim guidance" and the minimum necessary to administer the new park areas established by the Alaska National Interest Lands Conservation Act (ANILCA) (Pub. L. 96–487, December 2, 1980, 94 Stat. 2371, 16 U.S.C. 3101). While individual sections of part 13 have been amended and some new sections added since 1981, there has been no comprehensive review of the part 13 regulations. This proposed rulemaking intends to initiate the first phase of a continuing review of part 13. The specific proposals included with this rulemaking are changes that have been under consideration as separate rulemaking initiatives as well as certain designations, closures, openings, permit requirements and other provisions established by park Superintendents under their discretionary authority subsequent to the adoption of part 13, and which are now viewed as appropriate for consideration in rulemakings. We intend the part 13 review process started by this proposed rulemaking to be ongoing, with regularly recurring rulemaking proposals to maintain an up-to-date part 13 that is responsive to changing public and resource needs. It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections as noted below.

DATES: Comments must be received by June 1, 2004.

ADDRESSES: Send comments by mail to: National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. By email to: *akro_regulations@nps.gov*. By fax to: (907) 644–3805.

FOR FURTHER INFORMATION CONTACT: National Park Service, Victor Knox, Associate Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Telephone: (907) 644–3501. E-mail: *akro_regulations@nps.gov*. Fax: (907) 644–3816.

SUPPLEMENTARY INFORMATION:

Background

Each park area in Alaska has a compendium consisting of the compiled designations, closures, openings, permit requirements, and other provisions established by the Superintendent under the discretionary authority granted in 36 CFR 1.5 and elsewhere in regulations. We have conducted a review of 36 CFR part 13 and the park compendiums, and propose the following changes. These changes, discussed below in the Section-by-Section Analysis, are part of an ongoing rulemaking process to be conducted in conjunction with the annual review of individual park compendiums. Several of these proposed rules are intended to replace existing provisions in park compendiums. Also covered are four proposed rules that have been under independent consideration and are included with this proposal for administrative convenience and efficiency. Each of these proposals is identified in the **Section-by-Section Analysis**. As used within this document, the terms "we," "our," and "us" refer to the National Park Service.

Section-by-Section Analysis

Section 13.1 Definitions

§ *13.1(c).* We propose to define the term *airstrip* because the new regulations will prohibit the obstruction of airstrips (*see* § 13.10 below). The proposed definition identifies the specific types of airstrips at issue. It does not include every location susceptible to aircraft landings, but rather only airstrips that are generally known, at least locally, to be currently in such use. Such strips must be (1) visible to an average, reasonably alert person; (2) known in the local area as a location where aircraft land; or (3) marked in some way. This definition would include temporary and permanent airstrips over ground, snow, water, or ice.

§ *13.1(g).* We propose to define the term *facility* because the new regulations will address public use of "facilities." The existing part 13 regulations treat public use at or on NPS facilities the same as other areas. As visitor use levels have risen and user and/or resource conflicts have emerged, we have identified a need to manage select facilities and developed areas differently from other park areas. We propose to include buildings, structures, park roads (as that term is defined in § 1.4), parking lots, campgrounds, picnic areas, paved trails, and maintenance support yards in the facilities definition. Maintenance support yards are areas temporarily used during projects to store materials or for temporary employee housing. We intend the term *facility* to be construed narrowly. For example, camping will be prohibited at or on NPS facilities except for designated campgrounds. Camping on a paved trail or park road unreasonably interferes with other public access and poses obvious safety concerns. Current regulations require such a closure to be implemented as either a temporary closure not exceeding 12 months or as a rulemaking. Rather than propose a rulemaking for specific facilities in specific parks, we have instead adopted the approach proposed in these regulations.

Section 13.4 Information Collection

§ *13.4.* The Paperwork Reduction Act requires that we obtain approval from the Office of Management and Budget (OMB) before we collect information from the public. During the development of this proposed rule we learned that the information collection references currently found in § 13.4 are obsolete and incorrect. They became obsolete mainly because of department-wide regulations that superseded §§ 13.10 through 13.16. Our information collection activities have also been affected by the enactment of Federal statutes governing the way we regulate cruise ships and commercial fishing

access in Glacier Bay National Park. Our need to collect information under part 13, as currently written and as proposed, is covered under authorizations approved by the Office of Management and Budget for concession opportunities (OMB Control Number 1024–0125) and for special park uses (OMB Control Number 1024–0026). We propose to amend § 13.4 accordingly, and remove § 13.65(b)(7).

Section 13.10 Obstruction of Airstrips

§ 13.10(a)–(b). Alaska national park areas contain many remote and often minimally maintained or unmaintained bush landing areas [*see* § 13.1(c) above] relied on for general public and government access, and emergency use by aircraft. We considered including airstrips in the definition of facilities, but decided not to do so because it would unnecessarily broaden the facilities definition and the reach of the facilities regulations. For example, camping on an airstrip in a manner that obstructs a landing site is inappropriate because it poses safety problems, unfairly prevents other members of the public from accessing an area, and may interfere with government functions. However, camping adjacent to an airstrip would not pose problems under most circumstances. This regulation is modeled after an Alaska State law that prohibits obstructing airports and runways.

Section 13.18 Camping and Picnicking

§ 13.18(a)–(b). We propose revising paragraph (a) to carry into regulation various compendium restrictions on the length of time a specific campsite may be used by the same person or group. The regulation is modeled after State camping regulations. Camping in one location for a prolonged period can result in resource damage, particularly to soil and vegetation, and also does not allow for equitable allocation of preferred camping locations. The proposed revision also recognizes that we may require a party to relocate their camp if it unreasonably interferes with other public uses or may cause resource damage. Where camping in a particular location poses a resource concern, we will continue to utilize § 13.30 to establish permanent and temporary camping closures and restrictions. If the location of a specific party's camp may cause resource damage, we may require that party to relocate their camp under this proposed rule. Paragraph (a) would also restrict camping at or near park facilities other than campgrounds to avoid interference with the intended facility purposes. Other permanent or temporary camping closures or restrictions must be established pursuant to § 13.30. We propose paragraph (b) to provide a flexible and efficient method of notifying the public when picnicking is not appropriate in a particular area. The current regulation provides only for the posting of signs, which is not always the best method of providing the public with appropriate notice of picnicking restrictions and closures.

Section 13.19 Weapons, Traps, Bows and Nets

§ 13.19(a)–(e). We propose to revise § 13.19 in four aspects:

(1) Paragraph (a) serves to authorize the carrying, possession, and use of bear spray in all Alaska park areas. Such carrying, possession, and use are currently authorized in park areas established by ANILCA, but not in pre-ANILCA units. This revision allows bear repellent pepper spray in Klondike Gold Rush National Historical Park, Sitka National Historical Park, the former Mount McKinley National Park, the former Glacier Bay National Monument, and the former Katmai National Monument.

(2) Paragraphs (b) and (c) would prohibit the carrying, possession, and use of weapons, traps, and nets unless authorized by § 2.4 or § 13.19. Section 13.19 is currently structured only as an authorization.

(3) Paragraph (d) would authorize the lawful possession and use of firearms.

(4) Paragraph (e) clarifies that traps, bows, nets, and other implements may also be used and possessed in Alaska park areas for the lawful taking of fish and wildlife when authorized by applicable law or regulation. Currently § 13.19 addresses only the carrying of these items.

Section 13.20 Preservation of Natural Features

§ 13.20(a)–(f). This section would be revised in four aspects:

(1) The former Glacier Bay National Monument would be deleted from the applicability section of this regulation. Collecting natural products in the former monument is managed under § 13.20. Deleting this unit from § 13.20(a) would subject the former monument to the provisions in § 13.20(b)–(f) and consequently allow for the collection of plants essential for traditional ceremonies and collection of mushrooms.

(2) Paragraph (b) is a prohibition statement that does not effect a substantive change. Like the proposed prohibition statement in § 13.19, a new paragraph (b) is proposed to more clearly indicate that collecting natural products is prohibited, except as specifically authorized in the remainder of the section, § 2.1, or under the subsistence provisions of 36 CFR part 13.

(3) Paragraph (c) would be revised to allow collection of dead wood on the ground as fuel for campfires in the park. A new paragraph (d) would provide the Superintendents discretion to allow collection of dead standing wood as fuel for campfires in the park. Standing dead wood provides important wildlife habitat. In some cases, however, collection of dead standing wood for campfires may be appropriate in specific areas. We believe, however, that collection of dead standing wood in these areas should be considered on an individual basis; and flexibility to close areas is necessary to prevent over-utilization. The regulation also seeks to protect "ghost trees" created by the 1964 earthquake.

(4) We propose providing Superintendents the discretion to place limits on the size or quantity of natural products that may be collected without following the closure procedures in a new paragraph (f). Size and quantity limitations will be adopted in accordance with § 1.7.

Section 13.21 Taking of Fish and Wildlife

§ 13.21(d)(5). We propose a new paragraph (d)(5) to clarify and explain the existing procedure for checking hunting parties passing through all Alaska park areas. Part 2 regulations allow Superintendents the discretion to establish procedures for transporting lawfully taken wildlife through park areas. We propose to establish these procedures as the default rule since hunting is allowed in most Alaska parks. Since some form of hunting is allowed in most areas, identity of the transporter and the location of the kill site are normally the only pieces of information necessary. We do recognize, however, that different procedures may be more appropriate in other Alaska park areas, particularly where hunting is not allowed. In these areas, the Superintendents may establish different procedures for transporting wildlife taken lawfully under § 2.2.

Section 13.22 Unattended or Abandoned Property

§ 13.22(b). Paragraph (b) would be revised to reflect the generally shorter period of time now provided in park compendiums, that experience has shown is sufficient for the disposition of property in most circumstances. Paragraph (b) would also be revised to require that personal property be

labeled with the owner's identity, contact information, the date the property was left, and other pertinent information. This allows us to determine how long the personal property has been left and to contact the owner if there is a problem or the property needs to be moved. The regulation also establishes specific restrictions on fuel storage designed to minimize the chances of fuel spills. The consequences of a fuel spill can be catastrophic, especially in parks that contain stream headwaters. Specifically, the regulation allows an individual to have only one fuel cache within a park unit; limits to 30 gallons the amount of fuel that can be stored; limits the location fuel can be stored near water; and requires that it be stored in a closed, undamaged fuel container. We recognize that special circumstances may require different or additional restrictions, which may be established in accordance with paragraph (c). The Superintendent may relax the proposed general conditions on leaving property unattended if circumstances warrant. For example, Yukon Charley Rivers National Preserve intends to allow more than 30 gallons of fuel and also allow fuel to be left closer to water sources. In this unit, motorboats are the primary means of access and it is often necessary for people to travel substantial distances on waterways. Therefore, Yukon Charley Rivers National Preserve intends to adopt requirements different from those proposed as the standard here. These requirements will be noted in the park's compendium and the public notified in accordance with paragraph (c).

Section 13.30 Closure Procedures

§ 13.30(c)(1) and (d)(1). Section 13.30 currently provides procedures for closing and restricting certain activities authorized under §§ 13.18(a), 13.19, and 13.21. Before 1986, the NPS implemented ANILCA § 1110 access for traditional activities in part 13 and also adopted procedures for closing and restricting this access under §13.30. In 1986, the regulations were superseded by Department of the Interior regulations in 43 CFR part 36. The current Department regulations also provide procedures for closing or restricting the access that is otherwise authorized by those sections. Consequently, we propose a housekeeping change to delete the reference in § 13.30(c)(1) and (d)(1) on closures and restrictions to snowmachines, motorboats, airplanes, and other means of nonmotorized surface transportation since the procedures are now found in 43 CFR part 36.

§ 13.30(h). A new paragraph (h) would provide specific provisions for closing and restricting park facilities. Such facilities are provided for particular purposes and activities that from time to time must be curtailed due to emerging circumstances and conditions. Those instances usually fall under the categories of public health, safety, and protection of property.

Section 13.46 Use of Snowmobiles, Motorboats, Dog Teams, and Other Means of Surface Transportation Traditionally Employed by Local Rural Residents Engaged in Subsistence Uses

§ 13.46(e). Paragraph 13.46(e) would be updated to show the correct regulatory reference. The referenced sections were removed and reserved in 1986 and replaced by 43 CFR 36.11(c), (d), (e), and (g). One of the sections reserved at that time is now proposed for use (see § 13.10 above). This could result in confusion if the administrative correction is not made now.

Section 13.60 Aniakchak National Preserve

§ 13.60(b). We propose to add a new paragraph (b) to provide for a minimum distance between people and wildlife to protect both wildlife and park visitors. Wildlife viewing, fishing, or other activities in areas of concentrated food sources, especially for bears, can alter wildlife behavior and cause circumstances of hazard to park visitors and wildlife. Disruption of the natural wildlife pattern can also reduce or eliminate the viewing opportunities that attract many visitors to these areas. The restrictions proposed for paragraph (b) are intended to mitigate the risks associated with areas of abundant fish and wildlife while accommodating large numbers of visitors drawn to the area because of the wildlife. Not subject to the wildlife viewing conditions are those engaged in a lawful hunt, individuals on a bear viewing platform, or those who comply with a written protocol approved by the Superintendent. The State of Alaska, the NPS, and commercial operators in Aniakchak have spent considerable time preparing standards for viewing wildlife. The protocol referred to in the regulatory language is intended to mean these jointly developed standards.

Section 13.62 Cape Krusenstern National Monument

§ 13.62(a) Subsistence Resident Zone. This proposed change would amend § 13.62 by replacing the existing subsistence zone communities with a single region-wide resident zone area. This change is also proposed for Kobuk Valley National Park. This action is in response to recommendations pursuant to section 808 of ANILCA by the monument's Subsistence Resource Commission on behalf of the affected communities and other residents of the NANA region, and subsequent instructions from the Secretary of the Interior. Our resident zone regulations provide that resident zones may be either communities or areas. More than 90 percent of the NANA region's residents are Inupiaq Eskimos with a long history of subsistence use in the monument. The cohesive nature of the social and cultural relationships of the NANA region is well documented. We have completed an analysis of the NANA region and found that the area meets the criteria of a resident zone established under the provisions of § 13.43. Consequently, there is no administrative or management purpose to be achieved by treating the several communities of the region separately for subsistence activities in the monument. The substitution of a region-wide resident zone will allow the harvest and use of subsistence resources by all similarly situated local residents without burdening some subsistence users and the NPS with a permit process.

Section 13.63 Denali National Park and Preserve

§ 13.63(b) Camping. We propose to delete the reference to camping in the area along the road corridor since it is proposed for inclusion in the Frontcountry Developed Area regulation in §13.63(i).

§ 13.63(i) Frontcountry Developed Area. A new paragraph (i) is proposed for the most heavily used area of the park, which would be designated as the Frontcountry Developed Area (FDA). This area includes that portion of the park formerly known as Mt. McKinley National Park (Old Park) that is not designated as wilderness. This area was described at 57 FR 45166, 45178–80, September 30, 1992. The areas of the FDA are depicted on the 1:250,000 scale topographic map of Denali National Park and Preserve published by the USGS as map 63148–F8–PF–250 and revised in 1986. The FDA includes all lands and waters within 150 feet either side of the centerline of the Denali Park Road, all areas between the Alaska Railroad and the ordinary high water mark on the left [west] bank of the Nenana River, the park entrance area north of Hines Creek and east of the 149th Meridian and south of a line extending west from the mouth of Junco

Creek, the wilderness exclusions surrounding Wonder Lake, the Eielson Visitor Center, Toklat Road Camp, East Fork Ranger Cabin, Igloo, Teklanika, Sanctuary and Savage Campgrounds, areas surrounding eight former or proposed gravel pits along the park road, and 150 feet back from all turnouts and parking areas existing in 1980. The level of public use in the area requires a more comprehensive regulatory structure to equitably allocate opportunity for public use and to protect park resources. The numbered paragraphs that follow in the proposed rule deal with specific subject matter rules applicable within the FDA. Paragraph (i)(1) restricts camping to designated campgrounds and establishes seasonal permit requirements and length of stay limits. Paragraph (i)(2) restricts where fires may be set. Paragraph (i)(3) establishes rules for pets. Paragraph (i)(4) allows the Superintendent to prohibit or restrict other activities within the FDA for public health, safety, and resource needs. The need for these new regulatory provisions is predicated on the higher levels of public use and activity in the FDA and as noted, would not apply outside the FDA.

§ 13.63(j). Proposed paragraph (j) would prohibit the use of bicycles on the specified trails. This restriction would minimize the risk of negative wildlife encounters related to surprising wildlife and would protect the safety of pedestrians who use the trails. These trails are designed for and receive higher pedestrian concentrations than non-restricted trails and require restriction of bicycle use in the interest of safety for both pedestrians and riders.

§ 13.63(k). A new paragraph (k) would restrict roller skates, skateboards, roller skis, rollerblades, in-line skates, and other coasting/skating devices on specified trails. This restriction would apply to the same trails as specified for bicycles, as well as the Denali Park Road. This proposed restriction is based on the same safety concerns as the proposed regulation on bicycles. The restriction also includes the Denali Park Road. Compared to bicycles, skating devices have a limited ability to stop. Therefore, we propose to also close the Denali Park Road to skating devices. The roadway has numerous narrow and winding sections with limited visibility and a high volume of passenger vehicles, recreational vehicles, and buses.

Section 13.65 Glacier Bay National Park and Preserve

§ 13.65(a)(4) and (a)(5). The current regulations for commercial fishing lifetime access permits that are the subject of these proposed changes implemented § 123(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (the Act), including eligibility criteria for lifetime access permits for commercial fishing in the park. Recent judicial interpretation of § 123(b) of the Act indicates that the eligibility criteria currently provided in § 13.65(a)(4) and (a)(5) for commercial fishing lifetime access permits require revision to be consistent with the court's ruling regarding similar criteria in § 123(b). The existing regulations limit eligibility for lifetime access permits to fishermen engaged in commercial fishing as limited entry permit holders during a minimum number of qualifying years. The district court ruling for § 123(b) suggests that being engaged in commercial fishing as a crewmember should also count toward eligibility. For this reason we propose revising the regulations for lifetime access permits to include crewmember time for purposes of meeting the minimum number of qualifying years of commercial fishing. This change would revise only the criteria for determining the number of qualifying years. The requirement that applicants be limited entry permit holders at the time of application would not change.

§ 13.65(b)(1). We propose adding a definition for the term *Bartlett Cove Developed Area.* The Bartlett Cove Developed Area must be defined because we also propose adding special regulations for this heavily visited area of the park. The special regulations will equitably allocate recreational opportunities among users and protect park resources. The Bartlett Cove Developed Area will include all NPS administered lands and waters within one mile of any Bartlett Cove facility. A map of the Bartlett Cove Developed Area will be made available to the public at the visitor center in Bartlett Cove.

§ 13.65(b)(3)(ix)(C)(1)—Bartlett Cove Developed Area. We propose several regulations applicable within the Bartlett Cove Developed Area. This paragraph proposes to (i) limit camping to the Bartlett Cove campground during the peak summer season; (ii) restrict cooking, consuming, or preparing food to certain designated areas to protect people and wildlife, specifically bears; (iii) restrict food storage to specified areas and devices that bears cannot easily access; (iv) close for safety reasons the Forest Loop, Bartlett River, and Bartlett Lake trails to the use of bicycles; and (v) allow the Superintendent to prohibit or restrict other activities within the Bartlett Cove Developed Area for public health, safety, and resource needs. The need for these regulatory provisions is predicated on the higher levels of public use and activity in the Bartlett Cove Developed Area and, as noted, would not apply outside the area.

§ 13.65(b)(3)(ix)(C)(2)—Bartlett Cove Public Use Dock. We propose several rules providing for the safe and equitable use of Bartlett Cove docks. This paragraph proposes to (i) establish a daily time limit for individuals securing aircraft to the one designated aircraft float that must be shared by all users; (ii) restrict vehicles exceeding 30,000 pounds gross vehicle weight on the dock since heavier vehicles may damage the structure; (iii) prohibit leaving property on or attached to floats or the pier without prior permission from the Superintendent; (iv) prohibit processing commercially caught fish on the Public Use Dock; (v) prohibit commercially buying or selling fish on or over the Public Use Dock; (vi) prohibit using the fuel dock for activities besides fueling or waste pump-out; (vii) prohibit leaving a vessel unattended on the fuel dock for any length of time due to limited space; and (viii) prohibit using electrical power from the shore without prior authorization from the Superintendent.

§ 13.65(b)(3)(ix)(C)(3)—Collection of interstadial wood. We propose to prohibit the collection and burning of interstadial wood. Interstadial wood is aged wood preserved by historic glacial activity. This wood provides important geologic information and has an intrinsic value that warrants additional protection.

§ 13.65(b)(3)(ix)(C)(4)—Collection of rocks and minerals. We propose to make the former Glacier Bay National Monument subject to § 13.20. However, we do not believe that the provisions in § 13.20 allowing for collection of rocks and minerals should be extended to the former monument. Rather, we propose to maintain the prohibition on collecting of rocks and minerals in the former monument portion of the park.

§ 13.65(b)(3)(ix)(C)(5)—Collection of goat hair. We propose to allow collection of naturally shed goat hair in Glacier Bay National Park and Preserve. Goat hair is collected by members of local communities and used for making handicrafts. We believe this cultural practice is an appropriate use of park resources and should be accommodated.

§ 13.65(b)(3)(ix)(C)(6)—Camping. We propose to replace the current backcountry camping permit requirement in Glacier Bay pursuant to § 2.10 with a camping orientation

requirement. Camping orientations will be provided at the park visitor center, or as otherwise indicated on the park Web site and/or other postings convenient to visitors. The goal of the required orientation is to effectively protect habitat and wildlife resources in those areas most heavily used by the public, and provide the public with safety information that can be instrumental in preventing visitor accidents while camping in the park. The required orientation will ensure that overnight campers in the designated area are provided up-to-date safety and resource protection information; including information on area closures, advisories of areas with heavy bear activity, marine mammal haul-out beaches, bird nesting sites, and other circumstances that change often in very short timeframes. This proposed requirement would apply only to campers using the shoreline up to ¼ nautical-mile (1,519 feet) above the line of mean high tide within Glacier Bay, as this constitutes the main area where human impacts are most likely. Repeat campers who may have had an orientation earlier in the season would still need to visit or contact the park visitor center for a brief orientation update prior to going out for each trip. This would allow them to receive the most current update on bear activity, emergency restrictions, changes in wildlife populations or behaviors, and other information. Maps and informational brochures, food storage containers, updated weather reports, and other local information are also frequently provided for visitors during the orientation.

§ 13.65(b)(3)(ix)(C)(7)—Commercial transport of passengers by motor vehicles in Bartlett Cove. This proposed regulation eliminates the requirement to have a commercial operations permit to transport 15 or fewer people between Gustavus and Bartlett Cove. We believe a permit is unnecessary since commercial transporters primarily transport individuals from Gustavus Airport to Glacier Bay Lodge and the short distance between Gustavus and Bartlett Cove, and only a limited number of commercial operators (each of whom is known to the NPS) provide these services.

Section 13.66 Katmai National Park and Preserve

§ 13.66(c) Traditional red fish fishery. We propose revising the park regulations to conform existing fishing regulations to the provisions of section 1035 of the Omnibus Parks and Public Lands Management Act of 1996 (the Act) (Pub. L. 104–333, 110 Stat. 4240). The intent of this proposed regulation is to incorporate this statutory fishing allowance into existing park fishing regulations. We propose to add a new § 13.66(c) to allow local descendants of Katmai residents to continue their traditional fishing for red fish. Existing NPS regulations may have had the effect of restricting the traditional local fishery that is allowed by the Act. Traditional fishing for red fish by local residents is accomplished using a variety of fishing gear such as spear, dip net, and gill net. It is therefore necessary to conform the park regulations to the statutory provision in order to eliminate any confusion as to the applicable authority.

§ 13.66(d)—Brooks Camp Developed Area. A new § 13.66(d) is proposed for the most heavily used area of the park, which would be designated the Brooks Camp Developed Area (BCDA). The level of public use in the area requires a more comprehensive regulatory structure to equitably allocate opportunity for public use and to protect park resources. The area included in the BCDA is described in the introductory paragraph of the section. The numbered paragraphs that follow in the proposed rule address specific subject matter rules that would apply within the BCDA. These rules would not apply in areas of the park outside the BCDA. Paragraph (d) proposes to (1) limit camping to the Brooks Camp Campground and other designated areas during the times of highest visitation, establishes limits on length of stay, and also establishes group size limits at the Brooks Camp Campground during the fee period; (2) restrict use of the bear viewing platforms and boardwalks to specified hours; (3) close a small area adjacent to the Brooks River from the Riffles Bear Viewing Platform to a point 100 yards above Brooks Falls between June 15 and August 15; (4) establish rules for food storage; (5) restrict fires to designated fire rings; (6) restrict dishwashing to designated locations; (7) prohibit pets; (8) require attendance at a Bear Orientation presentation; (9) establish where food possession and picnicking are allowed and prohibit the possession and consumption of food at the river in the BCDA; (10) prohibit unattended personal property except at designated areas; and (11) allow the Superintendent to prohibit or restrict other activities within the BCDA for public health, safety, and resource needs. The need for these provisions is predicated on the higher levels of public use and activity in the BCDA and the significant levels of wildlife, especially bears, present in the area. A primary purpose is to prevent bears and other wildlife from learning to associate humans, human developments, or camp sites as potential sources of food, thus protecting wildlife and park visitors alike. As noted, these restrictions would not apply outside the BCDA nor other than during the peak summer season.

§ 13.66(e)—Wildlife viewing conditions. Paragraph (e) is proposed to provide for a minimum distance between people and wildlife to protect both wildlife and park visitors. Wildlife viewing, fishing, or other activities in areas of concentrated food sources, especially for bears, can alter wildlife behavior and cause hazardous circumstances for park visitors and wildlife. Disruption of the natural wildlife pattern can also reduce or eliminate the viewing opportunities that attract many visitors to these areas. The restrictions proposed for paragraph (e) are intended to mitigate the risks associated with areas of abundant fish and wildlife while accommodating large numbers of visitors drawn to these areas because of the wildlife. Not subject to the wildlife viewing conditions are those visitors engaged in a lawful hunt in the preserve, individuals on a bear viewing platform, or people who comply with a written protocol approved by the Superintendent. The State of Alaska, the NPS, and commercial operators in Katmai have spent considerable time preparing standards for viewing wildlife. The protocol referenced in the regulatory language is these jointly developed standards.

§ 13.66(f). Paragraph (f) is proposed to facilitate orderly and equitable use of the Lake Camp launching ramp and dock. The proposed rule would prohibit leaving boats, trailers, or vehicles longer than 48 hours without authorization of the Superintendent.

Section 13.67 Kenai Fjords National Park

§ 13.67(b)—Exit Glacier. We propose to add paragraph (b) to the existing park special regulations. Paragraph (b) includes specific rules that would be applied to access to and on Exit Glacier near its terminus. Such rules are necessary and appropriate to protect the public from the extremely hazardous conditions associated with falling ice in that area.

§ 13.67(c)—Public use cabins. Paragraph (c) is proposed to protect fragile vegetation in high use areas as well as the expected privacy and exclusive use of public use cabins by authorized users. We propose to prohibit camping and fires within 500 feet of the North Arm and Holgate public use cabins and within the five-

acre parcel leased by the NPS where the Aialik public use cabin is located. This closure is intended to avoid site-specific user conflicts while allowing reasonable transient passage through the area by others. This proposal is similar to a State of Alaska restriction that prohibits camping, pitching a tent, or staying overnight within 300 feet of a State public use cabin [11 Alaska Administrative Code 12.230(m)]. This paragraph would not apply on State land below the ordinary mean high tide, nor to the cabin permit holder when using a tent platform or tent pad provided by the NPS.

Section 13.68 Klondike Gold Rush National Historical Park

§ 13.68(a)—Camping. There is a need to allocate limited designated camping space through the use of a camping permit system. For camping at the Dyea campground, camping permits would be available at the self-registration station in the campground. For camping in all other areas of the park, camping permits would be available at the park office. Designated areas for camping will be established as a permit condition when and where appropriate. Because of the need to allocate limited space among users, we are also proposing a 14-day per calendar year limit for camping at the Dyea campground.

§ 13.68(b)—Preservation of natural, cultural, and archaeological resources. We propose to allow the collection of mushrooms in the park. Although mushrooms can be collected in most Alaska park areas pursuant to § 13.20(b)(1), that provision does not apply to Klondike Gold Rush. The park was not included in § 13.20(b)(1) when it was adopted because at that time the focus was on the park areas that were added by ANILCA. The pre-ANILCA park areas in many instances remained subject to the general NPS regulations without further modification by part 13. However, mushrooms are abundant in the park because of the favorable growing conditions provided by the temperate rain forests of Southeast Alaska. They are commonly gathered non-commercially by local residents and visitors in much the same way as wild fruits and berries are gathered where abundant on public lands in other areas. At this time, there does not appear to be a need to continue to prohibit the gathering of mushrooms. This paragraph proposes to allow the Superintendent to include mushrooms in the allowance for collecting fruits, berries, and nuts subject to conditions, restrictions, and closures established under § 2.1(c).

§ 13.68(c). A new paragraph (c) would address weapons on State-owned lands and waters that the NPS administers pursuant to a memorandum of understanding. This proposed paragraph would provide that NPS regulations prohibiting the general public from possessing, carrying and using weapons, traps, and nets for the lawful taking of fish and wildlife do not apply on these State-owned lands and waters.

Section 13.69 Kobuk Valley National Park

§ 13.69(a)(1)—Subsistence Resident Zone. The proposed change would amend § 13.69 by replacing the existing subsistence zone communities with a single region-wide resident zone area. An identical modification is proposed for Cape Krusenstern National Monument. This action is in response to recommendations pursuant to § 808 of ANILCA by the park's Subsistence Resource Commission on behalf of the affected communities and other residents of the NANA region, and subsequent instructions from the Secretary of the Interior. Our resident zone regulations provide that resident zones may be either communities or areas. More than 90 percent of the NANA region's residents are Inupiaq Eskimo residents with a long history of subsistence use in the Park. The cohesive nature of the social and cultural relationships of the NANA region is well documented. We have completed an analysis of the NANA region and found that the area meets the criteria of a resident zone established under the provisions of § 13.43. Consequently, there is no administrative or management purpose to be achieved by treating the several communities of the region separately for subsistence activities in the Monument. The substitution of a region-wide resident zone will allow the harvest and use of subsistence resources by all similarly situated local residents without burdening certain subsistence users and the NPS with a permit process.

Section 13.72 Sitka National Historical Park

§ 13.72(a)(1)—(3) Prohibited Activities. The existing restriction on overnight camping is recodified, without change, as paragraph (1). In new paragraphs (2) and (3), we propose to make permanent the existing compendium restrictions for bicycles, skates, skateboards, and similar recreational devices. Park access is predominantly by foot on narrow wooded trails. Pedestrian traffic is largely composed of families and senior citizens. Under current public use patterns and management objectives, we have found that use of these devices on the park trails and other walkways is detrimental to pedestrian safety. However, we recognize that bicycle use may be appropriate in the future if public use patterns or management objectives change.

Section 13.73 Wrangell-St. Elias National Park and Preserve

§ 13.73(b)—Kennecott Mines National Historic Landmark (KNHL). We propose adding a new paragraph (b) for the Kennecott Mines National Historic Landmark, one of the most heavily used areas of the park. We propose limiting activities in this high public use area to protect historic structures and contents and to protect the public from safety hazards. The numbered paragraphs that follow in the proposed rule address specific subject matter rules applicable within the KNHL. However, these prohibitions do not apply to private land within the KNHL. Paragraph (b)(1) prohibits entering closed structures or passing beyond barricades. Paragraph (b)(2) prohibits entering mine tunnels and other mine openings. Paragraph (b)(3) prohibits camping in or on any historic structure. Paragraph (b)(4) prohibits camping at the mill site and defines this area. Paragraph (5) prohibits lighting or maintaining a fire within the mill site as defined in § 13.73(b)(4).

§ 13.73(c)—Headquarters/Visitor Center Developed Area (HVCDA). The Headquarters/Visitor Center area is also one of the most heavily visited areas of the park and we propose to add a new paragraph (c) applicable to this area. This area consists of all NPS administered lands and waters within one-half mile of the headquarters building other than the Valdez Trail. The level of public use in the area requires a more comprehensive regulatory structure to equitably allocate services and facilities among users and to protect park resources. The numbered paragraphs that follow in the proposed rule deal with specific subject matter rules applicable within the HVCDA. Paragraph (1) prohibits lighting or maintaining a fire. Paragraph (2) prohibits camping within the HVCDA. Paragraph (3) prohibits entering the HVCDA after visiting hours which will be posted on the entrance gate.

§ 13.73(d)—Slana Developed Area (SDA). Like KNHL and HVCDA, the area around the Slana Ranger Station also receives significant visitation. We propose adding a new paragraph (d) to define this developed area as the area within one-quarter mile of the ranger station.

§ 13.73(e)—KNHL and Developed Area Closures and Restrictions. We propose to add paragraph (e) to allow the Superintendent to prohibit, restrict, or condition activities within the KNHL, HVCDA, and SDA for reasons of public health, safety, and resource needs, with notice posted on the park website and other areas convenient to visitors.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

A qualitative cost/benefit analysis was conducted to examine specific costs and benefits associated with this proposed regulation. That analysis concludes that positive net benefits would be generated by each component of the proposed regulatory action, and hence by the regulatory action overall. Further, governmental processes in NPS-administered areas in Alaska would be improved, and market failures would be more effectively addressed. Therefore, it is anticipated that economic efficiency would be improved by this proposed regulatory action.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule. The proposals included with this rulemaking apply on areas managed by the National Park Service and are not known to be inconsistent with other Federal regulations. Several proposals are specifically intended to improve consistency between State and Federal areas. The review process used to develop the rulemaking proposals included consultation with the State of Alaska Department of Natural Resources to seek views of appropriate officials and to provide maximum conformity with State rules on adjacent lands as well as active participation where NPS is proposing variation from similar State regulations.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved. While this proposed rule would implement a statutory use authorization for traditional fishing at Katmai National Park and broaden slightly commercial fishing access at Glacier Bay National Park, neither entitlement has budgetary impact.

(4) This rule does not raise novel legal or policy issues. This rule simply implements miscellaneous existing legislative enactments, judicial interpretations, and regulatory provisions. The proposed rule is not a completely new proposal, but rather a continuation of the rulemaking process begun in 1980 to implement various provisions required by the Alaska National Interest Lands Conservation Act (ANILCA). In implementing ANILCA, the NPS has sought to promulgate only those regulations necessary to interpret the law and to provide for the health and safety of the public and the environment. While the legal and policy issues associated with some parts of ANILCA may have been considered novel when adopted, they have long since lost their novelty. The continuing implementation of ANILCA has become routine and the process begun by this rulemaking is intended to increase participation and cooperation in the evolution of NPS regulations for Alaska.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rule are local in nature and negligible in scope. The proposals in this rulemaking will either implement rules unrelated to business activity or make permanent various temporary and emergency rules under which area businesses have been operating. The rules included in this proposed rulemaking will have no effect or in some cases a salutary effect by eliminating year to year uncertainty for businesses and park visitors. The regulatory flexibility analysis prepared for the original Glacier Bay commercial fishing regulations (see Record of Compliance, RIN 1024–AB99, dated July 27, 1999) remains applicable and is not changed by this proposed rule.

A qualitative Regulatory Flexibility threshold analysis was conducted to examine potential impacts to small entities. Based on the cost/benefit analysis referred to above, that threshold analysis concludes that, since no significant costs are anticipated for any component of the proposed action, significant economic impacts would not be imposed on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more. Expenses related to compliance with various provisions of this proposed rule are slight. No new user fees or charges are proposed. Any incidental costs of registering, checking-in, or participating in orientation programs would be small and often would not be additional to those already associated with visiting park areas.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The proposed provisions of this rulemaking will generally continue existing rules and use patterns for the park areas in Alaska. As noted above, new registration and orientation requirements for some activities can be accomplished generally at no additional cost to that currently incurred in visiting park areas. Application costs associated with subsistence permits at Cape Krusenstern National Monument and Kobuk Valley National Park will be substantially reduced by the proposed changes in the subsistence resident zones for those units.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The various provisions of this proposed rule do not apply differently to U.S.-based enterprises and foreign-based enterprises. The proposed changes to the Glacier Bay commercial fishing regulations will have a beneficial effect on local small businesses by making eligibility criteria for commercial fishing lifetime access permits less restrictive. It is expected that a small number of limited entry permit holders may be able to qualify for commercial fishing in the park.

Unfunded Mandates Reform Act

This rulemaking addresses only actions that will be taken by the NPS. It will not require any State, local or tribal government to take any action that is not funded. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. This rule is an agency specific rule and imposes no other requirements on small governments. Several of the proposed regulations are based on State of Alaska statutes. For example, the proposed regulations involving airstrip obstruction, backcountry camping and protection of dead, standing wood are based on current State of Alaska law. This consistency between the State of Alaska and the National Park Service is a benefit to visitors.

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

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because no taking of personal property will occur as a result of this proposed rule. The proposed change in the Glacier Bay commercial fishing regulations will slightly broaden commercial fishing access and the regulatory flexibility analysis previously prepared for those regulations remains applicable (see section 2 above).

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule is limited in effect to Federal lands and waters managed by the NPS and will not have a substantial direct effect on State and local government in Alaska. This proposed rule was initiated in part at the request of the State and has been drafted in closed consultation with the State of Alaska and, as such, promotes the principles of federalism.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the order. This rule does not impose a new burden on the judicial system.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties, which must be submitted for OMB approval under the Paperwork Reduction Act. However, these are not new collection requirements and, therefore, no additional request to OMB has been prepared. The information collection activities are necessary for the public to obtain benefits in the form of concession contracts and special use permits. Information collection associated with the award of concession contracts is covered under OMB control number 1024–0125; the information collection associated with the issuance of special use permits is covered under OMB control number 1024–0026.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment and finding of no significant impact for the Cape Krusenstern National Monument and Kobuk Valley National Park resident zone proposals has been completed. The remainder of the rule has been determined to be categorically excluded from further NEPA analysis in accordance with Departmental Guidelines in 516 DM 6 (49 FR 21438), and NPS procedures in Reference Manual-12.3.4.A(8), and there are no applicable exceptions to categorical exclusions (516 DM 2, Appendix 2; RM–12.3.5). Both are available at the Alaska Regional Office, 240 5th Avenue, Anchorage, Alaska, 99501, 907–644–3533.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); the Department of the Interior-Alaska Policy on Government-to-Government Relations with Alaska Native Tribes dated January 18, 2001; Part 512 of the Departmental Manual, Chapter 2 "Departmental Responsibilities for Indian Trust Resources"; and various park consultation agreements with tribal governments, the potential effects on federally-recognized Indian tribes have been evaluated, and it has been determined at this time that there are no potential effects.

While the consultation agreements noted above have not resulted in findings of potential effects, a number of the proposed rules have been included as a direct consequence of consultation. Among these are the Glacier Bay National Park and Preserve proposals for the gathering of shed goat hair for weaving and the collection of certain renewable plant resources for traditional uses. Also influenced by consultation are the Katmai National Park and Preserve redfish proposal and the Cape Krusenstern National Monument and Kobuk Valley National Park subsistence resident zone proposals. These various proposals are of interest to local residents using these NPS areas and have been facilitated by the relationships established through government-to-government consultation. Finally, the initial determination of effect noted here is dynamic and subject to change throughout this rulemaking process due to the ongoing nature of government-to-government consultation for the NPS areas in Alaska.

Clarity of This Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

Drafting Information: The principal contributors to this proposed rule are: Vic Knox, Associate Regional Director; Chuck Young, Chief Ranger, Glacier Bay National Park and Preserve; Hunter Sharp, Chief Ranger, Wrangell-St. Elias National Park and Preserve; Lou Waller, Jay Liggett, Jane Hendrick, Andee Hansen, Terry Humphrey, Joan Darnell, Heather Rice, Thetus Smith, and Paul Hunter, Alaska Regional Office.

Public Comment Solicitation: If you wish to comment on this proposed rule,

you may submit your comments by any one of several methods:

(1) You may mail comments to Regional Director, 240 West 5th Ave., Anchorage, Alaska 99501. Fax: (907) 644–3805.

(2) You may also e-mail comments via the Internet to *akro_regulations@nps.gov*. Please include "Attn: Part 13 Rules" in the subject line and your name and return address in the body of your Internet e-mail message. Finally, you may hand deliver comments to Regional Director, 240 West 5th Ave., Anchorage, Alaska 99501. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you want us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

The Proposed Amendments to the Rule

For the reasons stated in the preamble, the National Park Service proposes to amend 36 CFR part 13 as set forth below:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. Revise the authority citation for part 13 as follows:

16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Sec. 13.65 also issued under 16 U.S.C. 1a-2(h), 20, 1361, 1531, 3197; Pub. L. 105–277, 112 Stat. 2681, October 21, 1998; Pub. L. 106–31, 113 Stat 57, May 21, 1999; Sec. 13.66(c) also issued under Sec. 1035, Pub. L. 104–333, 110 Stat. 4240.

2. Amend § 13.1 by removing all alphabetical paragraph designations and adding the following terms in alphabetical order:

§ 13.1 Definitions.

* * * * *

The term *airstrip* means visible, marked, or known aircraft landing areas on the ground, snow, water, or any frozen surface. Airstrips may be marked with cones, lights, flagging, or windsocks, or be unmarked but recognizable because they have been cleared of vegetation or other obstructions.

* * * * *

The term *facility* means buildings, structures, park roads as defined by § 1.4, parking lots, campgrounds, picnic areas, paved trails, and maintenance support yards.

* * * * *

3. Revise § 13.4 to read as follows:

§ 13.4 Information collection.

The information collection requirements contained in §§ 13.17, 13.31, 13.44, 13.45, 13.49,13.51, and 13.65 are necessary for park Superintendents to issue concession contracts and special use permits, and have been approved by the Office of Management and Budget under 44 U.S.C. 3507. Information collections associated with the award of concession contracts are covered under OMB control number 1024–0125; the information collections associated with the issuance of special use permits are covered under OMB control number 1024–0026.

4–5. Add § 13.10 to read as follows:

§ 13.10 Obstruction of airstrips.

(a) A person may not place an object on the surface of an airstrip that, because of its nature or location, might cause injury or damage to an aircraft or person riding in the aircraft.

(b) A person may not dig a hole or make any kind of excavation, or drive a sled, tractor, truck, or any kind of vehicle upon an airstrip that might make ruts, or tracks, or add to an accumulation of tracks so as to endanger aircraft using the airstrip.

6. Revise § 13.18 to read as follows:

§ 13.18 Camping and picnicking.

(a) *Camping.* (1) Camping is authorized in park areas except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30, or as set forth for specific park areas in subpart C of this part.

(2) *Site time limits.* Camping is authorized for 14 consecutive days in one location. Camping is prohibited after 14 consecutive days in one location unless the camp is moved at least two miles or unless authorized by the Superintendent. All camps and associated equipment must be relocated immediately if determined by the Superintendent to be interfering with public access or other public interests or adversely impacting park resources.

(3) *Designated campgrounds.* Except at designated campgrounds, camping is prohibited on NPS facilities. The Superintendent may establish restrictions, terms, and conditions for camping in designated campgrounds. Violating restrictions, terms, and conditions is prohibited.

(b) *Picnicking.* Picnicking is authorized in park areas except where such activity is prohibited or otherwise restricted by the Superintendent. The public will be notified by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry or reasonable intervals along the boundary of the affected park locale.

(2) Maps available in the office of the Superintendent and other places convenient to the public.

(3) Publication in a newspaper of general circulation in the affected area.

(4) Other appropriate methods, such as the use of electronic media, including the internet, park brochures, maps and handouts.

7. Amend § 13.19 as follows:

(a) Revise paragraphs (a) through (d);

(b) Redesignate (e) as (g);

(c) Add paragraphs (e) and (f), to read as follows:

§ 13.19 Weapons, traps and nets.

(a) Irritant chemical devices, including bear spray, may be carried, possessed, and used in accordance with applicable Federal and non-conflicting State laws, except when prohibited or restricted pursuant to § 13.30.

(b) Paragraphs (d) through (g) apply to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument.

(c) Except as provided in this section and § 2.4 of this chapter, the following are prohibited:

(1) Possessing a weapon, trap, or net.

(2) Carrying a weapon, trap, or net

(3) Using a weapon, trap, or net.

(d) Firearms may be carried, possessed, and used within park areas in accordance with applicable State and Federal laws, except where such carrying, possession, or use is prohibited or otherwise restricted pursuant to § 13.30.

(e) Traps, bows and other implements (other than firearms) authorized by applicable State and Federal law for the taking of fish and wildlife may be carried, possessed, and used within park areas only during those times when the taking of fish and wildlife is authorized by applicable law or regulation.

(f) In addition to the authorities provided in paragraphs (d) and (e) of this section, weapons (other than

firearms), traps and nets may be possessed within park areas provided such weapons, traps or nets are within or upon a device or animal used for transportation and are unloaded and cased or otherwise packed in such a manner as to prevent their ready use while in a park area.

* * * * *

8. Amend § 13.20 as follows:

(a) Revise paragraph (a);

(b) Redesignate paragraphs (b), (c), (d), and (e) as paragraphs (c), (e), (f), and (g) respectively;

(c) Add new paragraphs (b) and (d); and

(d) Revise newly redesignated paragraphs (c)(4) and (f).

§ 13.20 Preservation of natural features.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park, the former Mt. McKinley National Park and the former Katmai National Monument.

(b) Gathering or collecting natural products, including living or dead fish and wildlife or parts or products thereof, plants or parts or products thereof, live or dead wood, fungi, seashells, rocks, and minerals is prohibited except as allowed by this section, § 2.1 of this chapter or part 13, subpart C.

(c) * * *

(4) Dead wood on the ground for use as fuel for campfires within the park area.

(d) The Superintendent may authorize, with or without conditions, the collection of dead standing wood in all or a portion of a park area. Collecting dead or downed wood in a closed area is prohibited. Collecting dead or downed wood in violation of terms and conditions is prohibited.

* * * * *

(f) *Closure and Notice.* (1) The Superintendent may limit the size and quantity of the natural products that may be gathered or possessed.

(2) Under conditions where it is found that significant adverse impact on park resources, wildlife populations, subsistence uses, or visitor enjoyment of resources will result, the Superintendent shall prohibit the gathering or otherwise restrict the collecting of these items. Portions of a park area in which closures or restrictions apply shall be either published in at least one newspaper of general circulation in the State and designated on a map which shall be available for public inspection in the office of the Superintendent, or designated by the posting of appropriate signs, or both.

* * * * *

9. In § 13.21, add new paragraph (d)(5) to read as follows:

§ 13.21 Taking of fish and wildlife.

* * * * *

(d) * * *

(5) Persons transporting wildlife through park areas must identify themselves and the location where the wildlife was taken when requested by an NPS employee or other authorized person.

* * * * *

10. Amend § 13.22 by revising paragraph (b) to read as follows:

§ 13.22 Unattended or abandoned property.

* * * * *

(b) *Personal property.* (1) Leaving personal property unattended longer than 4 months is prohibited. A Special Use Permit may be obtained from the Superintendent for unique or special circumstances that require property to be left in place for more than 4 months. All such requests must be made in writing to the Superintendent.

(2) All personal property must be labeled with the owner's name, home address, telephone number, date that the property was left, and the type of fuel if the property left contains fuel. Failure to label in accordance with this section is prohibited.

(3) All property must be stored in such a manner that wildlife is unable to access the contents. Storing property in a manner that wildlife can access contents is prohibited.

(4) Leaving fuel in more than one location in a park unit or leaving more than 30 gallons of fuel is prohibited unless authorized by the Superintendent.

(5) Storing fuel within 100 feet of a water source, high water mark of a body of water, or mean high tide is prohibited unless authorized by the Superintendent. Fuel must be contained in an undamaged and closed fuel container designed for fuel storage. Fueling from containers must occur in such a manner that any spillage would be prevented from coming into contact with water, soil, or vegetation.

(6) Leaving property unattended for longer than 24 hours on facilities is prohibited unless authorized by the Superintendent.

(7) Property left in violation of any prohibition in this section is subject to impoundment and, if abandoned, disposal or forfeiture.

* * * * *

11. Amend § 13.30 as follows:

(a) Revise paragraphs (c) and (d);

(b) Redesignate paragraph (h) as (i);

(c) Add a new paragraph (h), to read as follows:

§ 13.30 Closure procedures.

* * * * *

(c) *Emergency Closures.* (1) Emergency closures or restrictions relating to the taking of fish and wildlife shall be accomplished by notice and hearing.

(2) Other emergency closures shall become effective upon notice as prescribed in § 13.30(f); and

(3) No emergency closure or restriction shall extend for a period exceeding 30 days, nor may it be extended.

(d) *Temporary closures or restrictions.* (1) Temporary closures shall be effective upon notice as prescribed in § 13.30(f).

(2) Temporary closures or restrictions shall not extend for a period exceeding 12 months and may not be extended.

* * * * *

(h) *Facility closures and restrictions.* The Superintendent may close or restrict specific facilities for reasons of public health, safety, and protection of public property for the duration of the circumstance requiring the closure or restriction. Notice of facility closures and restrictions will be available for inspection at the park visitor center. Notice will also be posted near or within the facility, published in a newspaper of general circulation in the affected vicinity, or made available to the public by such other means as deemed appropriate by the Superintendent. Violating facilities closures or restrictions is prohibited.

* * * * *

12. Revise § 13.46(e) to read as follows:

§ 13.46 Use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

* * * * *

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, dog teams, and other means of surface transportation in accordance with 43 CFR 36.11(c), (d), (e), and (g).

13. Amend § 13.60 by adding a new paragraph (b) to read as follows:

§ 13.60 Aniakchak National Monument and Preserve.

* * * * *

(b) *Wildlife distance conditions.* (1) Approaching a bear or any large mammal within 50 yards is prohibited.

(2) Continuing to occupy a position within 50 yards of a bear that is utilizing

a concentrated food source, including, but not limited to, animal carcasses, spawning salmon, and other feeding areas is prohibited.

(3) The prohibitions do not apply to persons—

(i) Engaged in a legal hunt;

(ii) On a designated bear viewing structure;

(iii) In compliance with a written protocol approved by the Superintendent; or

(iv) Who are otherwise directed by a park employee.

14. Revise § 13.62(a) to read as follows:

§ 13.62 Cape Krusenstern National Monument.

(a) *Subsistence Resident Zone.* The following area is included within the resident zone for Cape Krusenstern National Monument:

The NANA Region.

15. Amend § 13.63 by revising paragraph (b) and adding paragraphs (i), (j), and (k) to read as follows:

§ 13.63 Denali National Park and Preserve.

* * * * *

(b) *Camping.* Camping is allowed in accordance with the backcountry management plan.

* * * * *

(i) *Frontcountry Developed Area.* For purposes of this section, the Frontcountry Developed Area (FDA) includes all park areas within the portion of the park formerly known as Mt. McKinley National Park (Old Park) not designated as Wilderness by Congress. A map showing the FDA is available at the park visitor center.

(1) *Camping.* (i) Camping in locations other than designated campgrounds is prohibited. From April 15 through September 30, parties camping at designated campgrounds must have a permit. Failure to obtain a permit is prohibited. Violation of permit terms and conditions is prohibited.

(ii) From April 15 through September 30, camping in designated campgrounds for more than a total of 14 days, either in a single period or combined periods, is prohibited. From October 1 through April 14, camping in designated campgrounds for more than a total of 30 days, either in a single period or combined periods is prohibited.

(2) *Fires.* In designated campgrounds, lighting or maintaining a fire is prohibited except in established grates.

(3) *Pets.* Possessing a pet is prohibited in the following locations: above the drinking water intake in the Rock Creek drainage; in the Visitor Center near the park entrance; the Eielson Visitor Center; and the Roadside Path between the park entrance area and park headquarters; the Mount Healy Overlook Trail; the Savage River Loop Trail; the Savage Rock Trail; the Savage Rest Area Loop Trail; the Horseshoe Lake Trail; the Taiga Loop Trail; the Rock Creek Trail; the Morino Trail; the Nenana River Trail; the Jonesville Bridge Trail; the McKinley Station Trail; the McKinley Bar Trail; the Wonder Lake Inlet Trail; the Blueberry Hill Trail; the Eielson Area Trails; and within 150 feet of the park sled dog kennel. A map of the designated trails and road side path will be available for inspection at the park visitor center.

(4) *FDA closures and restrictions.* The Superintendent may prohibit or otherwise restrict activities in the FDA to protect public health, safety, or park resources. Information on FDA closures and restrictions will be available for inspection at the park visitor center. Violating FDA closures or restrictions is prohibited.

(j) The use of a bicycle is prohibited on the following trails: the Roadside Path; the Mount Healy Overlook Trail; the Visitor Center Interpretative trails; the Savage River Loop Trail; the Savage Rock Trail; the Savage Rest Area Loop Trail; the Savage Cabin Trail; the Horseshoe Lake Trail; the Taiga Loop Trail; the Rock Creek Trail; the Morino Trail; Triple Lakes Trail; the Nenana River Trail; the Jonesville Bridge Trail; the McKinley Station Trail; the McKinley Bar Trail; the Wonder Lake Inlet Trail; the Blueberry Hill Trail; all campground trails; and the Eielson Area Trails. A map of the designated trails and road side path will be available for inspection at the park visitor center.

(k) The use of roller skates, skateboards, roller skis, in-line skates, and other skating devices is prohibited on the Denali Park Road and the following trails: the Roadside Path; the Mount Healy Overlook Trail; the Visitor Center Interpretative trails; the Savage River Loop Trail; the Savage Rock Trail; the Savage Rest Area Loop Trail; the Savage Cabin Trail; the Horseshoe Lake Trail; the Taiga Loop Trail; the Rock Creek Trail; the Morino Trail; Triple Lakes Trail; the Nenana River Trail; the Jonesville Bridge Trail; the McKinley Station Trail; the McKinley Bar Trail; the Wonder Lake Inlet Trail; the Blueberry Hill Trail; all campground trails; and the Eielson Area Trails. A map of the designated trails and roadside path will be available for inspection at the park visitor center.

16. Amend § 13.65 as follows:

(a) Revise paragraphs (a)(4)(ii), (a)(5)(ii), (a)(5)(iv), and (a)(5)(v);

(b) Amend paragraph (b)(1) by adding a new definition for "Bartlett Cove Developed Area" in alphabetical order immediately before the definition for "Charter vessel";

(c) Add new paragraphs (b)(3)(ix)(C)(*1*) through (*7*);

(d) remove paragraph (b)(7), to read as follows:

§ 13.65 Glacier Bay National Park and Preserve.

(a) * * *

(4) * * *

(ii) They have participated as a limited entry permit holder or crewmember in the district or statistical area encompassing Glacier Bay for each fishery for which a lifetime access permit is being sought.

(A) For the Glacier Bay commercial halibut fishery, the applicant must have participated as a permit holder or crewmember for at least two years during the period 1992–1998.

(B) For the Glacier Bay salmon or Tanner crab commercial fisheries, the applicant must have participated as a permit holder or crewmember for at least three years during the period 1989–1998.

(5) * * *

(ii) A notarized affidavit, sworn by the applicant, attesting to his or her history of participation as a limited entry permit holder or crewmember in Glacier Bay during the qualifying period for each fishery for which a lifetime access permit is being sought;

(iii) * * *

(iv) For qualifying years as a limited entry permit holder, proof of the applicant's permit and quota share history for the Glacier Bay fishery during the qualifying period, and/or for qualifying years as a crewmember, other available corroborating documentation of crewmember status. This may include a copy of the applicant's commercial crewmember license for each qualifying year, a notarized affidavit from their employer (generally a limited entry permit holder, or boat owner hired or contracted by a limited entry permit holder) stating the years worked by the applicant in a qualifying fishery in Glacier Bay, copies of tax forms W–2 or 1099, pay stubs, or other documentation;

(v) For applicants qualifying as a limited entry permit holder, documentation of commercial landings for the Glacier Bay fishery during the qualifying periods—*i.e.*, within the statistical unit or area that includes Glacier Bay. For halibut, this includes regulatory sub-area 184. For Tanner crab, this includes statistical areas 114–70 through 114–77. For salmon, the Superintendent may require additional documentation that supports the

applicant's declaration of Glacier Bay salmon landings. For halibut and Tanner crab, the Superintendent may consider documented commercial landings from the unit or area immediately adjacent to Glacier Bay (in Icy Strait) if additional documentation supports the applicant's declaration that landings occurred in Glacier Bay.

(b) * * *

(1) * * *

The term *Bartlett Cove Developed Area* means all NPS-administered lands and waters within 1 mile of any Bartlett Cove facility. A map showing the Bartlett Cove Developed Area is available at the park visitor center.

* * * * *

(3) * * *

(ix) * * *

(C) * * *

(*1*) *Bartlett Cove Developed Area.* (*i*) Camping is prohibited in the Bartlett Cove Developed Area except in the Bartlett Cove Campground. From May 1 through September 30, all overnight campers must register to camp in the Bartlett Cove Campground. Failure to register is prohibited.

(*ii*) Cooking, consuming, or preparing food in the Bartlett Cove Campground is prohibited except in designated areas.

(*iii*) *Food storage.* In the Bartlett Cove Developed Area, storing food in any manner except in a sealed motor vehicle, a vessel (excluding kayaks), a building, an approved bear resistant food container, a bear resistant trash receptacle, or a designated food cache is prohibited.

(*iv*) *Bicycles.* The use of a bicycle is prohibited on the Forest Loop, Bartlett River and Bartlett Lake trails.

(*v*) *Bartlett Cove Developed Area closures and restrictions.* The Superintendent may prohibit or otherwise restrict activities in the Bartlett Cove Developed Area to protect public health, safety, or park resources, or to provide for the equitable and orderly use of park facilities. Information on closures and restrictions will be available at the park visitor information center. Violating Bartlett Cove Developed Area closures or restrictions is prohibited.

(*2*) *Bartlett Cove Public Use Dock.* (*i*) Docking, tying down, or securing aircraft is prohibited except at the designated aircraft float at the Bartlett Cove Public Use Dock. Docking, tying down, or securing aircraft to the Bartlett Cove Public Use Dock for longer than three hours in a 24-hour period is prohibited. Pilots must remain with aircraft or provide notice of their location to a park ranger. Failure to remain with the aircraft or provide notice to a park ranger is prohibited.

(*ii*) Vehicles exceeding 30,000 pounds gross vehicle weight are prohibited on the dock, unless authorized by the Superintendent.

(*iii*) Leaving personal property (other than vessels) unattended on, or attached to, the floats or pier without prior permission from the Superintendent is prohibited.

(*iv*) Processing commercially caught fish on the Public Use Dock is prohibited.

(*v*) Buying or selling of fish or fish products is prohibited on or at the Public Use Dock without written permission from the Superintendent.

(*vi*) Utilizing the fuel dock for activities other than fueling and waste pump-out is prohibited.

(*vii*) Leaving a vessel unattended on the fuel dock for any length of time is prohibited.

(*viii*) Using electrical shore power for vessels is prohibited unless otherwise authorized by the Superintendent.

(*3*) *Collection of interstadial wood.* Collecting or burning interstadial wood (aged wood preserved in glacial deposits) is prohibited.

(*4*) *Collection of rocks and minerals.* Collecting rocks and minerals in the former Glacier Bay National Monument is prohibited.

(*5*) *Collection of goat hair.* The collection of naturally shed goat hair is authorized in accordance with terms and conditions established by the Superintendent. Violating terms and conditions for collecting goat hair is prohibited.

(*6*) *Camping.* From May 1 through September 30, all persons camping within Glacier Bay as defined by this section up to ¼ nautical mile (1519 feet) above the line of mean high tide must receive an NPS-approved camping orientation. A camping orientation is required for each visit. Failure to receive an NPS-approved camping orientation is prohibited.

(*7*) *Commercial transport of passengers by motor vehicles in Bartlett Cove.* Commercial transport of passengers between Bartlett Cove and Gustavus by motor vehicles legally licensed to carry 15 passengers or less is allowed without a permit. However, if required to protect public health and safety or park resources, or to provide for the equitable use of park facilities, the Superintendent may establish a permit requirement with appropriate terms and conditions for the transport of passengers.

* * * * *

17. In § 13.66 add new paragraphs (c) through (f), to read as follows:

§ 13.66 Katmai National Park and Preserve.

* * * * *

(c) *Traditional red fish fishery.* Local residents who are descendants of Katmai residents who lived in the Naknek Lake and River Drainage will be authorized, in accordance with State fishing regulations or conditions established by the Superintendent, to continue their traditional fishery for red fish (spawned-out sockeye salmon that have no significant commercial value).

(d) *Brooks Camp Developed Area.* For purposes of this section, the Brooks Camp Developed Area (BCDA) consists of all park areas within a 1.5 mile radius from the Brooks Falls Platform and is depicted on a map available at the park visitor center. Paragraphs (d)(1) through (10) of this section apply from May 1 through October 31 unless stated otherwise.

(1) *Camping.* (i) Camping is prohibited in all areas of the BCDA except within the Brooks Camp Campground and other designated areas.

(ii) Camping in Brooks Camp Campground for more than 7 total nights during the month of July is prohibited.

(iii) Exceeding a group size limit of 6 persons per site in the Brooks Camp Campground while in operation as a designated fee area is prohibited.

(2) *Visiting hours.* The Falls and Riffles bear viewing platforms and boardwalks are closed from 10 pm to 7 am during the period June 15 through August 15. Entering or going upon these platforms and boardwalks during these hours is prohibited.

(3) *Brooks Falls Area.* The area within 50 yards of the ordinary high water marks of the Brooks River from the Riffles Bear Viewing Platform to a point 100 yards above Brooks Falls is closed to entry from June 15 through August 15, unless authorized by the Superintendent.

(4) *Food storage.* In the BCDA, all fish must be stored in designated facilities and in accordance with conditions established by the Superintendent. Storing fish in undesignated areas or not in accordance with conditions is prohibited. Employees may store fish in employee residences.

(5) *Campfires.* Campfires outside of pre-established, designated fire rings are prohibited in the BCDA.

(6) *Sanitation.* Within the BCDA, washing dishes or cooking utensils at locations other than the water spigot near the food cache in the Brooks Campground or other designated areas is prohibited.

(7) *Pets.* Possessing a pet in the BCDA is prohibited.

(8) *Bear Orientation.* All persons visiting the BCDA must receive an NPS approved Bear Orientation. Failure to receive an NPS approved Bear Orientation is prohibited.

(9) *Picnicking.* Within the BCDA, picnicking in locations other than the Brooks Camp Visitor Center picnic area, Brooks Campground, Brooks Lake Picnic Area, and a site designated in the employee housing area is prohibited. Food consumption or possession while at the Brooks River is prohibited.

(10) *Unattended Property.* Leaving property, other than motorboats and planes, unattended for any length of time within the BCDA is prohibited, except at the Brooks Lodge Porch, Brooks Campground, or designated equipment caches at the Brooks Camp Visitor Center.

(11) *BCDA closures and restrictions.* The Superintendent may prohibit or otherwise restrict activities in the BCDA to protect public health and safety or park resources. Information on BCDA closures and restrictions will be available for inspection at the park visitor center. Violating BCDA closures or restrictions is prohibited.

(e) *Wildlife distance conditions.* (1) Approaching a bear or any large mammal within 50 yards is prohibited.

(2) Continuing to occupy a position within 50 yards of a bear that is utilizing a concentrated food source, including, but not limited to, animal carcasses, spawning salmon, and other feeding areas is prohibited.

(3) The prohibitions do not apply to persons—

(i) Engaged in a legal hunt;

(ii) On a designated bear viewing structure;

(iii) In compliance with a written protocol approved by the Superintendent; or

(iv) Who are otherwise directed by a park employee.

(f) *Lake Camp.* Leaving a boat, trailer, or vehicle unattended for more than 48 hours at the facilities associated with the Lake Camp launching ramp is prohibited without authorization from the Superintendent. Leaving a boat unattended at the Lake Camp dock is prohibited.

18. In § 13.67 add new paragraphs (b) and (c), to read as follows:

§ 13.67 Kenai Fjords National Park.

* * * * *

(b) *Exit Glacier.* (1) Except for areas designated by the Superintendent, climbing or walking on, in, or under Exit Glacier is prohibited within ½ mile of the glacial terminus from May 1 through October 31, and during other periods as determined by the Superintendent. Restrictions and exceptions will be available for inspection at the park visitor center, on bulletin boards or signs, or by other appropriate means.

(2) Entering an ice fall hazard zone is prohibited. These zones will be designated with signs, fences, rope barriers, or similar devices.

(c) *Public Use Cabins.* (1) Camping within 500 feet of the North Arm or Holgate public use cabin is prohibited except by the cabin permit holder on a designated tent site, or as otherwise authorized by the Superintendent.

(2) Camping within the five acre National Park Service leased parcel surrounding the Aialik public use cabin is prohibited except by the cabin permit holder on a designated tent site, or as otherwise authorized by the Superintendent.

(3) Building or maintaining a fire within 500 feet of the North Arm or Holgate public use cabins is prohibited except by the cabin permit holder in NPS provided campfire rings, or as otherwise authorized by the Superintendent.

(4) Building or maintaining a fire within the 5 acre National Park Service leased parcel surrounding the Aialik public use cabin is prohibited except by the cabin permit holder in NPS provided campfire rings, or as otherwise authorized by the Superintendent.

19. Revise § 13.68 to read as follows:

§ 13.68 Klondike Gold Rush National Historical Park.

(a) *Camping.* (1) Camping is permitted only in designated areas.

(2) Camping without a permit is prohibited. The Superintendent may establish permit terms and conditions; failure to comply with permit terms and conditions is prohibited.

(3) *Dyea campground.* Camping at Dyea campground more than 14 days in a calendar year is prohibited.

(b) *Preservation of natural, cultural, and archaeological resources.* The Superintendent may designate the gathering of mushrooms in accordance with the procedures set forth in § 2.1(c) of this chapter.

(c) The National Park Service administers certain State-owned lands and waters within the boundary of Klondike Gold Rush National Historical Park pursuant to a memorandum of understanding with the State of Alaska. The prohibition on carrying, possession, and use of weapons, traps, and nets in this chapter does not apply to the lawful taking of wildlife on these State-owned lands and waters.

20. In § 13.69 revise paragraph (a)(1) to read as follows:

§ 13.69 Kobuk Valley National Park.

(a) *Subsistence*—(1) *Resident Zone.* The following area is included within the resident zone for Kobuk Valley National Park: The NANA Region.

* * * * *

21. Revise § 13.72 to read as follows:

§ 13.72 Sitka National Historical Park.

(a) *Prohibited Activities.* The following activities are prohibited in Sitka National Historical Park:

(1) Overnight camping.

(2) Riding a bicycle, except in the public parking areas and on routes designated by the Superintendent. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the purposes for which the park was established.

(3) The use of roller skates, skateboards, roller skis, in-line skates, and other skating devices.

22. In § 13.73 add paragraphs (b) through (e), to read as follows:

§ 13.73 Wrangell-St. Elias National Park and Preserve.

* * * * *

(b) *Kennecott Mines National Historic Landmark (KNHL).* A map showing the boundaries of the KNHL is available at the park visitor center. The following activities are prohibited within the KNHL:

(1) Entering closed structures or passing beyond barricades.

(2) Entering mine tunnels and other mine openings.

(3) Camping in or on any historic structure.

(4) Camping within the mill site of the KNHL. The mill site consists of the collection of buildings clustered around the mill building on both sides of National Creek. For purposes of this section, the mill site is the area bounded by Bonanza Creek to the north, the Kennecott Glacier to the west, the 2,200 foot contour line to the east, and Sweet Creek to the south. The mill site is depicted on a map available at the park visitor center.

(5) Lighting or maintaining a fire within the mill site as defined in paragraph (b)(4) of this section.

(c) *Headquarters/Visitor Center Developed Area (HVCDA).* For purposes of this paragraph, the HVCDA consists of all park areas within a ½ mile radius of the Wrangell-St. Elias National Park and Preserve Headquarters building, other than the Valdez Trail. The following activities are prohibited within the HVCDA:

(1) Lighting or maintaining a fire.
(2) Camping.
(3) Entering the area after visiting hours. Visiting hours will be posted at the entrance gate.

(d) *Slana Developed Area (SDA).* For purposes of this section, the Slana Developed Area consists of all park areas within a ¼ mile radius of the Slana Ranger Station.

(e) *KNHL and developed area closures and restrictions.* The Superintendent may prohibit or otherwise restrict activities in the KNHL, Headquarter/Visitor Center Developed Area, and Slana Developed Area to protect public health and safety or park resources. Information on closures and restrictions will be available at the park visitor center. Violating such closures or restrictions is prohibited. Notwithstanding the provisions of this section, the Superintendent may issue a Special Use Permit to authorize uses in the KNHL and either developed area.

Dated: March 17, 2004.

Paul Hoffman,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–7131 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–PW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA–04–002; FRL–7642–6]

Approval and Promulgation of Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA invites public comment on its proposal to approve numerous revisions to the State of Washington Implementation Plan. The Director of the Washington State Department of Ecology (Ecology) submitted two requests to EPA dated September 24, 2001 and February 9, 2004 to revise certain sections of the Puget Sound Clean Air Agency's (PS Clean Air) regulation. The revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act (hereinafter the Act). EPA is not approving in this rulemaking a number of submitted rule provisions which are inappropriate for EPA approval and is taking no action on a number of other provisions that are unrelated to the purposes of the implementation plan.

EPA also invites public comment on its proposal to approve certain source-specific State implementation plan (SIP) revisions relating to Saint Gobain Containers and LaFarge North America.

DATES: Written comments must be received on or before May 3, 2004.

ADDRESSES: Comments may be sent either by mail or electronically. Written comments should be addressed to Roylene A. Cunningham, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. Electronic comments should be sent either to *r10.aircom@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for sending electronic comments to EPA. To send comments, please follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section, Part VIII, General Information.

Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Washington, Department of Ecology, P.O. Box 47600, Olympia, Washington 98504–7600. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Roylene A. Cunningham, EPA, Office of Air Quality (OAQ–107), Seattle, Washington 98101, (206) 553–0513, or e-mail address: *cunningham.roylene@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background of Submittal

On February 9, 2004, the Director of Ecology submitted a request to EPA to revise certain sections of PS Clean Air's regulation, which has been referred to as the PS Clean Air Cleanup or Resolution #1004. PS Clean Air adopted Resolution #1004 in order to facilitate the State Implementation Plan Process Improvement Project (SIP PIP), which was initiated by EPA Region 10 to simplify preparing and adopting SIP revisions. An important element of this process is to not include in the SIP portions of those regulations that are not related to attainment or maintenance of the NAAQS or to the requirements for SIPs under the Act. Another important element of this process is to include in the SIP, but not to submit for incorporation by reference into Federal law, portions of regulations that provide legal authority necessary to meet the requirements of title I of the Act, but do not directly regulate air emissions, because incorporating such general authority provisions by reference into Federal law is unnecessary and could potentially conflict with EPA's independent authorities. PS Clean Air also had as a goal to eliminate, where possible, duplicate regulations found in Ecology regulations and EPA regulations.

PS Clean Air is therefore requesting that all sections of their currently SIP approved regulations that are not related to criteria pollutants or to the requirements for SIPs under title I of the Act be removed from the SIP and has submitted a current version of their regulations to EPA as a SIP revision. The current submittal includes only those sections or regulations relating to criteria pollutants or to the requirements for SIPs and designates those provisions that are being submitted as part of the SIP but that should not be incorporated by reference into Federal law.

II. Requested Sections to be Approved Into the SIP, but not IBR'd

A. Key Changes to PS Clean Air's SIP

Only three out of the eleven sections in Regulation I, Article 3: General Provisions have been revised since they were last approved into the SIP. These include Sections 3.01, Duties and Powers of the Control Officer; 3.11, Civil Penalties; and 3.17, Appeal of Orders. The revisions to these three sections are

limited to editorial changes such as, Agency name changes; updated penalty fees; and references to the authority of the Board in addition to the Control Officer.

B. Summary of Action

1. Sections 3.01 through 3.21 in Regulation I, Article 3: General Provisions

EPA is proposing to approve the following sections as part of the SIP: Sections 3.01, Duties and Powers of the Control Officer, adopted September 9, 1999; 3.05, Investigations by the Control Officer, adopted February 10, 1994; 3.07, Compliance Tests, adopted February 9, 1995; 3.09, Violations—Notice, adopted August 8, 1991; 3.11, Civil Penalties, adopted September 26, 2002; 3.13, Criminal Penalties, adopted August 8, 1991; 3.15, Additional Enforcement, adopted August 8, 1991; 3.17, Appeal of Orders, adopted October 8, 1998; 3.19, Confidential Information, adopted August 8, 1991; and 3.21, Separability, adopted August 8, 1991.

These provisions do not regulate air emissions, but rather, describe general authorities such as investigative and enforcement authorities. Incorporation by reference of such provisions into Federal law is unnecessary and could potentially conflict with EPA's independent authorities. Therefore, EPA is proposing to not incorporate by reference these sections into the SIP and to remove the previous versions of these regulations from PS Clean Air's incorporation by reference section of the Washington State SIP, as follows: Sections 3.01, Duties and Powers of the Control Officer, adopted February 10, 1994; 3.05, Investigations by the Control Officer, adopted February 10, 1994; 3.07, Compliance Tests, adopted February 9, 1995; 3.09, Violations—Notice, adopted August 8, 1991; 3.11, Civil Penalties, adopted September 12, 1996; 3.13, Criminal Penalties, adopted August 8, 1991; 3.15, Additional Enforcement, adopted August 8, 1991; 3.17, Appeal of Orders, adopted August 8, 1991; 3.19, Confidential Information, adopted August 8, 1991; and 3.21, Separability, adopted August 8, 1991.

2. Section 3.23 Alternate Means of Compliance

This section grants PS Clean Air authority to allow other emission methods to be used to achieve compliance with the emission standards of PS Clean Air's regulation if the owner or operator demonstrates that the alternative methods are at least as effective as the required method and if the alternative method is included in a permit or regulatory order. Section 3.23 essentially authorizes PS Clean Air to issue variances from regulatory requirements. EPA approved this provision into the SIP on August 6, 1997 (62 FR 42216). Although PS Clean Air has requested that this provision not be incorporated by reference, the agency did submit it as part of its SIP submittal.

EPA believes that it erred when it approved this section as part of the SIP. Section 110(i) of the Act specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the Act and the implementing regulations at 40 CFR Part 51. *See* CAA section 110(l); 40 CFR 51.104. Section 51.104(d) specifically states that in order for a variance to be considered for approval as a SIP revision, the State must submit it in accordance with the requirements of 40 CFR 51.104, which includes the public notice, comment and hearing provisions of 40 CFR 51.102. Section 3.23 does not meet all of the requirements of section 110 of the Act, such as ensuring attainment and maintenance of the NAAQS. Section 3.23 allows the Control Office to approve "alternative methods" for achieving compliance if the Control Officer finds that the alternative methods are "at least as effective" as the required methods. This provision, however, does not contain specific, objective, and replicable criteria for determining if such "alternative methods" are in fact at least as effective as the required methods in terms of emission rates and ambient impacts. In addition, Section 3.23 states that such alternative means of compliance are to be established in regulatory orders issued under Section 3.03 or permits issued under Article 6 or 7. Section 3.03 is not part of the Washington SIP and orders issued under that provision are not Federally enforceable. In addition, regulatory orders issued under Section 3.03 are not sent to EPA for review prior to issuance. With respect to permits issued under Article 6, there is no requirement that all permits issued under Article 6 establishing such alternative means of compliance be subject to public review. Public and EPA review of revisions to the SIP are important elements of the SIP revision process.

Moreover, EPA's approval of the Washington SIP specifically states that any variance, exception, exemption, alternative emission limit, bubble, alternative sampling or testing method, compliance schedule revision, alternative compliance schedule or any other substantial change to a provision of the SIP must be submitted by the State for approval in accordance with 40 CFR 51.104 and that any such change does not modify the requirements of the Federally-promulgated SIP until it has been approved by EPA as an amendment to the SIP in accordance with section 110 of the Act. *See* 40 CFR 52.2476(b) and (c). Therefore, it is not appropriate for EPA to approve this provision into the SIP.

Section 110(k)(6) of the Act authorizes EPA, upon a determination that EPA's action approving, disapproving or promulgating any SIP or plan revision (or any part thereof) was in error, to revise such action as appropriate in the same manner as the approval, disapproval or promulgation. In making such a correction, EPA must provide such determination and the basis therefore to the State and the public. EPA is by this proposal notifying the PS Clean Air, Ecology and the public that EPA is removing Section 3.23 from the SIP and from incorporation by reference into Federal law.

It is important to emphasize that if PS Clean Air issues an order or permit in reliance on Section 3.23 that approves an alternative to a PS Clean Air regulation that has been approved as part of the SIP, EPA is not precluded from enforcing the Federally-approved SIP limit against the source. The granting of an alternative method of compliance by PS Clean Air to a SIP requirement does not change the Federally-enforceable SIP requirement for that source unless and until the alternative has been approved by EPA as a source-specific SIP revision.

III. Requested Sections To Be IBR'd Into the SIP

A. Key Changes to PS Clean Air's SIP

The docket includes a technical support document which describes in detail the substantive changes to the PS Clean Air rules that have been submitted by Ecology as revisions to the SIP, EPA's evaluation of the changes, and the basis for EPA's proposed action. In general the revisions were minor in nature and were made to improve the overall clarity, effectiveness, and enforceability of PS Clean Air's regulation.

B. Summary of Action

1. Provisions Approved by EPA and IBR'd

EPA has determined that the following sections are consistent with the requirements of title I of the Act and is proposing to approve them as part of

the SIP and incorporate them by reference into Federal law:

Regulation I, Sections 1.01, Policy; 1.03, Name of Agency; and 1.05, Short Title, adopted September 9, 1999; 3.04, Reasonably Available Control Technology [except (e)], adopted March 11, 1999; 3.06 Credible Evidence, adopted October 8, 1998; 5.03, Registration Required [except (a)(5)], adopted July 8, 1999; 5.05 General Reporting Requirements for Registration, adopted September 10, 1998; 7.09, General Reporting Requirements for Operating Permits, adopted September 10, 1998; 8.04, General Conditions for Outdoor Burning; 8.05, Agricultural Burning; 8.09, Description of King County No-Burn Area; 8.10, Description of Pierce County No-Burn Area; and 8.11, Description of Snohomish County No-Burn Area, adopted November 9, 2000; and 8.12, Description of Kitsap County No-Burn Area, adopted October 24, 2002; 9.03, Emission of Air Contaminant: Visual Standard [except (e)], adopted March 11, 1999; 9.04, Opacity Standards for Equipment with Continuous Opacity Monitoring Systems [except (d)(2) and (f)], adopted April 9, 1998; 9.09, Particulate Matter Emission Standards, adopted April 9, 1998; 9.15, Fugitive Dust Control Measures, adopted March 11, 1999; 9.16, Spray-Coating Operations, adopted July 12, 2001; 12.01, Applicability and 12.03, Continuous Emission Monitoring Systems [except (b)(1) and (b)(2)], adopted April 9, 1998; 13.01, Policy and Purpose, adopted September 9, 1999; and 13.02, Definitions, adopted October 8, 1998.

Regulation II, Sections 1.01, Purpose; 1.02, Policy; 1.03, Short Title; and 1.05, Special Definitions, adopted September 9, 1999; 2.01, Definitions, adopted July 8, 1999; 2.07, Gasoline Stations, adopted December 9, 1999; 2.08, Gasoline Transport Tanks, adopted July 8, 1999; and 3.02, Volatile Organic Compound Storage Tanks, July 8, 1999.

2. Provisions Not Approved by EPA

EPA is proposing not to approve certain provisions, which EPA believes are inconsistent with the requirements of the Act. To the extent such provisions are currently incorporated by reference into the SIP, EPA is proposing to remove them from the SIP.

Subsections 5.03(a)(5), 9.03(e), 9.04(d)(2), 9.04(f), and 12.03(b)(2) each authorize PS Clean Air to modify standards or requirements relied on to attain and maintain the NAAQS by granting an exemption or alternative to such requirements without going through a SIP revision and, as such, are not approvable. As discussed above, section 110(i) of the Act specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the Act and the implementing regulations at 40 CFR part 51. *See* CAA section 110(l); 40 CFR 51.104. Section 51.104(d) specifically states that in order for a variance to be considered for approval as a SIP revision, the State must submit it in accordance with the requirements of 40 CFR 51.104, which includes the public notice, comment and hearing provisions of 40 CFR 51.102.

Subsections 5.03(a)(5), 9.03(e), 9.04(d)(2), 9.04(f), and 12.03(b)(2) do not meet all of the requirements of section 110 of the Act, such as ensuring attainment and maintenance of the NAAQS. None of these provisions contain sufficiently specific, objective, and replicable criteria for determining if the exemption or alternative methods or requirements will, in fact, be at least as effective as the required methods or requirements in terms of emission rates and ambient impacts. Moreover, none of the provisions ensure that the approval of such exemptions or alternatives will be subject to EPA and public review. In the case of an exemption granted under Subsection 5.03(a)(5), there is no review at all of the granting of the exemption. In the case of Subsections 9.03(e), 9.04(d)(2), 9.04(f), and 12.03(b)(2), the approval of the alternative or exemption will be contained in an order or permit issued under Section 3.03 or Article 6. As stated above, Section 3.03 is not part of the Washington SIP and orders issued under that provision are not Federally enforceable. In addition, regulatory orders issued under Section 3.03 are not sent to EPA for review prior to issuance. With respect to permits issued under Article 6, there is no requirement that all permits issued under Article 6 establishing such alternative methods or requirements be subject to public review. Public and EPA review of revisions to the SIP are important elements of the SIP revision process.

Moreover, EPA's approval of the Washington SIP specifically states that any variance, exception, exemption, alternative emission limit, bubble, alternative sampling or testing method, compliance schedule revision, alternative compliance schedule or any other substantial change to a provision of the SIP must be submitted by the State for approval in accordance with 40 CFR 51.104 and that any such change does not modify the requirements of the Federally-promulgated SIP until it has been approved by EPA as an amendment to the SIP in accordance with section 110 of the Act. *See* 40 CFR 52.2476(b) and (c). Therefore, it is not appropriate for EPA to approve these provisions into the SIP.

Section 110(k)(6) of the Act authorizes EPA, upon a determination that EPA's action approving, disapproving or promulgating any SIP or plan revision (or any part thereof) was in error, to revise such action as appropriate in the same manner as the approval, disapproval or promulgation. In making such a correction, EPA must provide such determination and the basis therefore to the State and the public. EPA is by this proposal notifying the PS Clean Air, Ecology and the public that EPA is removing from the SIP and from incorporation by reference into Federal law Subsection 9.03(e) (State adoption date September 8, 1994; EPA effective date June 29, 1995) and Section 9.09(c)[1] (State adoption date February 10, 1994; EPA effective date June 29, 1995).

It is important to emphasize that, even if PS Clean Air grants an exemption to registration, an alternate opacity standard, or an exemption from a data recovery requirement, which exemption or alternative has not been approved as part of the Washington SIP, EPA is not precluded from enforcing the Federally-approved SIP registration requirement, opacity limit, or monitoring requirement against the source. As provided in 40 CFR 52.2476, the granting of such an exemption or alternate opacity standard by PS Clean Air to a SIP requirement does not change the Federally-enforceable SIP requirement for that source unless and until the exemption or alternate has been approved by EPA as a source-specific SIP revision.[2]

Subsection 12.03(b)(1) is different in effect from the other provisions that EPA is not approving in this action. This provision authorizes the Control Officer to excuse or exempt an owner or operator from periods of monitoring downtime if the owner or operator demonstrates to the Control Officer that the downtime was not the result of inadequate design, operation, or maintenance, or any other reasonably preventable condition and any necessary repairs to the monitoring

[1] Note Subsection 9.04(d)(2) was revised to incorporate the substantive provisions of Section 9.09(c) and Section 9.09(c), which was previously approved as part of the SIP, was deleted.

[2] Note that PS Clean Air has also not submitted as part of this SIP submittal Sections 3.03, General Regulatory Orders, and Article IV, Variances. These provisions also could be used to change requirements approved as part of the SIP without a SIP revision. As such, they are not approvable under title I of the Act for the reasons stated above and EPA is in no way approving such provisions.

system are conducted in a timely manner. In contrast to the other provisions discussed in this section, Subsection 12.03(b)(1) authorizes the Control Officer to excuse an event after the occurrence of the event. As such, Subsection 12.03(b)(1) is in essence an enforcement discretion provision. Although this provision does have objective criteria relating to the exercise of this discretion, the provision does not clarify that the Control Officers's determination that compliance with the data recovery requirements should be excused is not binding on EPA or citizens. As such, it is not appropriate for EPA to approve such a provision. *See* Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Monitoring, and Robert Perciasepe, Assistant Administrator for Air And Radiation, to the Regional Administrators, entitled *State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown*, p. 3 (September 20, 1999).

3. Provisions on Which EPA is Taking No Action at this Time

Article 1, Section 1.07, Definitions, has been revised since this SIP submission was submitted to EPA. PS Clean Air will be submitting the revisions to Section 1.07 to EPA in a separate action. EPA will therefore be taking action on this section in a separate rulemaking.

IV. Requested Sections To Be Removed from the SIP

PS Clean Air has requested that EPA remove certain provisions from the SIP because they are not required elements of a SIP under title I of the Act or because they have been previously repealed by the Agency.

A. Summary of Action

EPA proposes to take the following action on the provisions which PS Clean Air has requested be removed from the SIP.

1. Regulation I

Section 5.07, Registration Fees

Section 5.07, Registration Fees (adopted September 11, 1997) was inappropriately approved into the SIP. Local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit are generally not appropriate for inclusion into the SIP. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate to make local fee collection Federally enforceable. Therefore, EPA is proposing to remove Section 5.07, Registration Fees, from the SIP.

Sections 8.02, Outdoor Fires—Prohibited Types, and 8.03, Outdoor Fires—Prohibited Areas

Sections 8.02, Outdoor Fires—Prohibited Types (adopted February 8, 1996), and 8.03, Outdoor Fires—Prohibited Areas (adopted February 9, 1995), were repealed by PS Clean Air's Board by Resolution No. 933 on November 9, 2000. The requirements of these provisions are included in the new Section 8.04, General Conditions for Outdoor Burning (adopted November 9, 2000), through incorporation by reference of the provisions of WAC 173–425. Removing these provisions from the SIP does not change the stringency of the SIP because Section 8.04 is being submitted for inclusion into the SIP. Therefore, EPA is proposing to remove Sections 8.02, Outdoor Fires—Prohibited Types and 8.03, Outdoor Fires—Prohibited Areas from the SIP.

Sections 9.11, Emission of Air Contaminant: Detriment to Person or Property and 9.13, Emission of Air Contaminant: Concealment and Masking Requirement

PS Clean Air is requesting that these sections be removed from the SIP. As justification for the request, the Agency states that Sections 9.11 (adopted June 9, 1983) and 9.13 (adopted June 9, 1988) are only used as tools to deal with nuisance, primarily odors. PS Clean Air further states that, because the similar provisions of WAC 173–400–040(5) and (7) are already part of the SIP, it is unnecessary to include Sections 9.11 or 9.13 in the SIP.

With reservations, EPA is granting PS Clean Air's request to remove Section 9.13 from the SIP, but is denying the request to remove Section 9.11. As an initial matter, EPA does not agree that Sections 9.11 and 9.13 apply only or primarily to nuisance and odors. There is nothing in the text of the regulations to suggest that they are so limited, and EPA believes the regulations apply equally to NAAQS pollutants, such as particulate. As part of the SIP, EPA would not attempt to enforce the provisions of Sections 9.11 and 9.13 as they apply to odors and nuisance. If, in fact, PS Clean Air intends that these sections apply only to nuisance and odors, PS Clean Air could create separate "odors" or "nuisance" provisions much like WAC 173–400–040(4), Odors, which is not included in the SIP.

It is true that WAC 173–400–040(5), Emissions detrimental to persons or property, and WAC 173–400–040(7), Concealment and masking, are very similar to the provisions of PS Clean Air Regulation I, Section 9.11 and 9.13, respectively. These WAC provisions apply Statewide and have been part of the Washington SIP for many years. To avoid confusion, we believe that PS Clean Air Sections 9.11 and 9.13 should also be included as part of the SIP because they do not, on their face, exclude NAAQS pollutants, and because they are in effect in PS Clean Air's jurisdiction. Because WAC 173–400–040(5) and WAC 173–400–040(7) will continue to apply Statewide, even if the PS Clean Air provisions are removed from the SIP, however, removing these provisions from the SIP will not decrease the stringency of the Washington SIP. For this reason, EPA, with great reluctance, is proposing to grant PSCAA's request to remove Section 9.13 from the SIP.

EPA is proposing to deny PS Clean Air's request, however, to remove Section 9.11 from the SIP. Section 6.03, Notice of Construction, which PS Clean Air is submitting as a SIP revision, refers to and relies on Section 9.11 for applicability. Section 6.03(a)(8) (adopted July 12, 2001)[3], states that a minor new source review permit is required for "any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation." Thus, sources that are cited for violation of Section 9.11 are subject to PS Clean Air's minor new source review program, which must be submitted and approved as part of the SIP. Until Section 9.11 is no longer tied to applicability of PS Clean Air's new source review program, EPA does not believe that this provision can be removed from the SIP.

In granting PS Clean Air's request to remove Section 9.13 from the SIP, EPA emphasizes the importance of the fact that the Federally-enforceable requirements of the Washington SIP have not, in fact, been substantively changed by the removal because WAC 173–400–040(7) continues to apply to sources within PS Clean Air's jurisdiction. If, for example, Washington was seeking to remove WAC 173–400–040(5) and (7), EPA would require a showing that, consistent with CAA section 110(l), removal of these provisions did not interfere with any

[3] PS Clean Air has proposed to renumber this subsection to Section 6.03(a)(5) and plans on submitting the revised Section 6.03 as part of the SIP.

applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act and that, if applicable, the revision meets the requirements of CAA section 193.

Sections 11.01, Ambient Air Quality Standards, and 11.02, Ambient Air Monitoring

PS Clean Air is requesting that Sections 11.01 and 11.02 (adopted April 14, 1994) be removed from the SIP because they are informational only and not regulatory. Sections 11.01 and 11.02 are not referenced in any other provisions that are part of the PS Clean Air's regulations that are approved into the SIP. Therefore, EPA is proposing to grant PS Clean Air's request to remove Sections 11.01 and 11.02 from the SIP.

Sections 12.02, Continuous Emission Monitoring Requirements, and 12.04, Recordkeeping and Reporting Requirements

Sections 12.02, Continuous Emission Monitoring Requirements, and 12.04, Recordkeeping and Reporting Requirements (adopted August 10, 1989) were repealed by PS Clean Air's Board through Resolution No. 865 on April 9, 1998. The requirements of these provisions are included in new and revised Sections 12.01, Applicability, and Section 12.03, Continuous Emission Monitoring Systems (adopted April 9, 1998), through incorporation by reference of 40 CFR Part 60, 61, and 63. Removal of these provisions from the SIP does not make the SIP less stringent because Sections 12.01 and 12.03 are being submitted for inclusion into the SIP. Therefore, EPA is proposing to grant PS Clean Air's request to remove Sections 12.02, Continuous Emission Monitoring Requirements, and 12.04, Recordkeeping and Reporting Requirements from the SIP.

2. Regulation II

Section 2.04, Volatile Organic Compound Storage Tanks

Section 2.04, Volatile Organic Compound Storage Tanks (adopted June 13, 1991) was revised and renumbered to Regulation II, Section 3.02 Volatile Organic Compound Storage Tanks. The purpose of the revisions to this section was to reflect that the requirements for large volatile organic compound storage tanks are sometimes used for products other than petroleum (which makes this section more appropriately located in Article 3: Miscellaneous Volatile Organic Compound Emission Standards). Removing Section 2.04 from the SIP does not change the stringency of the SIP because Section 3.02 is being submitted for inclusion into the SIP. Therefore, EPA is proposing to grant PS Clean Air's request to remove Section 2.04, Volatile Organic Compound Storage Tanks from the SIP.

Section 3.07, Petroleum Solvent Dry Cleaning Systems

Section 3.07, Petroleum Solvent Dry Cleaning Systems (adopted February 11, 1982) was repealed by PS Clean Air's Board through Resolution No. 914 on March 9, 2000. PS Clean Air's Board took this action because it determined that Section 3.07 was not necessary because there were no longer any sources subject to this section in their jurisdiction. There is no relaxation of the SIP because if a new facility sought operation within PS Clean Air's jurisdiction; Regulation I, Article 6, Notice of Construction would apply and insure local, State, and Federal emission requirements were met. Therefore, EPA is proposing to remove Section 3.07, Petroleum Solvent Dry Cleaning Systems from the SIP.

3. Regulation III

PS Clean Air is requesting removal of Regulation III, their air toxics regulations, from the SIP. The provisions of Regulation III are not related to criteria pollutants regulated under title I of the Act or to the requirements for SIPs under title I of the Act and therefore, were inappropriately approved into the SIP. Thus, EPA is proposing to grant PS Clean Air's request to remove Regulation III from the SIP.

V. Saint Gobain Containers, NOC Order of Approval #8244

This Order was issued to Saint-Gobain Containers and will become effective on the effective date of EPA's SIP approval. The Order establishes PM10 emission limits for Glass Furnaces Nos. 2, 3, 4, and 5 combined; PM10 emissions limits from any baghouse exhaust; and details of compliance response.

A. Background

In October 1992, EPA noted that the Puget Sound Region PM10 SIP was deficient because the plan did not contain enforceable facility-wide particulate emission limits for the industrial sources in the Seattle-Duwamish area. EPA conditionally approved the Puget Sound Region PM10 SIP on June 23, 1994 (59 FR 32370), subject to the condition that the State submit limits for these sources on a set schedule.

In December 1994, the Board of Directors of the Puget Sound Air Pollution Control Agency (now known as Puget Sound Clean Air Agency) issued regulatory orders with emission limits for major industrial sources in the Duwamish area and EPA approved these regulatory orders as part of the SIP on October 26, 1995 (60 FR 54812). Saint Gobain was one of these sources. Subsequently, Saint Gobain requested a minor revision to its facility emission limit. The requested change relates to the form of the standard and the compliance test procedure, but not the overall emission limit. PS Clean Air proposes to approve this change and has forwarded the proposal to Ecology with a request that Ecology submit the change as a revision to the SIP.

B. Summary of Action

PS Clean Air is proposing a minor revision to Saint-Gobain's PM10 emission limits (*i.e.*, Glass Furnaces Nos. 2, 3, 4, and 5) within the facility and the test procedure for determining compliance. The revision affects the form of the standard and the compliance test procedure, but not the overall emission limit, which was established to protect the ambient PM10 standard. Emissions allowed under the order are expected to remain unchanged. Therefore, EPA is proposing to approve Saint Gobain Containers, NOC Order of Approval #8244 into the SIP.

VI. LaFarge North America, NOC Order of Approval #5183

A. Background

PS Clean Air issued an order to Holnam, Inc., Ideal Division, now known as LaFarge North America, Inc., on February 9, 1994, under the authority of Regulation I, Section 9.09(c) [State adopted, February 10, 1994], which has since been renumbered to Regulation I, Section 9.04(d)(2). The rule language reads as follows: "The provisions of Section 9.09(b)(2) shall not apply to any source that has obtained an Order of Approval for a Notice of Construction that correlates the particulate matter concentration with opacity such that any violation of the alternate opacity standard accurately indicates a violation of the applicable emission standard of the Section 9.09(a)." [State adopted, February 10, 1994]

LaFarge submitted to PS Clean Air an analysis showing that, at 0.05 gr/dscf, its predicted opacity was 15.02%. LaFarge's submittal also demonstrated that the change in the in stack opacity levels was not expected to have an impact on total annual or short term particulate matter emissions. Therefore,

PS Clean Air granted LaFarge an alternate opacity limit of 12% (1hr average) in NOC Order of Approval #5183, dated February 9, 1994. The Order also requires LaFarge to source test annually to verify that the 12% (1hr average) opacity standard demonstrates continuous compliance with the 0.05 gr/dscf mass emission limit of Section 9.09(a) of Regulation I [State adopted, February 10, 1994], which has since been renumbered to Regulation I, Section 9.09.

PS Clean Air is submitting NOC Order of Approval #5183, dated February 9, 1994 for inclusion into the SIP at this time.

B. Summary of Action

Based on LaFarge's submittal which demonstrated that the change in the in stack opacity levels was not expected to have an impact on total annual or short term particulate matter emissions, EPA is proposing to approve the LaFarge order as a source-specific SIP revision.

VII. Geographic Scope of SIP Approval

This SIP approval does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151. Consistent with previous Federal program approvals or delegations, EPA will continue to implement the Act in Indian Country in Washington because PS Clean Air did not adequately demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas of Indian Country. The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Therefore, EPA's SIP approval applies to sources and activities on non-trust lands within the 1873 Survey Area.

VIII. General Information

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

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office, under Docket number WA–04–002. The official public file consists of the documents specifically referenced in this action, and other information related to this action. The official public rulemaking file is available for public viewing at EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. EPA requests that, if possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. EPA's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal Holidays.

2. Copies of the State submission and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State of Washington, Department of Ecology, P.O. Box 47600, Olympia, Washington 98504–7600.

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

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

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking WA–04–002" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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

a. *E-mail.* You may send comments by electronic mail (e-mail) to *r10.aircom@epa.gov,* please including the text "Public comment on proposed rulemaking WA–04–002" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

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

2. *By Mail.* Send your comments to: Roylene A. Cunningham, EPA, Office of Air Quality, (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. Please include the text "Public comment on proposed rulemaking WA–04–002" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Roylene A.

Cunningham, EPA, Office of Air Quality, (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

C. How Should I Submit CBI To the EPA?

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

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

IX. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the 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 Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 24, 2004.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 04–7470 Filed 4–1–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA209–4301; FRL–7642–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Hazelwood SO_2 Nonattainment and the Monongahela River Valley Unclassifiable Areas to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These SIP revisions include a regulation change to the allowable sulfur oxide emission limits for fuel burning equipment and a modeled demonstration of attainment of the national ambient air quality standards (NAAQS) for sulfur dioxide (SO_2) in the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area located in the Allegheny Air Basin in Allegheny County, Pennsylvania. In addition, EPA is proposing to redesignate these areas to attainment of the NAAQS for SO_2 and to approve a combined maintenance plan for both areas as a SIP revision. These SIP revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). This action is being taken in accordance with the Clean Air Act (CAA).

DATES: Comments must be received on or before May 3, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting

electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39thStreet, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 15, 2003, the PADEP, on behalf of the ACHD, submitted a SIP revision for SO_2 for Allegheny County, Pennsylvania. The SIP revision consisted of a change to ACHD's Article XXI, section 2104.03, pertaining to sulfur oxide emissions for fuel burning equipment; a modeled demonstration of attainment of the NAAQS for SO_2 in the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area of the Allegheny County Air Basin; and a request to redesignate these areas to attainment. The SIP revision also included a maintenance plan covering both of these areas which will ensure that attainment of the NAAQS for SO_2 will be maintained.

I. Background

When Were These Areas Designated Nonattainment and Unclassifiable for SO_2?

EPA originally designated all of Allegheny County, Pennsylvania as nonattainment for SO_2 under section 107 of the CAA on March 3, 1978 (43 FR 8962). In a subsequent final rulemaking published on October 21, 1981 (46 FR 51607), EPA approved a request to redesignate portions of Allegheny County for SO_2. As a result of this action, the area of the Allegheny County Air Basin within a two-mile radius of the Hazelwood monitor (the Hazelwood area) was designated nonattainment for SO_2, and the area of the Allegheny County Air Basin within an eight-mile radius of the Duquesne Golf Association Club House in West Mifflin, excluding the Hazelwood nonattainment area, (the Monongahela River Valley area) was designated unclassifiable for SO_2. On November 15, 1990, the CAA amendments were enacted. Pursuant to section 107(d)(1)(C), the Hazelwood area was designated nonattainment for SO_2 and the Monongahela River Valley area was designated unclassifiable for SO_2 by operation of law. These designations are codified in 40 CFR part 81.339.

What are the Geographical Boundaries of the Hazelwood SO_2 Nonattainment Area and the Monongahela River Valley Unclassifiable Area?

The Hazelwood SO_2 nonattainment area of the Allegheny County Air Basin is the area within a two-mile radius of the Hazelwood monitor. Surrounding this nonattainment area is the Monongahela River Valley unclassifiable area. It consists of that portion of Allegheny County within an eight-mile radius of the Duquesne Golf Association Clubhouse in West Mifflin, excluding the Hazelwood nonattainment area. These nonattainment and unclassifiable areas were consolidated into one aggregate area for the purposes of performing the modeled attainment demonstration and for the maintenance plan.

II. Redesignation Evaluation

What Are the Criteria for Redesignation?

Section 107(d)(3)(E) of the CAA, as amended, specifies five requirements that must be met to redesignate an area to attainment. They are as follows:

(1) The area has attained the applicable NAAQS.

(2) The area has a fully approved SIP under section 110(k).

(3) The air quality improvement is permanent and enforceable.

(4) The area has met all relevant requirements under section 110 and part D of the Act.

(5) The area has a fully approved maintenance plan pursuant to section 175A.

Has the State Met the Criteria for Redesignation?

The EPA has reviewed the redesignation request submitted by PADEP, on behalf of the ACHD, for the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area. EPA finds that the request meets the five requirements of section 107(d)(3)(E).

What Data Shows Attainment of the NAAQS for SO_2 in the Hazelwood Nonattainment Area and the Monongahela River Valley Unclassifiable Area?

There are two components involved in making a demonstration that an area is attaining the applicable NAAQS for SO_2. The first component relies upon ambient air quality data. The second component relies upon supplemental EPA-approved air quality modeling. The ACHD and PADEP have quality-assured SO_2 ambient air monitoring data showing that the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area have attained the NAAQS for SO_2. The County is currently operating three monitors within these areas, the Hazelwood, Liberty, and Glassport monitors. The Glassport monitor was previously proposed to be removed from continuous operation, and to be operated only during periods of scheduled desulfurization equipment outages. However, the ACHD has decided that the Glassport monitor will continue to operate on a continual basis. All of the monitors meet the requirements of 40 CFR parts 53 and 58, and are representative of the highest ambient concentrations.

The redesignation request for the Hazelwood and Monongahela River Valley areas is based upon air quality data for 1994—2000, as this was the most recent data at the time this redesignation request was initially prepared. The data was collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality Subsystem (AQS) of the Aerometric Information Retrieval System (AIRS). The annual primary NAAQS for SO_2 is 0.03 parts per million (ppm). The annual value is calculated as the arithmetic means of all 1-hour values over a calendar year. This standard has not been exceeded in Allegheny County since 1984. The daily primary 24-hr NAAQS is 0.14 ppm, and the 3-hr secondary NAAQS for SO_2 is 0.50 ppm. The daily value is calculated as the average 1-hour values over the consecutive 24-hour period of one day, and the 3-hour value is calculated as the average 1-hour value for successive non-overlapping 3-hour periods. Violations of the 24-hour and 3-hour standards occur when they are exceeded more than once in a calendar year. The most recent violations of the 24-hour and 3-hour standards occurred in 1993, when each standard was exceeded twice at the Hammerfield monitor in the Hazelwood area. An area is attaining the NAAQS for SO_2 if there is no more than one exceedance annually in accordance with 40 CFR part 50.4.

The air quality data for the monitoring sites submitted with this redesignation request shows that from 1994 through 2000 (through 1999 for Hammerfield, which was terminated in 2000), there

were no violations of the primary or secondary NAAQS for SO_2. Only one exceedance has been recorded since 1993, a 24-hour exceedance at the Glassport monitor in 1999. The NAAQS was not exceeded again for the year, hence no violation occurred. EPA has also confirmed that quality-assured data shows that no violations occurred in 2001 through 2003. Therefore, the areas have attained and continue to attain the NAAQS for SO_2. Air quality measurements used in this submittal were performed in accordance with the appropriate regulations and guidance documents including adherence to EPA quality assurance requirements. Monitoring procedures were determined in accordance with 40 CFR part 58.

Dispersion modeling is commonly used to demonstrate the SIP adequately provides for attainment and maintenance of the NAAQS for SO_2. An air quality modeling demonstration of attainment for the SO_2 NAAQS for the Hazelwood nonattainment area and the surrounding Monongahela River Valley unclassifiable area was included in this submittal for approval as a SIP revision. The modeling analysis was performed according to the "Guideline on Air Quality Models," Appendix W to 40 CFR, part 51. The modeling demonstrates that the areas have attained and will maintain the standard under the operating scenarios allowed for in the SIP. A more detailed discussion of the modeling evaluation is included in the technical support document (TSD) prepared for this rulemaking. Because the areas have attained the NAAQS for SO_2 based upon the quality-assured data available during preparation of the August 15, 2003 submittal, and continue to attain the NAAQS, the first criterion of section 107(d)(3)(E) has been satisfied. The ACHD and PADEP have committed to continue monitoring in these areas in accordance with 40 CFR part 58.

Is There a Fully Approved SIP Under Section 110(k) of the Act?

The SIP for the area must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply. The SIP for Southwestern Pennsylvania was fully approved by EPA on October 21, 1981 (46 FR 51607), and identified existing local control strategies to bring the area into compliance. Control strategies included coke oven gas desulfurization and source-specific emission requirements. On November 15, 1990, the CAA amendments were enacted. Pursuant to section 107(d)(1)(C), the Hazelwood area in Allegheny County, Pennsylvania, was designated nonattainment and the Monongahela River Valley area in Allegheny County, Pennsylvania, was designated unclassifiable by operation of law. On August 18, 1995 (60 FR 43012), EPA approved a source-specific SIP revision for U.S. Steel Clairton Works in Allegheny County, implementing spare desulfurization equipment to be used in the event of a breakdown of the coke oven gas desulfurization process. The August 15, 2003 submittal which is the subject of this proposed rulemaking, includes an additional revision to the areas SO_2 emission limits. This revision to the ACHD Article XXI, Revision 46, section 2104.03, pertains to allowable sulfur oxide emission limits for fuel burning equipment. Specifically, the revision mandates that equipment firing only natural gas or liquified petroleum gas (propane), or any combination thereof, will be limited to an SO_2 emission rate which is no greater than the current potential to emit (pte). In addition, the SIP revision limits processes and incinerators to the lesser of their current pte rate or 500 ppm SO_2 at any time in the effluent stack gas (volumetric basis). These amendments to the SO_2 emission limits for fuel burning equipment in Allegheny County were submitted to EPA for approval as SIP revisions concurrently with the redesignation request to meet the requirements of section 110(k) of the CAA. EPA is proposing approval of these further restrictions of emissions of SO_2 as a SIP revision.

Is the Improvement in Air Quality Due to Permanent and Enforceable Measures?

In order to redesignate an area, EPA must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable reductions. Implementation of the SIP has led to decreased levels of pollutant emissions. These improvements are permanent and enforceable. Limits restricting hydrogen sulfide (H_2S) content have been imposed under Article XXI of ACHD's regulations. Shenango, Inc., is required to meet a limit of 34 grains of hydrogen sulfide content per dry hundred cubic feet of coke oven gas, while U.S. Steel must meet a limit of 40. The coke oven gas standard of 50 grains H_2S/100 dscf was in effect at the time of the nonattainment designation. The current limits of 34 and 40 grains H_2S/100 dscf represent a 32 percent reduction in modeled SO_2 emissions from coke oven gas usage at Shenango and a 20 percent reduction at U.S. Steel, respectively.

Permanent shutdown of many facilities in the nonattainment and unclassifiable areas has occurred. LTV Corporation permanently ceased operations of its Hazelwood coke production facility in 1998. LTV's South Side facility closed shortly after the time of designation. Unlike currently operating facilities which were modeled at their allowable emission rates, banked emissions were used in the modeling demonstration for the LTV facilities, which represent approximately a 65 percent reduction from LTV's former allowable emissions. Emissions from the Hazelwood coke facility were the primary cause of violations in the Hazelwood area, and consequently, the designation of nonattainment. Other facilities situated outside the nonattainment area but inside the unclassifiable area, such as U.S. Steel Duquesne, Homestead, and National Works, have also permanently ceased operations since the time of designation, with no banked emissions.

The decrease of coal and fuel oil usage has led to air quality enhancements. Numerous sources have restrictions on coal and oil, and their enforceable operating permits reflect that these sources are not capable of burning these fuels. Percent reduction in emissions can be estimated according to AP–42 emission factors. For example, a boiler switching from No. 2 fuel oil (containing 0.1% sulfur by weight) to natural gas corresponds to a change in emission factors from 0.1120 to 0.0006, in pounds of SO_2 per million Btu.

As mentioned previously, the August 15, 2003 submittal also includes revisions to the allowable sulfur oxide emission limits for fuel burning equipment. New allowable limits are to be implemented for boilers firing only natural gas and/or and liquefied petroleum gas (propane). These boilers will now have limits no greater than their current maximum pte values of SO_2. This revision allows for more accurately modeled plumes, as it makes a natural gas boiler and a coal boiler of the same capacity more distinguishable by emission rates. Previously, boilers using only natural gas and propane were assigned the same allowable limits as boilers of the same size that used coal or fuel oil. Percent reduction due to this change is given by the change in emission factors, from 1.0 to 0.006, in pounds of SO_2 per million Btu.

Similarly, process and incinerator emission limits are being changed to current maximum pte values or, if lesser than pte, the previous value of 500 ppm SO_2 at any time in the effluent stack gas

(volumetric basis) is the allowable rate. The previous limit of 500 ppm SO_2 at any time in the effluent stack gas (dry volumetric basis) led to excessively high allowable rates for many processes in Allegheny County. For some sources, emissions calculated at maximum production rates were only a minute fraction of 500 ppm. Imposing the lower of maximum pte or 500 ppm translates to more realistic (and lower) emissions. Percent reduction due to this change varies greatly from process to process at the affected sources, from 0–99 percent, depending on the flow rate of the effluent stack gas and the type of process.

Attainment in the Hazelwood area is due to the permanent and enforceable measures and improvements listed above. As required by the attainment and maintenance plan, model runs have produced theoretical results of attainment for sources running at maximum possible capacities over five different years of meteorology.

Does the State Meet the Applicable Requirements of Section 110 and Part D?

The general SIP elements delineated in Section 110(a)(2) of Title I, part A, include but are not limited to the following: Submittal of a SIP that has been adopted by the state after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, and provisions for public and local agency participation. Upon approval of the additional revision to the areas SO_2 emission limits and the modeled attainment and maintenance demonstration submitted on August 15, 2003, EPA concludes that the Commonwealth's SIP for the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area will satisfy all of the section 110 and part D requirements of the CAA.

1. Section 110 Requirements

Section 110 of the CAA concerns the general provisions needed in a SIP. The applicable requirements of section 110, especially section 110(a)(2) have been satisfied by Allegheny County's portion of the Pennsylvania SIP approved in 1981 and by its subsequent amendments.

2. Part D Requirements

Part D contains general provisions that apply to all nonattainment plans in general, and certain sections that apply to specific pollutants. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. EPA designated the Hazelwood area as nonattainment for SO_2 by operation of law (codified at 40 CFR part 81.339). For the Hazelwood area to be redesignated to attainment, the area must have met the applicable requirements of subpart 1 of part D of the CAA, specifically sections 172(c) and 176, and sections 191–192 of subpart 5 of part D.

a. Subpart 1 of Part D—Section 172(c) Provisions

Pennsylvania's August 15, 2003 SIP revision submittal for the Hazelwood and Monongahela areas fully complies with the part D requirements, as set forth in section 172(c) of the CAA. The plan complies with the requirements to implement RACM by providing for immediate attainment of the NAAQS for SO_2 through the emission limits and operating restrictions imposed on the contributing sources in the Pennsylvania SIP. Reasonable Further Progress (RFP) is achieved due to the immediate effect of the emission limits required by the plan. An inventory of the SO_2 emissions in the Hazelwood nonattainment area and the unclassifiable Monongahela River Valley area was provided in the submittal and found to be acceptable. The Federal requirements for NSR in nonattainment areas are contained in section 172(c)(5). EPA guidance indicates the permitting requirements of the part D NSR program for new major sources and major modifications shall be replaced by the PSD program's permitting requirements when an area has reached attainment and has been redesignated, provided that the PSD program will be fully effective immediately upon redesignation. The ACHD was originally delegated the authority to implement and enforce the provisions of 40 CFR 52.21 on behalf of EPA, on December 14, 1983 (48 FR 55625). The ACHD adopted the PSD requirements promulgated in 40 CFR 52.21, incorporating them by reference in its regulations as provided in Article XXI, section 2102.07. On March 26, 2003, EPA renewed the ACHD's existing delegation to implement and enforce the provisions of 40 CFR 52.21 as well as any future revisions to these regulations (68 FR 14617). Therefore, the permitting requirements of the PSD program are fully effective in the Hazelwood area immediately upon its redesignation to attainment. The August 15, 2003 submittal provides for immediate attainment of the NAAQS for SO_2 through the emission limitations, operating requirements, and compliance schedules that are set forth in the Pennsylvania SIP. As stated previously, this submission complies with section 110(a)(2). All of the applicable provisions of section 110(a)(2) are satisfied by the August 15, 2003 submittal or they have already been approved by EPA. The modeling demonstration for the August 15, 2003 SIP submittal was conducted in accordance with EPA's "Guideline on Air Quality Models." The use of AERMOD was approved by EPA for use by ACHD in accordance with section 172(c)(8) of part D of the CAA.

Section 172(c)(9) of the CAA defines contingency measures as measures in a SIP which are to be implemented if an area fails to make RFP or fails to attain the NAAQS by the applicable attainment date, and shall consist of other control measures that are not included in the control strategy. However, the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, (57 FR 13498), states that SO_2 measures present special considerations because they are based upon what is necessary to attain the NAAQS. Because SO_2 control measures are well established and understood, they are far less prone to uncertainty. It would be unlikely for an area to implement the necessary emissions controls yet fail to attain the NAAQS for SO_2. Therefore, for SO_2 programs, contingency measures mean that the state agency has the ability to identify sources of violations of the NAAQS for SO_2 and to undertake an aggressive followup for compliance and enforcement. Allegheny County has the necessary enforcement and compliance programs as well as the means to identify violators, thus satisfying the contingency measures requirement.

b. Subpart 1 of Part D—Section 176 Conformity Requirements

It was determined that the significant causes of nonattainment in this area were emissions from stationary facilities in the area and not from mobile or area sources. Because the SO_2 violations had been caused by industrial sources and motor vehicles were not an important contributor to the nonattainment problem, for conformity purposes, no quantitative analysis for transportation related SO_2 impacts is required. While section 176 provides that a State's

conformity revision must be consistent with Federal Conformity regulations promulgated by EPA, given the nature of the area's former nonattainment problem, it is reasonable to interpret those conformity requirements as not applying for purposes of evaluating the redesignation request.

c. Subpart 5 of Part D Requirements

Subpart 5 of part D addresses additional provisions for SO_2 nonattainment areas. Section 191(b) of the CAA Amendments requires any state containing an area designated nonattainment for SO_2 prior to enactment of the 1990 CAA Amendments, but lacking a fully approved SIP, to submit an implementation plan by May 15, 1992. EPA published a Notice of Final Rulemaking in the October 21, 1981 **Federal Register** (46 FR 51607), fully approving a SIP for the Hazelwood area to provide for attainment of the NAAQS in the area. This plan has been revised and supplemented by the August 15, 2003 submittal.

Is There a Fully Approved Maintenance Plan Under Section 175A?

Section 175A of the Act sets forth the necessary elements of a maintenance plan needed for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after EPA approves a redesignation to attainment. Eight years after the redesignation, Pennsylvania must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. Under section 175A(d), contingency provisions must include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area. EPA is proposing to approve the maintenance plan for the Hazelwood nonattainment area because EPA finds that the submittal meets the requirements of section 175A. The details of the maintenance plan requirements and how the submittal meets these requirements are detailed in the following paragraphs. A maintenance plan must contain the following elements: (1) An emissions inventory reflective of SO2 emissions in the monitored attainment years, (2) a maintenance demonstration which is expected to provide adequate assurance of maintenance over the initial 10-year period, (3) a commitment to continue monitoring in the area, (4) a method for verifying continued attainment, and (5) a contingency plan with specific indicators or triggers for implementation of the plan.

A. Maintenance Plan Requirements

1. Emissions Inventory

For this maintenance plan, the emissions inventory is the modeled inventory of all sources affecting both the nonattainment and unclassifiable areas. The maintenance plan includes the 1999 emission inventory used to perform the modeling demonstration of attainment and maintenance. Emission rates are based on the maximum allowable amounts of SO_2 as determined by Article XXI of the SIP that could potentially be released into the ambient air. The modeled emission rates are appropriate for the demonstrations of attainment and maintenance. These values, along with the corresponding stack and building downwash parameters for each source, were input into the model. Model runs for five years of meteorological data were used to identify the maximum level of emissions in the area that will attain and maintain the NAAQS. Any future increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the attainment demonstration due to new or modifying stationary sources would be subject to new source review requirements including a demonstration that the NAAQS is protected.

2. Maintenance Demonstration

Industrial facilities were the main cause of nonattainment in the area. The attainment demonstration was based upon maximum allowable emission levels for stationary sources impacting the nonattainment and unclassifiable area. As discussed previously, the attainment and maintenance demonstration was performed using air dispersion modeling in order to show that the attainment inventory attains the primary and secondary NAAQS for SO_2. The American Meteorological Society/EPA Regulatory Model (AERMOD) was the model used for the demonstration. EPA approved the use of this model for this analysis since this model has only been proposed for inclusion in the "Guideline on Air Quality Models." The attainment inventory reflected the new emission limits contained in Article XXI which are discussed in section IV. C of this document. Based on the modeling analysis, the maximum annual SO_2 average concentration predicted was 71.6 ug/m^3, the second highest daily average was 344.7 ug/m^3, and the second highest 3-hour average was 1248.8 ug/m^3. These values are below the NAAQS for SO_2 standards of 80 ug/m^3, 365 ug/m^3, and 1300 ug/m^3, respectively. Additional information on the air dispersion modeling performed for the maintenance demonstration can be found in the TSD prepared for this rulemaking, and the submittal itself.

Population has steadily decreased in the county since 1990 and this decline is expected to continue through 2020. Therefore, other sources of emissions related to population are expected to decline. Employment in manufacturing is expected to decrease significantly between 2002–2020. As a result of these factors, SO_2 emissions are expected to remain below the emission levels used to demonstrate attainment for the next 10 years and the area is expected to maintain the NAAQS for SO_2 for the next 10 years. Moreover, as noted previously, any future increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the attainment demonstration due to new or modifying stationary sources would be subject to NSR requirements (minor source NSR and PSD for major new sources and modifications) including a demonstration that the NAAQS is protected.

3. Commitment To Continue Monitoring Air Quality

The maintenance plan commits to maintaining the ambient air quality monitors located at the areas of greatest concern which are the Hazelwood, Glassport, and Liberty Borough locations. These monitors will be maintained and operated in accordance with 40 CFR part 58. Before any monitors could be removed from continuous service, their removal would first be evaluated for any potential impairment to the SO_2 network.

4. Verification of Continued Attainment

In addition to reviewing ambient air quality data in the Hazelwood and Monongahela River Valley areas, ACHD will periodically update their emissions inventory and will continue to examine the impact of any new major sources or modifications through its PSD program to ensure protection of the NAAQS. Furthermore, under the SIP-approved minor source NSR program, the air quality impact of new minor sources or modifications resulting in any increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the maintenance

demonstration would be evaluated to ensure protection and maintenance of the NAAQS in these areas.

5. Contingency Plan

It is considered unlikely that an area would fail to attain the SO_2 standards after it has demonstrated, through modeling, that attainment is reached after the limits and restrictions are fully implemented and enforced. Nonetheless, the ACHD will rely on air monitoring data to track future compliance with the NAAQS for SO_2, and to determine the need to implement contingency measures. If an SO_2 exceedance occurs anywhere in the Hazelwood and Monongahela River Valley areas, the ACHD would first determine whether or nor all of the affected sources are in compliance with their allowable SIP-approved limits. If any sources are found in violation of their allowable SIP-approved limits, the ACHD would take the appropriate action to bring any source(s) back into compliance. If all sources are found to be in compliance, the ACHD will evaluate the nature or cause of the exceedance and determine whether such an exceedance triggers the need for additional additional emission controls measures. If a violation of the NAAQS does occur, regulatory contingency measures to further reduce SO_2 will be adopted within 12 months of the violation. Those regulatory contingency measures will be implemented such that affected sources are in required to comply with their requirements within 12 months of their adoption. Possible contingency measures include: lowering the hydrogen sulfide grain loading for coke oven gas, specific plan limits for types or amounts of high sulfur fuel, and lower SO_2 emission limits.

B. Subsequent Maintenance Plan Revisions

A new maintenance plan must be submitted to EPA, as a SIP revision, within eight years of the redesignation of the nonattainment area, as required by section 175(A)(b). This subsequent maintenance plan must provide for the maintenance of the NAAQS for SO_2 for a period of 10 years after the expiration of the initial 10-year maintenance period. The PADEP must submit an updated maintenance plan within eight years of the final redesignation of these areas.

III. Proposed Action

EPA is proposing to approve SIP revisions submitted on August 15, 2003 by the Commonwealth of Pennsylvania on behalf of the ACHD . These SIP revisions include a regulation change to the allowable sulfur oxide emission limits for fuel burning equipment and a modeled demonstration of attainment of the NAAQS for SO_2 in the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area located in the Allegheny Air Basin in Allegheny County, Pennsylvania. In addition, EPA is proposing to redesignate these areas to attainment of the NAAQS for SO_2 and to approve a combined maintenance plan for both areas as a SIP revision. EPA has prepared a TSD in support of this proposed rulemaking. Copies are available, upon request, from the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting either electronic or written comments. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA209–4301 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov* attention PA209–4301. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov , EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

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

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

Submittal of CBI Comments

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

accordance with procedures set forth in 40 CFR part 2.

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

Considerations When Preparing Comments to EPA

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

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

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have 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), nor will 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), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule pertaining to a change to the allowable sulfur oxide emission limits for fuel burning equipment and a modeled demonstration of attainment of the NAAQS for SO_2 in the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area located in the Allegheny Air Basin in Allegheny County, Pennsylvania and the redesignation of these areas to attainment of the NAAQS for SO_2, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: March 25, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–7471 Filed 4–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[FRL–7642–9]

Delaware and Maryland: Adequacy of State Solid Waste Landfill Permit Programs Under RCRA Subtitle D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to approve Delaware's and Maryland's solid waste regulations which ensure that hazardous waste from conditionally exempt small quantity generators (CESQGs) will only be disposed of in accordance with EPA regulations. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving Delaware's and Maryland's regulations by an Immediate Final Rule, EPA did not make a proposal prior to the

Immediate Final Rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this approval in the preamble to the Immediate Final Rule. Unless we receive written comments which oppose this approval during the comment period, the Immediate Final Rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the Immediate Final Rule, and it will not take effect. We will then respond to public comments in a later Final Rule based on this proposal. You will not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by May 3, 2004.

ADDRESSES: Written comments should be sent to Mike Giuranna, RCRA State Programs Branch, Waste & Chemicals Management Division (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, telephone: (215) 814–3298. Comments may also be submitted electronically through the Internet to: *giuranna.mike@epa.gov* or by facsimile at (215) 814–3163. You may examine copies of the relevant portions of Delaware's and Maryland's regulations during normal business hours at EPA, Region III.

FOR FURTHER INFORMATION CONTACT: Mike Giuranna, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number: (215) 814–3298, e-mail: *giuranna.mike@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, please see the Immediate Final Rule published in the "Rules and Regulations" section of today's **Federal Register**.

Dated: January 8, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–7469 Filed 4–1–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7445]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, *§ 67.4*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	San Joaquin County.	Stanislaus River	Approximately 5 miles downstream of State Highway 99.	None	*45
			Approximately 3 miles upstream of Santa Fe Railroad.	None	*93

*Elevation in feet.

Maps are available for inspection at the Department of Public Works, 1810 East Hazelnut Avenue, Stockton, California 95202.

Send comments to The Honorable Leroy Omellas, Chairman, San Joaquin County Board of Supervisors, 222 East Weber Avenue, Room 701, Stockton, California 85202.

Califomia	Ripon (City), San Joaquin County.	Stanislaus River	Approximately 3.3 miles downstream of State Highway 99.	None	*48
			Approximately 1.3 miles upstream of State Highway 99.	None	*57

*Elevation in feet.

Maps are available for inspection at City Hall, 259 North Wilma Avenue, Ripon, Califomia 95366.

Send comments to The Honorable Tim Hem, Mayor, City of Ripon, 259 North Wilma Avenue, Ripon, California 95366.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Burgess Creek	At confluence with Walton Creek	*6,755	*6,749	Routt County (Uninc. Areas) and City of Steamboat Springs.
	Just upstream of Burgess Creek Road	None	+7,355	
Elk River (Lower Reach)	At confluence with Yampa River	None	+6,533	Routt County (Uninc. Areas).
	Approximately 1.5 miles upstream of County Road 44	None	+6,712	
Walton Creek	At confluence with Yampa River	*6,754	+6,759	Routt County (Uninc. Areas) and City of Steamboat Springs.
	Approximately 850 feet upstream of County Road 24	None	+6,827	
Walton Creek Side Channel	Approximately 500 feet downstream of County Road 24	None	+6,810	Routt county (Uninc. Areas).
	At divergence from Walnut Creek main channel	None	+6,825	
Yampa River Bypass (near Steamboat Springs).	At confluence with Yampa River	*6,811	+6,816	Routt County (Uninc. Areas).
	Approximately 700 feet downstream of divergence from Yampa River.	*6,848	+6,853	
Yampa River near Hayden	Approximately 2,600 feet downstream of U.S. Highway 40	None	+6,314	Routt County (Uninc. Areas) and Town of Hayden.
	Approximately 1.3 miles upstream of U.S. Highway 40	None	+6,424	
Yampa River Side channel 1	At confluence with Yampa River main channel	*6,622	+6,626	Routt County (Uninc. Areas) and City of Steamboat Springs.
	At divergence from Yampa River main channel	*6,636	+6,635	
Yampa River Side Channel 2	At confluence with Yampa River main channel	*6,710	+6,716	City of Steamboat Springs.
	At divergence from Yampa River main channel	*6,717	+6,724	
Yampa River split Flow at Highway 131 (near Steamboat Springs).	At confluence with Yampa River	*6,825	+6,830	Routt County (Uninc. Areas)
	At divergence from Yampa river	*6,838	+6,843	
Yampa River near Steamboat Springs.	Approximately 1.5 miles downstream of County Road 179	None	+6,483	Routt County (Uninc. Areas) and City of Steamboat Springs.
	Approximately 1.5 miles upstream of State Highway 131	*6,861	+6,865	

*National Geodetic Vertical Datum (to convert to NAVD, add 4.2 feet to NGVD elevation).
+North American Vertical Datum.

Addresses

Routt County (Unincorporated Areas)

Maps are available for inspection at the Routt County Courthouse, 136 6th Street, Steamboat Springs, Colorado 80477.

Send comments to the Honorable Douglas B. Monger, Chairman, Routt County Board of Commissioners, P.O. Box 773598, Steamboat Springs, Colorado 80477.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

City of Steamboat Springs

Maps are available for inspection at City Hall, 124 Tenth Street, Steamboat Springs, Colorado 80477.
Send comments to the Honorable Paul Strong, Council President, City of Steamboat Springs, P.O. Box 775088.

Town of Hayden

Maps are available for inspection at the Town Hall, 178 West Jefferson, Hayden, Colorado 81639.
Send comments to the Honorable Chuck Grobe, Mayor, Town of Hayden, P.O. Box 190, Hayden, Colorado 81639.

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

Dated: March 24, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–7441 Filed 4–1–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT35

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To Reclassify the Pahrump Poolfish (Empetrichthys latos) From Endangered to Threatened Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule, published in the **Federal Register** on September 22, 1993 (58 FR 49279), to reclassify the Pahrump poolfish (*Empetrichthys latos*) from endangered to threatened status. We have determined that reclassification of this species at this time is not appropriate.

ADDRESSES: The complete file for this action is available for inspection, by appointment, during normal business hours at our Southern Nevada Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502 (telephone: 775/861–6300; facsimile: 775/861–6301).

SUPPLEMENTARY INFORMATION:

Background

The Pahrump poolfish, family Goodeidae, was discovered by Gilbert in 1893, but was incorrectly identified as the Ash Meadows killifish (*Empetrichthys merriami*). Miller (1948) later described the Pahrump poolfish as the Pahrump killifish (*Empetrichthys latos latos*), which historically occupied an isolated spring (Manse Spring) on private property known as Manse Ranch in the Pahrump Valley of southern Nye County, Nevada.

When describing the Pahump killifish, Miller also identified two other subspecies occurring in isolated springs in Nye County, the Pahrump Ranch killifish (*Empetrichthys latos pahrump*) inhabiting Pahrump Spring, and the Raycraft Ranch killifish (*E. l. concavus*) occurring in Raycraft Spring. Both of these subspecies became extinct in the late 1950s as a result of introduced carp (*Cyprinus* spp.) and desiccation of the springs from groundwater pumping (Miller 1948; Deacon and Williams 1984; Miller *et al.* 1989).

The only congener (member of the same genus) to these three subspecies, the Ash Meadows killifish, was documented by Gilbert (1893) and historically occupied numerous springs in nearby Ash Meadows, Nye County, Nevada. This species was last seen in 1948 and is believed to have gone extinct in the early 1950s, likely as a result of habitat alteration, and competition with and predation by, introduced nonnative crayfish (*Procambarus clarkii*), mosquitofish (*Gambusia affinis*), black mollies (*Mollienesia shenops*), and bullfrogs (*Rana catesbiana*) (Deacon and Nappe 1968; Soltz and Naiman 1978; Miller et al. 1989).

The common name of the genus *Empetrichthys* has since been changed from killifish to poolfish (Robins et al. 1991). Also, because the Pahrump poolfish (*Empetrichthys latos latos*) is now the only remaining representative of the species *E. latos*, the subspecies designation has been dropped; thus, the fish is currently known as the Pahrump poolfish (*E. latos*) (Robins et al. 1991; Eschmeyer 1998; Integrated Taxonomic Information System 2002).

The Pahrump poolfish (poolfish) is a small fish that obtains an average maximum length of 3 inches (76.2 millimeters), with females generally larger than males (Service 1980; Deacon 1984a, 1984b, 1984c). The poolfish has a slender, elongate body with dorsal and anal fins placed far back, a broad upturned mouth, a dark longitudinal streak (which tends to disappear in older, larger individuals), and an orange ring around the eyes. On average, there are 30 to 32 scales in the lateral series (scales found along the lateral line, which is a series of porelike openings along the sides of a fish), but the number may vary from as low as 29 to a high of 33 scales (Sigler and Sigler 1987; La Rivers 1994). Poolfish lack pelvic fins, but the dorsal, anal, and caudal fins are bright orange-yellow when the fish are in an environment of optimal temperature and dissolved oxygen (Selby 1977; Soltz and Naiman 1978). The pectoral fins of the species typically have 16 to 18 rays (Sigler and Sigler 1987). The body of the poolfish is generally greenish-brown with black mottling, but males may be silver-blue without mottling during the spawning season (Soltz and Naiman 1978; Service 1980).

Transplant History: In 1975, poolfish were extirpated from their only known natural habitat, Manse Spring, as a result of desiccation of the spring from groundwater pumping and competition from nonnative goldfish (Deacon *et al.* 1964; J. Deacon, in litt. 1970). Anticipating the demise of the spring at Manse Ranch (Minckley and Deacon 1968), personnel from Federal and State agencies and academic institutions removed poolfish from Manse Spring during the early 1970s and transplanted poolfish to three locations in Nevada:

1. Los Latos Pool along the Colorado River, near Lake Mohave in June 1970 (J. Deacon in litt. 1970);

2. Corn Creek Springs on the Desert National Wildlife Refuge (DNWR), Clark

County in August 1971 (D. Lockard, Service, in litt. 1971); and

3. Shoshone Ponds Natural Area, White Pine County, a Bureau of Land Management (BLM) native fish sanctuary in March 1972 (D. Lockard in litt. 1972; Mark Barber, BLM, in litt. 1987).

Transplanted poolfish at Los Latos Pool were lost during floods in the late 1970s, and individuals were never replaced at this location. Poolfish at Shoshone Ponds Natural Area were lost to vandalism in 1974 when the water source was intentionally turned off. Modifications were made to the ponds' water system to try to prevent future vandalism, and the poolfish were replaced in August 1976 with fish from Corn Creek Springs (after a 1-year stay at a University of Nevada, Las Vegas holding facility) (Leroy McLelland, Nevada Division of Fish and Game (NDFG), in litt. 1976; Logan 1977; M. Barber in litt. 1987). In order to replace the lost Los Latos Pool population, a third population of poolfish was established in the irrigation reservoir at the State of Nevada's Spring Mountain Ranch State Park (State Park) in western Clark County. Poolfish from Corn Creek Springs were transplanted to the State Park location in June 1983 (Richard Haskins, NDFG, in litt. 1983).

We approved the Pahrump Killifish Recovery Plan (Recovery Plan) on March 17, 1980 (Service 1980). The Recovery Plan recommended the establishment of at least three populations of poolfish as the primary objective for the species' recovery efforts, preferably including a population at Manse Spring. The species is less likely to be threatened simultaneously at three or more separate sites than at a single location. The Recovery Plan also stated that the species could be considered for reclassification to threatened status when each of the three populations contained at least 500 adults for 3 years, and each habitat was free of immediate and potential threats. Poolfish could be considered for delisting if the three populations continued to exceed 500 individuals for an additional 3 years after reclassification.

All three transplanted populations of poolfish reproduced successfully and thrived in their new habitats, and data indicated that these transplanted populations had maintained a minimum of 500 individuals between 1986 and 1993 (Nevada Department of Wildlife, NDOW, 1988a, 1988b; Sjoberg 1989; Heinrich 1991a, 1991b, 1993). With the three populations stable and secure on Federal and State lands, we published a proposed rule to downlist the poolfish from endangered to threatened status on September 22, 1993 (58 FR 49279).

However, soon after the publication of the proposed rule, we learned that the Nevada Division of State Parks (NDSP) would receive funding for a project to drain and dredge accumulated sediment from the irrigation reservoir at the State Park to restore the reservoir's water storage capacity. We informed the NDSP of the proposed project's potential to adversely affect the poolfish population residing in the reservoir, and that the NDSP must obtain an incidental take permit from us, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Further action on the proposed rule was halted as the NDSP developed a habitat conservation plan (HCP) to apply for the permit.

In 1995, the NDSP acquired a section 10(a)(1)(B) permit from us for the proposed modifications and future operation and maintenance of the irrigation reservoir at the State Park as described in the HCP. The permit remains in effect until the year 2025. Modifications to the reservoir in 1995 were completed without adversely affecting the poolfish population. Based on information from annual surveys utilizing mark and recapture methods, as well as informal visual surveys, the population remains stable at the State Park, and is currently the largest population of poolfish, estimated at 16,775 individuals (95 percent confidence interval) in 2003 (NDOW in litt. 1997, 2001b, 2001c, 2002a, 2002b; NDOW 1999, 2000, 2001; B. Hobbs, NDOW, pers. comm. 2002; B. Hobbs, NDOW, pers. comm. 2003).

In the late 1990s, the population of poolfish at Corn Creek Springs was lost to illegally introduced nonnative crayfish (NDOW 1999). The last three poolfish were found at Corn Creek Springs during summer surveys in 1998 and no other poolfish were captured during surveys in subsequent years (NDOW 1999, 2000). A new, isolated refugium for the poolfish was built at Corn Creek Springs in 2002. Thirty adult poolfish from the State Park population were introduced into the refugium in June 2003, with visual surveys in July 2003 revealing eight young in the refugium (NDOW in litt. 2003a). Another 30 adult poolfish were added to the refugium from the State Park population in August 2003, with additional introductions to the refugium planned for the near future (NDOW in litt. 2003a). The third poolfish population at the Shoshone Ponds Natural Area has historically remained stable since the 1980s with only natural population fluctuations affecting its status (NDOW in litt. 2003b). However, surveys in 2003 indicated a significant decrease in the population to less than 1,000 individuals. The cause for the decline is unknown and is currently being investigated (NDOW, in litt. 2003b).

Previous Federal Action

On March 11, 1967, the Pahrump poolfish (as the Pahrump killifish) was listed as endangered under the Endangered Species Preservation Act of 1966 (16 U.S.C. 668aa(c)). The species retained its endangered status with the passage of the Act. The Recovery Plan for this species was completed in 1980. On September 22, 1993, we proposed to reclassify the Pahrump poolfish from endangered to threatened status (58 FR 49279).

Other Federal actions include section 7 consultations with the DNWR and the BLM regarding the potential effects of various actions on the poolfish populations within their respective jurisdictions. Consultations with the DNWR have included projects with actions having short-term adverse effects to the poolfish population at Corn Creek Springs, but with long-term benefits. These include chemical eradication of competing mosquitofish, and mechanical and chemical removal of emergent vegetation to preserve pond integrity. The BLM has consulted with us on the management of the Shoshone Ponds Natural Area, as well as prior to authorizing transfer of public lands in adjacent areas into private ownership under the Desert Land Entry Act. This act allows individuals to reclaim, irrigate, and cultivate arid and semiarid public lands. We have also issued several recovery permits under section 10(a)(1)(A) of the Act to the NDOW and various academic institutions, authorizing take of the species for tasks identified in the Recovery Plan. Finally, we have previously allocated funds to the NDOW for conducting surveys of each poolfish population and may continue to do so in the future as funds are available, under section 6 of the Act.

Summary of Comments

With publication of the proposed rule on September 22, 1993, we requested that all interested parties submit factual reports, information, and comments that might contribute to the development of the final downlisting decision. We contacted appropriate State and Federal agencies, County and city governments, scientific organizations and authorities, and other interested parties, and requested them to comment. Following the publication of the proposed rule, we received two comments: one from the

NDOW and the other from an individual, both supporting the reclassification, and neither raised any additional concerns.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424), promulgated to implement the listing provisions of the Act, set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of five factors described in section 4(a)(1). These factors, and their application to the Pahrump poolfish, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Current Range: Three separate populations of poolfish currently exist; however, only one is considered stable. Additionally, none of these populations currently occurs at Manse Spring, its native habitat. Establishing a population of poolfish at Manse Spring was identified as a high-priority objective of the Recovery Plan. However, recent residential development in and around Manse Ranch continues to modify the native habitat, and future residential and commercial development in the Pahrump Valley may limit the available water resources and preclude the opportunity to re-establish a poolfish population in this location.

Excessive Groundwater Withdrawals: The most critical threat to the poolfish has historically been the destruction of habitat through groundwater withdrawals, as demonstrated by the desiccation of the only native habitat of the species. Adequate, reliable water sources are necessary to ensure that currently occupied ponds provide suitable habitat for the poolfish. Thus, long-term declines in spring flows due to groundwater pumping from areas surrounding existing poolfish habitat remain a threat to all the populations. Threats to water sources necessary for poolfish habitat have been minimized to the extent possible by the managing Federal and State agencies. For example, we filed for, and received, vested water rights at Corn Creek Springs from the State of Nevada that will ensure the water supply for the poolfish population at that location. In addition, the NDOW and the NDSP hold State appropriative water rights to the springs supporting the habitats at Shoshone Ponds Natural Area and the State Park, respectively.

In the past, groundwater withdrawals were mainly done for agricultural activities. However, the present demand on limited water sources is to accommodate the growing human population and development in the arid desert of southern Nevada. The annual population growth in southern Nevada has been 7 percent per year since 1910, whereas growth in the United States during the same period has averaged only 1 percent per year (Southern Nevada Water Authority (SNWA) 2002). Southern Nevada is primarily reliant on the Colorado River for most of its water; however, groundwater is a critical component of the area's water resources, mainly to meet peak water demands during the hot summer (SNWA 2002). Secured water rights at poolfish habitats currently provide available groundwater resources to support the species. However, all of the groundwater rights held by local water agencies are currently not being utilized, and these agencies are exploring use of these rights as future options to meet continued demand (SNWA 2002). It is likely that the threat of significantly reduced, and limited, water sources caused by pressures exerted on the groundwater system to accommodate extensive population growth and development in southern Nevada could threaten the future existence of the poolfish.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Pahrump poolfish is a nongame fish, and no commercial or recreational use of the species has been documented, nor is it anticipated. Scientific interest in this species has been limited to activities associated with tasks identified in the Recovery Plan. Section 10 of the Act allows for the issuance of permits for research, rehabilitation, and propagation. We issue recovery permits authorizing activities identified in the Recovery Plan, provided these activities do not jeopardize the continued existence of the poolfish.

Since Corn Creek Springs and Shoshone Ponds Natural Area are open to the public without daily oversight by agency personnel, it is difficult for us and the BLM to protect the ponds from illegal human actions that may adversely affect the poolfish and their habitat. Most legal human activities in these areas, such as recreational fishing, have not been and are not a threat to the poolfish. Vandalism was historically a significant problem at Shoshone Ponds Natural Area. The initial introduction of poolfish to those ponds from Manse Spring was lost to vandalism in 1974 when the water source was intentionally turned off (M. Barber in litt. 1987). Vandalism continues to be a minor threat to the poolfish in this location, given that public access to the site is not monitored on a daily basis (B. Hobbs, pers. comm., 2002).

C. Disease or Predation

The remaining populations of poolfish possess low numbers of common external fish parasites (Heckmann 1987, 1988); however, neither these parasites nor any diseases are currently a threat to the poolfish.

The effect of predation by the nonnative bullfrog on the poolfish population at Corn Creek Springs has been investigated. Analyses of bullfrog stomach contents indicated that bullfrog predation on poolfish is minimal (D. Withers, NDOW, in litt. 1985, 1986, 1988; J. Heinrich, NDOW, in litt. 1991). Bullfrogs also persist and predate on poolfish at the State Park, but do not represent a significant threat to the overall population (Heinrich 1991a; B. Hobbs, pers. comm., 2002).

In 1975, the population of poolfish at Corn Creek Springs experienced a rapid reduction as a result of unauthorized introduction of nonnative mosquitofish. Close coordination between our agency, State agencies, and academic institutions resulted in the eradication, by chemical means, of the mosquitofish to alleviate competitive pressures on the poolfish (Selby 1977). For years afterwards, the poolfish at Corn Creek Springs remained a healthy and stable population.

The stability of this population was again threatened when nonnative crayfish were illegally introduced into the ponds at Corn Creek Springs. Surveys first noted the presence of crayfish in 1993, and thereafter the poolfish population rapidly declined (NDOW 1999). Despite attempts to eliminate the crayfish, the poolfish population was extirpated by 1999. Nonnative common goldfish were first discovered in 1998 at Corn Creek Springs (NDOW 1999). The presence of the competing and predatory goldfish may have compounded the problem of an already depleted population of poolfish, possibly contributing to the demise of the population that year. Efforts by the DNWR, the NDOW, and volunteers to eradicate nonnative crayfish from Corn Creek Springs have been unsuccessful (NDOW in litt. 2001a). Thus, a new, isolated refugium for the poolfish was built at Corn Creek Springs in 2002 with introductions to the refugium from the State Park in June and July of 2003 (*see Transplant History* above) (NDOW in litt. 2003a).

Illegal introductions of nonnative aquatic species to the habitats of

poolfish have occurred historically and continue to pose the most significant current threat to the existence of this species. Currently, the populations at the State Park and Shoshone Ponds Natural Area have not been significantly affected by nonnative aquatic species. However, the recent loss of the population at Corn Creek Springs illustrates that the poolfish is vulnerable to extinction as a result of predation by aggressive, aquatic nonnative species. The introduction of nonnative species to the populations of poolfish at the State Park or Shoshone Ponds Natural Area could impose irreparable consequences.

D. The Inadequacy of Existing Regulatory Mechanisms

Federal Protection: Upon being listed under the Act, the poolfish immediately benefitted from a Federal regulatory framework. This framework includes prohibition of take, which is defined broadly under the Act to include killing, injuring, or attempting to kill or injure; prohibition of habitat destruction or degradation if such activities harm individuals of the species; the requirement that Federal agencies ensure their actions will not likely jeopardize the continued existence of the species; and the requirement that we develop and implement a recovery program for the species. Poolfish continue to be protected by the provisions of the Act.

Additionally, as previously discussed, the population of poolfish at the State Park will be conserved under the provisions of the section 10(a)(1)(B) permit issued by us to the State for its HCP. This permit remains in effect until the year 2025.

The sites where the poolfish currently resides have no connection to a navigable water. Therefore, it is unlikely that section 404 of the Clean Water Act of 1972, as amended, administered by the U.S. Army Corps of Engineers, will provide any regulatory protection for this species.

State Regulations: The State of Nevada classifies the poolfish as a fully protected fish species, further classified as endangered under Chapter 503.065 of the Nevada Administrative Code (2002). The State prohibits the capture, removal, or destruction of any protected species at any time, by any means, except under a special permit issued by the NDOW under Chapters 503.584–503.589 of the Nevada Revised Statutes (NRS) (2002). The Nevada Natural Heritage Program also ranks the poolfish as S1, meaning that in Nevada it is considered critically imperiled due to extreme rarity, imminent threats, and/or biological factors. However, this designation provides no legal protection in Nevada.

A Nevada legislative finding in 1969 recognized the serious losses of native fish and wildlife in the State and provided a method for the State to conserve, protect, restore, and propagate selected species of native fish and wildlife and their habitats (NRS 2002). This finding and subsequent amendments included the authority for the State's Board of Wildlife Commissioners and State agencies it governs, specifically NDOW, to manage land in accomplishing the objectives of the program to conserve native fish and wildlife, including conserving, protecting, and assisting in propagating the poolfish.

The NDOW is a cooperating partner with us for the ongoing management efforts to conserve this native fish species. In light of the events that have occurred since we proposed to reclassify the poolfish, the NDOW fully supports the current action to withdraw the proposed rule (Jon Sjöberg, NDOW, pers. comm. 2003).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The low numbers of poolfish in its isolated habitats naturally make it vulnerable to risks associated with small, restricted populations. The elements of risk that are amplified in very small populations include: (1) Random demographic effects (*e.g.*, skewed sex ratios, high death rates, or low birth rates); (2) the effects of genetic drift (random fluctuations in gene frequencies) and inbreeding (mating among close relatives); (3) natural catastrophes (floods, fires, droughts, etc.) at random intervals; and (4) deterioration in environmental quality (Shaffer 1987). However, the poolfish were believed to have been isolated for over 20,000 years in the Pahrump Valley (Soltz and Naiman 1978), and this natural evolutionary factor is currently an insignificant threat when compared with the historical modification of its natural habitat, introductions of nonnative, aquatic predators in its transplanted habitats, and reduced and limited water supplies.

Summary of Findings

In developing this notice, we carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Pahrump poolfish. Events subsequent to the proposed rule published in 1993 resulted in the extirpation of the poolfish population at Corn Creek Springs, although a small number of poolfish have recently been successfully introduced back into a new isolated refugium at Corn Creek Springs. Surveys in 2003 showed a significant decline in the population at Shoshone Ponds Natural Area, with the cause currently unknown. Therefore, only the State Park poolfish population remains stable. Thus, one of the main objectives for downlisting the species in the Recovery Plan, which is to have three stable populations of poolfish, has not been met.

This species was historically threatened by habitat destruction and degradation, particularly from groundwater pumping which led to extirpation from its only known natural habitat. Currently, we remain concerned that this species is threatened by potential introductions of nonnative aquatic predators, and habitat destruction and loss due to reduced and limited water supply for the poolfish as a result of demands on limited water sources to accommodate extensive population growth and development in the arid desert of southern Nevada.

Because the Pahrump poolfish occurs in only one stable population, and because all the poolfish populations are subject to various immediate, ongoing, and future threats as outlined above, we find that this species continues to be in imminent danger of extinction. Therefore, the poolfish meets the Act's definition of endangered and warrants continued protection as endangered under the Act. Threatened status would not accurately reflect the diminished status and threats to this species. Based upon the findings documented in this notice, we are hereby withdrawing the proposed rule published on September 22, 1993 (58 FR 49279), that proposed to reclassify the Pahrump poolfish from endangered to threatened.

References Cited

A complete list of all references cited herein is available upon request from our Southern Nevada Field Office (see **ADDRESSES** section).

Author

The primary author of this notice is Amy LaVoie (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 8, 2004.

Marshall P. Jones, Jr.,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 04–7412 Filed 4–1–04; 8:45 am]

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Notices

Federal Register
Vol. 69, No. 64
Friday, April 2, 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

Forest Service

Buckhorn Mountain Project a Supplement to the Final Environmental Impact Statement for Crown Jewel Mine, Okanogan and Wenatchee National Forests, Okanogan and Ferry Counties, Washington

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: On September 5, 2003, the USDA Forest Service and Washington State Department of Ecology published a notice of intent to jointly prepare a Supplemental Environmental Impact Statement (SEIS) for a proposal by Crown Resources Corporation (Crown) to develop a mine and mill for precious mineral extraction in the vicinity of Chesaw, Washington (**Federal Register**, Volume 68, No. 172, page 52736). The Buckhorn Mountain Project will supplement the Final environmental impact statement (FEIS) for Crown Jewel Mine, which was released February 7, 1997. Since publication of the notice of intent, Crown Resources has submitted a revised plan of operations that mills the ore and disposes the tailings at Echo Bay Mineral Corporation's existing Kettle River facility east of Republic in Ferry County. The agencies have accepted the new plan of operations as the proposed action for the project and are re-scoping this new proposal. Crown proposes to develop an underground gold mine on Buckhorn Mountain approximately 3.5 air miles east of Chesaw, Washington in sections 24 ad 25, Township 40 North, Range 30 East, W.M. and transport ore by road to the existing Kettle River milling facility 8 miles east of Republic, Washington in Section 26, Township 37 North, Range 33 East, W.M. Milling and tailings disposal would occur at the Kettle River facility. Additionally rock would be quarried for backfill materials at a location approximately one mile west of Curlew on the south side of the West Kettle River Road, in Sections 14 and 15, Township 39 North, Range 33 East, W.M. The SEIS will evaluate an underground mining and milling configuration that is different from the underground mining operation proposed in the Crown Jewel Mine FEIS. The proposed project will comply with the direction in the December 1989 Okanogan National Forest Land and Resource Management Plan (Forest Plan), as amended. The Forest Plan provides the overall guidance for management of NFS lands included in this proposal. The agencies invite written comments on the scope of this project. In addition, the agencies give notice of this analysis so that interested and affected individuals are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of this analysis must be received by May 17, 2004. A public information and scoping meeting will be held on April 22, 2004 at the Republic Elementary School, 30306 E. Highway 20 from 5–7:30 p.m. to provide information about the project to the public and to allow people to comment on the project. The Draft SEIS is expected to be filed in January 2005. The final SEIS is expected to be filed in June 2005.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Phil Christy, Project Coordinator, Tonasket Ranger District, 1 West Winesap, Tonasket, Washington 98855 [Phone: (509) 486–5137].

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and SEIS to Phil Christy, Project Coordinator, Tonasket Ranger District, 1 West Winesap, Tonasket, Washington 98855 [Phone: (509) 486–5137].

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for this action is to respond to the revised plan of operations and other permit applications submitted by Crown to construct and operate a mine of the specific body of ore on Buckhorn Mountain, along with processing facilities, while protecting surface resources.

Proposed Action

The proposed action is the proposal described in Crown's February 9, 2004, Amended Plan of Operation which can be viewed on-line at *http://www.fs.fed.us/r6/okanogan/* (click on Bulletin Board). The proposal would consist of an underground mine and associated surface facilities on private lands and on public lands administered by the Forest Service (*See* Figure 4). Milling of the extracted ore and tailings disposal would be accomplished at the Echo Bay Mineral Corporation's Kettle River Mill located near Republic in Ferry County, Washington.

The proposed mine would result in 31 acres of disturbed area surrounding fenced surface facilities above the ore deposit. There will be up to 55 acres of additional disturbance related to haul roads for the project. Approximately 8 months of underground development work is required prior to initial ore production. The 88,000 tons of development rock generated during this initial period would be temporarily staged on the round surface until returned underground as backfill. Construction of the administrative office and other associated surface facilities would occur concurrently. Full-scale production of fifteen hundred tons of ore per day is likely to begin twelve months after project initiation. Commercial production is projected to continue for approximately 90 months (7.5 years). Active physical decommissioning of site facilities would continue for approximately 2 additional years upon mining cessation, followed by three to five years of reclamation monitoring and final closure.

The majority of underground mine openings would be backfilled upon completion of mining. The backfill would consist of development rock from the mine and gravel excavated from existing mines and/or a new gravel mine or mines. The Amended Plan of Operations identifies a large quarry site located about one mile west of Curlew as a significant source of backfill materials. Backfill will consist of approximately 900,000 cubic yards of uncemented materials and 700,00 cubic yards of materials with a cement additive.

The proposed supply route to the mine would extend from the city of Oroville east on Oroville-Toroda Creek Road through the community of

Chesaw, then continue on Pontiac Ridge Road to FS Road 120. Approximately one mile of new road would be constructed to connect FS Road 120 to oh proposed mine site (*See* Figure 5).

Mineral ore extracted from the mine would be hauled to the Kettle River Mill and tailings disposal facility by road in highway-legal trucks. The haul route would be approximately 47 miles in length and would traverse a combination of FS roads, county roads and state highways. Approximately three miles of new road would need to be constructed to connect the mine with FS Road 3550 (Marias Creek Road). The haul route would follow FS Road 3550 east to its intersection with Toroda Creek Road (*See* Figure 6). The Amended Plan of Operations identifies the following three alternative routes to connect the mine with Toroda Creek Road:

(1) FS Road 120 south to Pontiac Ridge Road then east to Toroda Creek Road on Oroville Toroda Creek (Beaver Lake) Road (Labeled as Alternative Route A on Figure 5);

(2) FS Road 120 south to Pontiac Ridge Road then east to Toroda Creek Road on Pontiac Ridge Road (Labeled as Alternative Route B on Figure 5); and

(3) FS Road 120 north to FS Road 100 then east to Toroda Creek Road on FS Road 3575 (Nicholson Creek Road) (Labeled as Alternative Route D on Figure 5).

The haul route would extend north on Toroda Creek Road, then east on West Kettle River Road to its intersection with State Route (SR) 21 near the community of Curlew. The road would follow SR 21 south through the community of Malo to its intersection with Cook Mountain Road. The route would continue eastbound on Cook Mountain Road, then turn on Jack May's Road, and then on to Fish Hatchery Road were it would enter the existing mill and tailings disposal site. On their return trip from the mill to the mine, haul trucks would transport backfill from the gravel quarry near Curlew (described above) to the mine site.

The mill and tailings disposal site are approximately four miles east of SR 21 and eight miles east of Republic. The key steps in the milling process will include ore crushing and grinding, carbon in-leach precious mineral extraction, cyanide detoxification and disposal of tailings, and gold and silver recovery. In order to accommodate ore from the Buckhorn mine, the tailings disposal facility at the Kettle River Mill would need to be expanded. The amended proposal calls for increasing the height of the existing tailings impoundment to maintain the expansion within the disposal facility's current footprint (*See* Figure 7).

Under the amended proposal, about 100 employees would be employed at the mine at the peak of initial construction activities and 120 employees at full mine operation. Approximately 30 employees would be employed for ore hauling activities, while about 40 employees would be employed at the milling and tailings facility.

All project activities must be in compliance with Chapter 78.56 RCW (Metals Mining and Milling Operations) and Chapter 78.44 RCW (Surface Mining). A reclamation plan that meets the standard of Chapter 78.44 RCW will be required for any surface mining of sands and gravels associated with the project.

Possible Alternatives

The Crown Jewel Mine FEIS analyzed a reasonable range of alternatives. The new underground mine proposal differs from the underground mine presented in the Crown Jewel Mine Final EIS, although some components remain the same. Because a reasonable range was established in the preceding FEIS, possible alternatives will be limited to alternative components to the underground mining/milling operation and will be based on the response to scoping. The agencies may still analyze the original July 2003 proposal by Crown Resources for a mill and tailings facility at Dry Gulch, with haul down the Pontiac Ridge road.

Lead and Cooperating Agencies

The Forest Service and the Washington State Department of Ecology will be joint lead agencies in accordance with 40 CFR 1501.5(b), and are responsible for preparation of the SEIS. The Washington State Department of Natural Resources will be a cooperating agency in accordance with 40 CFR 1501.6. Scoping will determine if additional cooperating agencies are needed.

Nature of the Decision To Be Made

The Forest Supervisor for the Okanogan and Wenatchee National Forests will decide whether or not to permit a mining operation on Buckhorn Mountain, and if it is permitted, what mitigation measures and monitoring will be required. The Forest Supervisor will only be making a decision regarding operations on NFS lands.

Scoping Process

Public participation will be especially important at several points during the analysis. The participating agencies will be seeking information, comments, and assistance from Federal, State, local agencies, Native American Tribe and other individuals and organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the Draft SEIS. The scoping process includes:

- Identifying potential issues not addressed in the Crown Jewel Mine EIS.
- Identifying major issues to be analyzed in depth.
- Identifying issues, which have been addressed by a relevant previous environmental analysis include the Crown Jewel Mine EIS.
- Exploring additional potential components of an underground mine/mill alternative, which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project.
- Determining potential cooperating agencies and task assignments.
- Notifying interested members of the public of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (*e.g.* newsletters, correspondence, etc.).

Preliminary Issues

A number of issues were identified in the Crown Jewel Mine EIS. The major issues identified concerned the effects of the proposal on water quality and quantity, wildlife habitat, and visual quality, and the potential for increased traffic, the use of toxic materials for processing the ore, extraction impacts, potential spills, and social/economic impacts. Because of the very limited impacts to NFS lands, the current proposal minimizes the issues of wildlife habitat impacts, extraction impacts, potential spills, visual quality impacts, and the use of toxic materials on NFS lands.

Permits or Licenses Required

Numerous permits and licenses are required for this project. A list of these can be requested at the contact address above.

Comment Requested

This notice of re-intent initiates the scoping process, which guides development of the SEIS. The Forest Service is seeking public and agency comment on the proposed action to determine if any additional issues arise which were not already addressed in the Crown Jewel Mine EIS. Additional issues may lead either to other alternatives, or additional mitigation measures and monitoring requirements.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A Draft SEIS will be prepared for comment. Copies will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The comment period on the Draft SEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a Draft SEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft SEIS stage but that are not raised until after the completion of the Final SEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the participating agencies at a time when it can meaningfully consider them and respond to them in the Final SEIS.

To assist the participating agencies in identifying and considering issues and concerns on the proposed action, comments on the Draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft SEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the Final SEIS, the participating agencies are required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft SEIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Comments received including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

The Forest Supervisor for the Okanogan and Wenatchee National Forest will be the responsible official for this SEIS and its Record of Decision. As the responsible official, the Forest Supervisor will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: March 29, 2004.

Alan M. Quan,

Deputy Forest Supervisor.

[FR Doc. 04–7433 Filed 4–01–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, May 27, 2004, and July 22, 2004. The purpose of these meetings is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meetings will be held May 27, 2004, and July 22, 2004.

ADDRESSES: The meetings will be held at the Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Trongass Ave., Ketchikan, AK 99901, or electronically to *jingersoll@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 26, 2004.

Forrest Cole,

Forest Supervisor.

[FR Doc. 04–7432 Filed 4–1–04; 8:45 am]

BILLING CODE 3410–11–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, April 15, 2004. The theme of the meeting is Introduction/Overview/Business Planning. The agenda includes: Payments to Counties Update, Socio-Economic Subcommittee Update, Coat Range Fire History, BLM Settlement Agreement Update, Pre-Monitoring Trip Information, Public Comment and Round Robin.

DATES: The meeting will be held April 15, 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 2:45 p.m. for fifteen minutes. The meeting is expected to adjourn around 3:30 p.m.

Dated: March 26, 2004.

Jane L. Cottrell,

Acting Forest Supervisor.

[FR Doc. 04–7435 Filed 4–1–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request approval to revise and extend an information collection, the Conservation Effects Assessment Project Survey.

DATES: Comments on this notice must be received by June 7, 2004 to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Conservation Effects Assessment Project Survey.

OMB Control Number: 0535–0245.

Expiration Date of Approval: 09/30/04.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The goal of this NASS project is to collect land management information that will assist the Natural Resources Conservation Service (NRCS) in assessing environmental benefits associated with implementation of various conservation programs and installation of associated conservation practices. The 2002 Farm Bill substantially increased funding for the Environmental Quality Incentives Program (EQIP) as well as other conservation programs; a portion of the technical assistance funds for conservation programs has been allocated for use in assessing the environmental benefits of these conservation practices. The assessment will be used to report progress annually on Farm Bill implementation to Congress and the general public. The information collected will also be used to provide OMB with requested information on the cost effectiveness of the EQIP and the Conservation Reserve Program.

NRCS is leading a multi-agency effort to estimate the environmental benefits of conservation practices. Benefit measures will include soil quality enhancement, erosion reduction, reduction in nutrient and sediment losses from farm fields, soil carbon sequestration, water use efficiency, and reductions in in-stream nutrient and sediment concentrations. Investments are being made in additional model development to address benefits associated with reductions in pesticide losses, air quality, and wildlife habitat. The assessment is designed to be national and regional in scope. A sampling and modeling approach has been adopted to avoid the high costs associated with expanded reporting by NRCS field staff.

Benefits will be estimated by applying transport models and other physical process models at sample sites associated with the National Resources Inventory (NRI) sampling frame. The NRI is a scientifically-based, longitudinal panel survey designed to assess conditions and trends of soil, water, and related resources of the Nation's non-federal lands. The NRI is conducted for the U.S. Department of Agriculture by NRCS in cooperation with the Iowa State University Statistical Laboratory and provides critical information to address agri-environmental issues at national, regional, and State levels. Data gathered in the NRI are linked to NRCS soil survey and climate databases. These linked data, along with NRI's historical data for 1982–2002, form the basis for unique modeling applications and analytical capabilities. The NRI sampling frame will be used for this project because it captures the diversity of the Nation's agricultural resource base (soils, topography, and climate), which is a critical factor in estimating benefits of conservation practices. Also critical are the historical and linked data that already exist for each NRI sample site. The assessment of benefits is not possible, however, without augmenting these existing data with additional information on land management and conservation practice adoption.

NASS will collaborate with NRCS in the acquisition of this additional information by conducting a survey for a sub-sample of NRI sample units in the contiguous 48 States.

The survey will utilize personal interviews to administer a questionnaire that is designed to obtain from farm operators field-specific data associated with the selected sample units. Specific questions are asked about physical characteristics of the field, pesticide and fertilizer applications, and technical aspects of conservation practices associated with the field. Several other questions deal with production activities before and after implementation of specific conservation practices and with the operator's participation in conservation programs.

The design calls for conducting 10,000–15,000 interviews in each of three years and then pooling the results for the final dataset. The first set of interviews was conducted in the fall of 2003 using a similar survey. This survey will be used to complete the collection of data for 2004 and 2005. If analysis indicates that more samples are needed to adequately estimate the benefits of conservation practices nationally then data collection will be extended to include 2006. Each year's data collection will be for a different set of agricultural land units.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 60 minutes per response.

Respondents: Farm operators.

Estimated Number of Respondents: 15,000.

Estimated Total Annual Burden on Respondents: 15,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC February 26, 2004.

Carol House,

Associate Administrator.

[FR Doc. 04–7415 Filed 4–1–04; 8:45 am]

BILLING CODE 3410–20–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 2, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Gloves, Disposable 8415–01–392–8448
NPA: Bestwork Industries for the Blind, Inc., Runnemede, New Jersey
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas

Product/NSN: Paper Shredder 1200 CC 7520–00–NIB–1696
Product/NSN: Paper Shredder 1200 SC 7520–00–NIB–1695
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Product/NSN: Three Wheel Tape Dispenser 7520–00–634–6724
Product/NSN: Two Wheel Tape Dispenser 7520–00–285–1772
NPA: The Arc of Bergen and Passaic Counties, Inc., Hackensack, New Jersey
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Service

Service Type/Location: Custodial Services Food & Drug Administration, CDER Lab/Office Building White Oak, Maryland
NPA: Alliance, Inc., Baltimore, Maryland
Contract Activity: GSA/PBS National Capitol Region, Washington, DC

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Sheet, Bed, Disposable 7210–00–498–0512
NPA: East Texas Lighthouse for the Blind, Tyler, Texas
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania

Product/NSN: Test Kit, Oil Condition 6630–01–096–4792
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, Pennsylvania
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania

Product/NSN: Tray, Repositional Note Pad 7520–01–207–4351
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 04–7507 Filed 4–1–04; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: April 7, 2004; 1:30 p.m.–4 p.m.

PLACE: Radio Free Asia, Conference Room, 2025 M Street, NW., Washington, DC 20036.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will

relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: March 30, 2004.

Carol Booker,

Legal Counsel.

[FR Doc. 04–7616 Filed 3–31–04; 1:00 pm]

BILLING CODE 8230–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the New Mexico State Advisory Committee will convene at 8:30 a.m. (MDT) and adjourn at 8:30 p.m. (MDT), Friday, April 30, 2004. The purpose of the community forum will be to obtain current information and perspectives on the status of civil rights for Native Americans in Farmington, New Mexico. There will be formal presentations from elected officials, Navajo and community leaders, law enforcement, education and health administrators. Also, an open session will be conducted.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 22, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–7455 Filed 4–1–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting/pre-briefing of the New Mexico State Advisory Committee will convene at 5 p.m. (MDT) and adjourn at 7:30 p.m. (MDT), Thursday, April 29, 2004. The purpose of the planning meeting will be to brief advisory committee members on Commission and regional activities and plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 22, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–7456 Filed 4–1–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a conference call of the Wisconsin Advisory Committee will convene at 10 a.m. and adjourn at 12 p.m., Thursday, April 15, 2004. The purpose of the conference call is to review and approve the project proposal "Police Protection of Communities of Color in Milwaukee."

This conference call is available to the public through the following call-in number: (1–800–659–1203), contact name: Emraida Kiram. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights at (312) 353–8311 (TDD 312–353–8362), by 4 p.m. on Tuesday, April 13, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington DC, March 29, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–7454 Filed 4–1–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, April 9, 2004, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of March 19, 2004 Meeting
III. Announcements
IV. Staff Director's Report
V. Future Agenda Items

10 a.m. Briefing on Voting and Election Reform: Voter Empowerment—Tools, Integrity, and Ensuring Access.

FOR FURTHER INFORMATION CONTACT: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 04–7674 Filed 3–31–04; 3:20 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

[I.D. 032904D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Processed Products Family of Forms.

Form Number(s): 88–13, 88–13C.

OMB Approval Number: 0648–0018.

Type of Request: Regular submission.

Burden Hours: 680.

Number of Respondents: 1,320.

Average Hours Per Response: NOAA Form 88–13, 30 minutes, and NOAA Form 88–13C, 15 minutes.

Needs and Uses: This is a survey of seafood and industrial fishing processing firms. Firms processing fish from certain fisheries must report on their annual volume, the value of products, and monthly employment figures. The data are used in economic analyses to estimate the capacity and extent to which processors utilize domestic harvest. These analyses are necessary to carry out the provision of the Magnuson-Stevens Fishery Conservation and Management Act.

Affected Public: Business or other for-profit organizations.

Frequency: Monthly, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or *David__Rostker@omb.eop.gov*.

Dated: March 26, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–7511 Filed 4–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

International Code Council: The Update Process for the International Codes and Standards

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The International Code Council (ICC), promulgator of the International Codes and Standards, maintains a process for updating the entire family of International Codes ("I-Codes") based on receipt of proposals from interested individuals and organizations involved in the construction industry, as well as the general public. The first edition of the I-Codes was the 2000 edition; the current edition is the 2003 edition. The codes are updated every three years (2006, 2009 edition, etc.) with an intervening Supplement published every 18 months. There are two hearings for each code development cycle: The first where a committee considers the proposals and recommends an action on each proposal, and the second to consider comments submitted in response to the committee action on proposals.

The purpose of this request is to increase public participation in the system used by ICC to develop its codes and standards. In accordance with the responsibilities assigned to NIST by the National Technology Transfer and Advancement Act of 1995, NIST is publishing this notice as a public service on behalf of ICC. NIST does not necessarily endorse, approve, or recommend any of the codes or standards referenced in the notice.

DATES: The date of the Final Action Hearing is May 17–20, 2004 at the Sheraton Hotel in Overland Park, KS. This hearing will complete the 2003/2004 Code Development Cycle. Any interested party can participate and testify, and there is no cost to attend the hearings. The 2004 Supplement to the 2003 I-Codes will be the result of this cycle. The deadline for submittal of code changes for the 2004/2005 Code Development Cycle is August 20, 2004. Information on ICC's code development schedule, the agenda for the hearing, and hotel information are also posted on the ICC Web site at: *http://www.iccsafe.org.*

FOR FURTHER INFORMATION CONTACT: Mike Pfeiffer, PE; Vice President, Codes & Standards Development; ICC Chicago District Office, 4051 West Flossmoor Road, Country Club Hills, IL 60478; Telephone (708) 799–2300, Extension 338. E-mail: *mpfeiffer@iccsafe.org.*

SUPPLEMENTARY INFORMATION:

Background

ICC produces the only family of Codes and Standards that are comprehensive, coordinated and necessary to regulate the built environment. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning new and existing construction.

The Code Development Process is initiated when proposals from interested persons, supported by written data, views or arguments, are solicited and published in the Proposed Changes Document. This document is distributed a minimum of 30 days in advance of the first hearing and serves as the agenda.

At the first hearing, each ICC Code Development Committee considers testimony on every proposal and acts on each one individually (Approval, Disapproval, or Approval as Modified). The ICC members in attendance ("assembly") are also afforded the opportunity to vote. The results are published in a report entitled the Report of the Public Hearing, which identifies the disposition of each proposal, the assembly vote and the reason for the committee's action. Anyone wishing to submit a comment on the assembly's vote or committee's action, expressing support or opposition, is provided the opportunity to do so. Comments received are published and distributed in a document called the Final Action Agenda which serves as the agenda for the second hearing. Proposals which are approved at the second hearing, are incorporated in either the Supplement or Edition, as applicable, with the next cycle starting with the submittal deadline for proposals.

Proponents of proposals automatically receive a copy of all documents (Proposed Changes, Report of the Public Hearing, and Final Action Agenda). Interested parties may also request a copy, free of charge, from the ICC Chicago District Office. See the **FOR FURTHER INFORMATION CONTACT** listed with this Notice. Copies can also be downloaded from the ICC Web site at *http://www.iccsafe.org.*

The International Codes and Standards consist of the following:

I-Codes:

- International Building Code
- ICC Electrical Code
- International Energy Conservation Code
- International Existing Building Code
- International Fire Code
- International Fuel Gas Code
- International Mechanical Code
- ICC Performance Code for Buildings and Facilities
- International Plumbing Code
- International Private Sewage Disposal Code
- International Property Maintenance Code
- International Residential Code
- International Urban-Wildland

Interface Code
International Zoning Code
I-Standards:
ICC/ANSI A 117.1 Accessible and Usable Buildings and Facilities
ICC Standard on Bleachers, Folding and Telescopic Seating and Grandstands
ICC Standard on Storm Shelters (under development)
ICC Standard on Hurricane Resistant Construction (under development)

The process for updating and developing ICC Standards is ANSI accredited and includes similar steps to the process of Code Development: Soliciting proposals; committee action; public comment; final vote; and publication of the standard.

Dated: March 25, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–7450 Filed 4–1–04; 8:45 am]

BILLING CODE 1310–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032404D]

Marine Mammals; Photography Permit Application No. 946–1747

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Ocean Futures Society, 325 Chapala St., Santa Barbara, CA 93101, has applied in due form for a permit to take gray whales (*Eschrichtius robustus*) and killer whales (*Orcinus orca*) for purposes of commercial/educational photography.

DATES: Written, telefaxed, or e-mail comments must be received on or before May 3, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the offices listed under the **SUPPLEMENTARY INFORMATION** heading of this notice.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 946–1747.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jill Lewandowski, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a "pilot" application for Level B harassment of non-listed and non-depleted marine mammals for photographic purposes.

The applicant proposes to take 100 gray whales and 50 killer whales by Level B harassment during close approaches to obtain above- and below-water still photographs, video footage, and sound recordings of migrating gray whales and encounters of killer whales feeding on gray whales. Activities would occur aboard ship, boat, and helicopter along the Mexican-U.S. border north to the Bering and Chukchi Seas during the periods of April through September 2004 and January through June 2005. The purpose of this project is to educate the public on the state of the health of the oceans consistent with the six-part Ocean Futures Society/KQED-PBS partnership film series (Jean-Michel Cousteau's Ocean Adventures series).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Dated: March 26, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–7510 Filed 4–1–04; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the Spirit of Service Award Nomination Guidelines for Senior Corps, AmeriCorps, and Learn and Serve America. On March 11, 2004, these information collections were granted a

six month emergency approval until September 30, 2004, by OMB.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by June 1, 2004.

ADDRESSES: You may submit written input to the Corporation by any of the following methods:

(1) Electronically through the Corporation's e-mail address system to Ms. Shannon Maynard at *smaynard@cns.gov*.

(2) By fax to (202) 565–2784, Attention Ms. Shannon Maynard.

(3) By mail sent to: Corporation for National and Community Service, Attn: Ms. Shannon Maynard, Public Affairs Associate, 1201 New York Avenue, NW., Station 8613, Washington, DC 20525.

(4) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (3) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon Maynard, (202) 606–5000, ext. 428.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

The Spirit of Service Awards enable the Corporation to recognize exceptional organizations and program participants from each of the Corporation's three programs, Senior Corps, AmeriCorps, and Learn and Serve America. For 2004, the Corporation plans to establish specific nomination guidelines for each of the programs and develop a formal nomination process, which involves voluntary information collection from non-government individuals.

Prior to 2003, AmeriCorps recognized its outstanding members annually through the All-AmeriCorps Awards, which were initiated in 1999 and presented by President Clinton as part of the 5th anniversary celebration of the program. Senior Corps had recognized its outstanding projects and volunteers at its own national conference, and Learn and Serve America recognized exemplary programs and participants through its Leaders School selection and the President's Student Service Awards.

Current Action

The Corporation is soliciting public comments so it can obtain approval from OMB for a three year time period of the Spirit of Service Awards nomination for its three programs. The goal is to establish a nomination process in order to select the annual Spirit of Service Award winners in time to receive their awards during the Corporation's Annual National Conference on Community Volunteering and National Service.

Part I

Type of Review: New collection.
Agency: Corporation for National and Community Service.
Title: Spirit of Service Awards Nomination Guidelines and Application—Senior Corps.
OMB Number: 3045–0091.
Agency Number: None.
Affected Public: Individuals or households, not-for-profit institutions, and State, local or tribal government.
Total Respondents: 200.
Frequency: One time.
Average Time Per Response: 3 hours.
Estimated Total Burden Hours: 600 hours.
Total Burden Cost (capital/startup): $9,900.
Total Burden Cost (operating/maintenance): $0.

Part II

Type of Review: New collection.
Agency: Corporation for National and Community Service.
Title: Spirit of Service Awards Nomination Guidelines and Application—AmeriCorps.
OMB Number: 3045–0092.
Agency Number: None.
Affected Public: Individuals or households, not-for-profit institutions, and State, local or tribal government.
Total Respondents: 200.
Frequency: One time.
Average Time Per Response: 3 hours.
Estimated Total Burden Hours: 600 hours.
Total Burden Cost (capital/startup): $9,900.
Total Burden Cost (operating/maintenance): $0.

Part III

Type of Review: New collection.
Agency: Corporation for National and Community Service.
Title: Spirit of Service Awards Nomination Guidelines and Application—Learn and Serve America.
OMB Number: 3045–0093.
Agency Number: None.
Affected Public: Individuals or households, not-for-profit institutions, and State, local or tribal government.
Total Respondents: 200.
Frequency: One time.
Average Time per Response: 3 hours.
Estimated Total Burden Hours: 600 hours.
Total Burden Cost (capital/startup): $9,900.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 29, 2004.

Sandy Scott,

Acting Director, Office of Public Affairs.

[FR Doc. 04–7442 Filed 4–1–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 3, 2004.

Title, Form, and OMB Number: Army ROTC Referral Information; ROTC Form 155–R; OMB Number 0702–0111.
Type of Request: Reinstatement.
Number of Respondents: 16,300.
Responses Per Respondent: 1.
Annual Responses: 16,300.
Average Burden Per Response: 15 minutes.
Annual Burden Hours: 4,075.
Needs and Uses: The purpose of the information is to provide prospect referral data to a Professor of Military Science to contact individuals who have expressed an interest in Army ROTC.

The Army ROTC Program produces approximately 75 percent of the newly commissioned officers for the U.S. Army. The Army must have the ability to attract quality men and women who will pursue college degrees.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/ Information Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 29, 2004.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–7402 Filed 4–1–04; 8:45 am]

BILLING CODE 5001–06–M

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 Pub. L. 92–463, notice is hereby given of the forthcoming meeting of the Advisory Group Panel. The purpose of the meeting is to allow the SAB leadership to provide advice on Space Systems. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: 1–2 April 2004.

ADDRESSES: Colorado Springs, CO.

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. 04–7418 Filed 4–1–04; 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 Pub. L. 92–463, notice is hereby given of the forthcoming meeting of the Senior Review Group Meeting. The purpose of the meeting is to allow the SAB leadership to review the progress of the SAB's ongoing study efforts. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: April 14, 2004.

ADDRESSES: Langley AFB, VA.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Mark 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. 04–7419 Filed 4–1–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Secretary of the Navy's Advisory Subcommittee on Naval History

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Secretary of the Navy's Advisory Subcommittee on Naval History, a subcommittee of the Department of Defense Historical Advisory Committee will meet to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History, which was conducted on September 19 and 20, 2002, and to make comments and recommendations on these activities to the Secretary of the Navy. The meetings will be open to the public.

DATES: The meetings will be held on Thursday, April 29, 2004, from 8 a.m. to 4 p.m. and Friday, April 30, 2004, from 8 a.m. to 4 p.m.

ADDRESSES: The meetings will be held at the Navy Museum of The Naval Historical Center, 805 Kidder Breese Street, SE., Building 76, Washington Navy Yard, DC 20374–5060.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Dudley, Director of Naval History, 805 Kidder Breese Street, SE., Bldg. 57, Washington Navy Yard, DC 20374–5060, telephone (202) 433–2210.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of these meetings is to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History and to make comments and recommendations on these activities to the Secretary of the Navy.

Dated: March 25, 2004.

S. K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–7420 Filed 4–1–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 1, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 29, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.
Title: Early Childhood Longitudinal Study: Birth Cohort/Preschool Year.
Frequency: One-time.
Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 2,398.
Burden Hours: 1,551.
Abstract: The Early Childhood Longitudinal Study, Birth Cohort (ECLS–B) is a nationally representative longitudinal study of children born in the year 2001. The preschool year followup represents the third round of data collection for members of this cohort. Children are assessed using state of the art assessment tools, parents are interviewed as well as child care providers and school personnel. Together with the Kindergarten component of this early childhood studies program, the survey informs the research and general community about children's health, early learning, development and education experiences. The focus of this survey is on characteristics of children and their families that influence children's first experiences with the demands of formal schools as well as early health care and in- and out-of-home experiences.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2485. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–7428 Filed 4–1–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 1, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 29, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.
Title: Final Performance Report for Preparing Tomorrow's Program To Use Technology (PT3) Grant Program.
Frequency: One time.
Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 197.
Burden Hours: 3,940.
Abstract: This is the final performance report for approximately 197 PT3 FY 2000, 2001, and 2003 grantees. It is required by statute, Title II, Part B, by EDGAR 75.590, and by the Government Performance and Results Act (GPRA).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2486. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a

telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–7429 Filed 4–1–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Migrant Education Formula Grant Program

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

ACTION: Notice of interpretation.

SUMMARY: Section 1303(a) and (b) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), provides for the allocation of Migrant Education Program (MEP) funds to States, the District of Columbia, and the Commonwealth of Puerto Rico (Puerto Rico). The Department announces that the interpretations of these provisions for Fiscal Year (FY) 2003, published in the **Federal Register** on June 11, 2003 (68 FR 34911), shall continue to apply for FY 2004 and those subsequent fiscal years in which the amount of funds appropriated for the MEP does not exceed the amount appropriated in FY 2002.

DATES: Effective date: April 2, 2004.

FOR FURTHER INFORMATION CONTACT: James English, Office of Migrant Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E315, Washington, DC 20202–6135. Telephone: (202) 260–1394, or via Internet: *james.english@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

The MEP, authorized in Title I, part C, of the ESEA, as amended by NCLB, is a State-operated and State-administered formula grant program. It provides assistance to State educational agencies (SEAs) to support high-quality and comprehensive educational programs that provide migratory children appropriate educational and supportive services that address their special needs in a coordinated and efficient manner, and give migratory children the opportunity to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet. Funds are allocated to SEAs under a formula authorized under section 1303 of the ESEA, as amended by NCLB.

Through this notice, the Department announces that its interpretations of the formula for awarding FY 2003 MEP funds to States, including the District of Columbia and Puerto Rico, as published in the **Federal Register** on June 11, 2003 (68 FR 34911), shall apply to the Department's allocation of MEP funds in FY 2004 and those succeeding fiscal years in which the amount of funds appropriated for the MEP does not exceed the amount appropriated in FY 2002. The Department continues to apply these interpretations for the reasons identified in the June 11, 2003, notice.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, under 5 U.S.C. 553(b)(A) the Secretary is generally not required to offer the public an opportunity to comment on an interpretative rule. These rules advise the public of our interpretation of sections 1303(a) and (b) of the ESEA, as amended by NCLB. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required. For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(2).

Intergovernmental Review

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

This document is intended to provide early notification of our specific plans and actions for this program.

Electronic Access to This Document

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

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

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

(Catalog of Federal Domestic Assistance Number 84.011: Title I, Education of Migrant Children.)

Dated: March 29, 2004.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 04–7508 Filed 4–1–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–289]

Application To Export Electric Energy; Intercom Energy, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Intercom Energy, Inc. (Intercom) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 3, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (fax (202) 287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) (202) 586–7983 or Michael Skinker (Program Attorney) (202) 586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 27, 2004, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Intercom to transmit electric energy from the United States to Mexico. Intercom is a California company with its principal place of

business in Chula Vista, California. Intercom does not own or control any electric generation facilities, nor does it have a franchised electric power service area. The electric energy which Intercom proposes to export to Mexico would be purchased from electric utilities and other suppliers within the U.S.

Intercom proposes to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by San Diego Gas & Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. The construction of each of the international transmission facilities to be utilized by the applicants, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Intercom application to export electric energy to Mexico should be clearly marked with Docket EA–289. Additional copies are to be filed directly with Ernesto Pallares, Chief Executive Officer, Intercom Energy, Inc., 303 H Street, Suite 401, Chula Vista, CA 91910 and Jon L. Brunenkant, James W. Moeller, Brunenkant & Haskell, LLP, 805 15th Street, NW., Suite 1101, Washington, DC, 20005 and Daniel J. Morgin, The Morgin Law Firm, P.C., 110 Juniper Street, San Diego, CA 92101.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on March 25, 2004.

Ellen Russell,

Acting Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04–7486 Filed 4–1–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 29, 2004, 8:30 a.m. to 5 p.m.; and Friday, April 30, 2004, 8:30 a.m. to 12 p.m.

ADDRESSES: Academy for Education Development (AED) Conference Center, 1825 Connecticut Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen ((301) 903–9817; *david.thomassen@science.doe.gov*), or Ms. Shirley Derflinger ((301) 903–0044; *shirley.derflinger@science.doe.gov*), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–70/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. The most current information concerning this meeting can be found on the Web site: *http://www.science.doe.gov/ober/berac/announce.html*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda:

Thursday, April 29, and Friday, April 30, 2004:

- Conflict of Interest and Federal Advisory Committee Act requirements and overview
- Comments from Dr. Raymond Orbach, Director, Office of Science
- Report by Dr. Ari Patrinos, Associate Director of Science for Biological and Environmental Research
- Discussion of BERAC reports on (1) need for additional sites for environmental remediation sciences research (2) review of the scientific basis for a proposed subsurface geosciences laboratory at the Idaho National Engineering and Environmental Laboratory, (3) guidance to BER on how the Atmospheric Science Program should be reconfigured, (4) a Committee of Visitors review of the Climate Change Research Division's program management, and (5) radiochemistry program needs and opportunities.
- BERAC recommendations for BER to develop a roadmap for achieving and tracking its long term performance measures
- Status report on the development of a Genomics:GTL roadmap
- Coordination of common DOE and NIH research interests
- Discussion to define operating hours at BER facilities
- Science talk
- New Business
- Public comment (10 minute rule)

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 29, 2004.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 04–7485 Filed 4–1–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed revisions and a three-year extension to the Forms:

EIA–411, "Coordinated Bulk Power Supply Program Report,"
EIA–412, "Annual Electric Industry Financial Report,"
EIA–423, "Monthly Cost and Quality of Fuels for Electric Plants,"
EIA–767, "Steam-Electric Plant Operation and Design Report,"
EIA–826, "Monthly Electric Sales and Revenue with State Distributions Report,"
EIA–860, "Annual Electric Generator Report,"
EIA–861, "Annual Electric Power Industry Report,"
EIA–906, "Power Plant Report," and
EIA–920, "Combined Heat and Power Plant Report."

The EIA is also soliciting comments on a proposed new Form EIA–860M, "Monthly Update to the Annual Electric Generator Report" to be authorized for three years.

DATES: Comments must be filed by June 1, 2004. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Charlene Harris-Russell. To ensure receipt of the comments by the due date, submission by fax ((202) 287–1946) or e-mail *Charlene.Harris-Russell@eia.doe.gov* is recommended. The mailing address is Energy Information Administration, Electric Power Division, EI–53, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Charlene Harris-Russell may be contacted by telephone at (202) 287–1747.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Charlene Harris-Russell at the address listed above. To review the proposed forms and instructions, please visit: *http://www.eia.doe.gov/cneaf/electricity/page/fednotice/formsandinstr.html.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The EIA collects information about the electric power industry for use by government and private sector analysts. The survey information is disseminated in a variety of print publications, electronic products, and electronic data files. For details on EIA's electric power information program, please visit the electricity page of EIA's Web site at *http://www.eia.doe.gov/fuelelectric.html.*

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

II. Current Actions

EIA has completed an extensive review and update of the electric power survey collection instruments. The forms presented here are the result of that task which includes input from the electric power industry, other industrial users of the data, government agencies, consumer groups, and private sector analysts. Along with the forms changes, the EIA is proposing a revision to the commercially sensitive data elements collected on EIA's electric power forms that will be treated as confidential.

As a means of improving its electric power surveys to reflect the changing industry, EIA proposes the following changes:

Form EIA–411, "Coordinated Bulk Power Supply Program Report." The collection of this form is proposed to become mandatory subject to a revised memorandum of agreement with the North American Electric Reliability Council. Additional revisions include: (1) Reconcile differences between capacity totals reported to EIA by its respondents and the planning capacity data reported by the North American Electric Reliability Council, (2) transmission line outage data, and (3) distributed generation data. Specifically, a new Schedule 3, Reconciliation Between Total Generation Regional Capacity and Planned Regional Capacity Resources (Summer, Winter), collects 35 proposed data elements on generator capacity. This replaces the previous Schedule 3 that collected 115 data elements concerning capacity information by generator. A new Schedule 7, Annual Data for Transmission Line Outages for Extra High Voltage (EHV) Lines, will collect 13 new data elements on outages by voltage class. Schedule 2, Part A and B. Historical and Projected Demand and Capacity—Summer, Winter, will collect distributed generation data. Together, these represent a net decrease of 60 data elements on the Form EIA–411. The form and instructions will be modified to show these changes.

Form EIA–412 "Annual Electric Industry Financial Report." This form will now ask in the Identification Section, if an entity generates electricity. In addition, a new Schedule 9B, Electric Generating Plant Statistics, Unregulated Companies, will collect cost data from unregulated plants at a higher aggregated level than previously requested. As a result of these actions, the overall net change for the Form EIA–412 is a decrease of 10 data elements collected from unregulated plants.

Schedule 9, Part A, is no longer applicable to unregulated plants. The form and instructions will be modified to show these changes.

Form EIA–423, "Monthly Cost and Quality of Fuels for Electric Plants." EIA proposes to ask one new question that will identify 'tolling agreements' for a plant. A tolling agreement is an arrangement that allows one company to have marketing control of electricity produced by generating assets owned by another company. The agreement usually requires the marketer to procure the fuel supply necessary to produce the electricity. The form and instructions will be modified to show this change.

Form EIA–767, "Steam-Electric Plant Generation and Design Report." EIA proposes to revise Schedule 4. Part E, Mercury Emission Controls. This schedule will allow respondents to select from an array of mercury emission controls rather than provide a written description of the emission control type. The form and instructions will be modified to reflect these changes.

Form EIA–826, "Monthly Electric Sales and Revenue with State Distributions Report." Schedule 1. Part D, Bundled Service by Retail Energy Providers, or any Power Marketer that Provides "Bundled Service", and Part E, Any Other Retail Service Provider, are new categories of providers that will answer the same questions as Parts A, B, and C. These new respondents do not fit into current ownership categories. In addition, a question has been added requesting information on mergers and acquisitions by reporting parties during the report period. The net result is the addition of new categories of respondents and one data item for existing respondents. The form and instructions will be modified to reflect these changes.

Form EIA–860, "Annual Electric Generator Report." Schedule 5. New Generator Connection Information, will collect cost and physical data about the site connection of a new generator to the electric grid. In addition, Schedule 3. Power Plant Data, will be revised to collect generator-level information on fuel switching capability for existing power plants and those planned for initial operation in five years. As a result of these additions, 65 new items will be added to the form. The form and instructions will be modified to show these changes.

Form EIA–861, "Annual Electric Power Industry Report." A question will be added to Schedule 2. Part A, General Information, which asks for the status of plans to operate alternate-fueled vehicles. In addition, Schedule 4. Part D, Bundled Service by Retail Energy Providers, or any Power Marketer that Provides "Bundled Service", and Part E, Any Other Retail Service Provider, are supplied for new categories of providers that will answer the same questions as Parts A, B, and C. These new respondents do not fit into current ownership categories. In addition, a question has been added requesting information on mergers and acquisitions by reporting parties during the reporting period. Also, 7 additional data items will be collected on Schedule 6, Demand-Side Management, about costs incurred in DSM programs. Schedule 7, Customer-Site Generation, will collect data on distributed generation capacity, including back-up generation capacity. The net result is the addition of new respondent categories and 28 data elements. The form and instructions will be modified to show these changes.

Form EIA–906, "Power Plant Report." A new Schedule 3, Annual Electricity Sources and Disposition, will incorporate a new schedule to collect energy sources and disposition from unregulated electricity generators. This data will be collected once a year as annual totals. The form will also be modified to collect gross generation in addition to the existing collection of net generation. This data will be collected monthly from a sample of respondents and annually from the remaining respondents. The result of adding this schedule is the addition of 8 new data elements. The form and instructions will be modified to reflect these changes.

Form EIA–920, "Combined Heat and Power Plant Report." A new Schedule 4, Annual Electricity Sources and Disposition, will collect energy sources and disposition from 'combined heat and power plants'. This data will be collected once a year as annual totals. The schedule will result in 8 new data elements. The form and instructions will be modified to reflect the changes.

Form EIA–860M, "Monthly Update to the Annual Electric Generator Report." This new form will collect data on the status of proposed new generators or proposed changes to existing generators. It will be collected for each generator that is scheduled to become operational within a rolling 12 month period. For inclusion in the EIA–906 monthly survey a generator must meet the same criteria as for the EIA–860 annual survey: the generator must have a nameplate capacity of 1 megawatt or greater and the generator, or the facility that houses the generator, must be connected to the electric power grid. Data items to be collected include the current status of the plant, prime mover type, and nameplate capacity. There will be 15 data items collected on each proposed or modified generators. Form and instructions will be provided.

With regard to confidential treatment of information reported on the electric power surveys, EIA is proposing changes in the elements that will be treated as confidential and not publicly released in individually-identifiable form. These changes are being proposed for two reasons. First, as the level of generation competition increases, so does the concern for the disclosure of commercially sensitive data. Certain elements reported on EIA's electric power survey forms are trade secrets and commercial or financial information that are privileged or confidential. Also, certain elements reported on EIA's electric power surveys reveal details that could be exploited by those seeking to harm the Nation's critical energy infrastructure. Public release of these elements is expected to impair the Government's ability to obtain the information in the future and would be harmful to the Government's ability to analyze and respond to situations affecting the electric power supply and system operations of the United States.

EIA continuously monitors the electric power industry. Based on its review, EIA is proposing to increase the number of elements that will be treated as confidential. Following are the data elements from EIA's electric power surveys that will receive confidential treatment beginning in 2005. (Elements currently treated as confidential by EIA are marked by asterisks.)

a. Monthly retail sales, revenue and number of customers of energy service providers* (EIA–826) (see following discussion regarding removal of the confidential protection 6 months after the end of the calendar year of the data).

b. Fuel cost* (EIA–423) (see following discussion regarding removal of the confidential protection 6 months after the end of the calendar year of the data).

c. Fuel Stocks* (EIA–906 and EIA–920) (see following discussion regarding removal of the confidential protection 6 months after the end of the calendar year of the data).

d. Plant cost data for unregulated plants* (EIA–412) (see following discussion regarding additional protection limiting use to exclusively statistical purposes).

e. Latitude and Longitude* (EIA–767 and EIA–860).

f. Bulk Transmission Facility Power Flow Cases (EIA–411).

g. Electric Transmission Maps (EIA–411).

h. Maximum tested heat rate under full load* (EIA–860).

In addition to the elements listed above that will be treated as confidential, EIA proposes to collect one of those elements in accordance with the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) (Title 5 of Pub. L. 107–347). This will ensure that the information is used only for exclusively statistical purposes unless respondents provide informed consent for other uses. The element to be collected under CIPSEA is: Plant cost for unregulated entities (EIA–412).

For certain elements, commercial sensitivity declines rapidly over time and EIA is proposing to remove the confidential protection 6 months after the end of the calendar year of the data for the:

a. Fuel cost (EIA–423).

b. Fuel stocks (EIA–906 and EIA–920).

c. Monthly retail sales, revenues and number of customers of energy providers (EIA–826).

The individual survey forms and instructions will be modified to address the specific confidentiality provisions that apply to the data elements.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposals discussed in Item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Are the proposed collections of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

C. Does EIA's proposed confidentiality treatment for electric power survey information maximize the utility of the data for users while adequately protecting sensitive information?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due dates?

D. Public reporting burden for the collections are estimated to average the times shown below. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate are these estimates?

Form EIA–411, "Bulk Power Supply Program Report,"—14.15 hours per response in 2005 (previous estimate was 16.15 hours);

Form EIA–412, "Annual Electric Industry Financial Report Utilities,"—25.00 hours per response in 2005 (previous estimate was 25.00 hours);

Form EIA–423, "Cost and Quality of Fuels for Electric Plants,"—2.00 hours per response in 2005 (previous estimate was 2.00 hours);

Form EIA–767, "Steam Electric Plant Operation and Design Report,"—82.00 hours per response in 2005 (previous estimate was 82.00 hours);

Form EIA–826, "Monthly Electric Sales and Revenue with State Distributions Report," 1.50 hours per response in 2005 (previous estimate was 1.50 hours);

Form EIA–860, "Annual Electric Generator Report,"—18.12 hours per response in 2005 (previous estimate was 16.12 hours);

Form EIA–861, " Annual Electric Power Industry Report,"—10.50 hours per response in 2005 (previous estimate was 9.30 hours);

Form EIA–906, "Power Plant Report,"—2.00 hours per response in 2005 (previous estimate was 1.40 hours);

Form EIA–920, "Combined Heat and Power Plant Report,"—2.00 hours per response in 2005 (previous estimate was 1.40 hours);

Form EIA–860M, "Monthly Update to the Annual Electric Generator Report,"—1.00 hour per response in 2005 (new form).

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, March 30, 2004.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 04–7484 Filed 4–1–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0012, FRL–7642–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Data Reporting Requirements for State and Local Vehicle Emission Inspection and Maintenance (I/M) Programs, EPA ICR Number 1613.02, OMB Control Number 2060–0252

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to reinstate a previously approved collection. That ICR has expired on February 28, 1996. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 1, 2004.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Chi Li, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4336; fax number: 734–214–4052; email address: *li.chi@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2004–0012, which is available for public viewing at the Office of Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are state/local government air quality regulatory agencies.

Title: Data Reporting Requirements For State and Local Vehicle Emission Inspection and Maintenance (I/M) Programs.

Abstract: To provide general oversight and support to state and local I/M programs, the Transportation and Regional Programs Division (TRPD), Office of Transportation and Air Quality, Office of Air and Radiation, U.S. Environmental Protection Agency, requires that state or local program management for both basic and enhanced I/M programs submit two varieties of reports to EPA. The first reporting requirement is the submittal of an annual report providing general program operating data and summary statistics, addressing the program's current design and coverage, a summary of testing data, enforcement program efforts, quality assurance and quality control efforts, and other miscellaneous information allowing for an assessment of the program's relative effectiveness; the second is a biennial report on any changes to the program over the previous two-year period and the impact of such changes, including any weaknesses discovered and corrections made or planned.

General program effectiveness is determined by the degree to which a program misses, meets, or exceeds the emission reductions committed to in the state's approved SIP, which, in turn, must meet or exceed the minimum emission reductions expected from the relevant performance standard, as promulgated under EPA's revisions to 40 CFR part 51, in response to requirements established in section 182 of the Clean Air Act Amendments of 1990 (Act). This information will be used by EPA to determine a program's progress toward meeting requirements under 40 CFR part 51, as well as to assess national trends in the area of basic and enhanced I/M programs and to provide background information in support of periodic site visits and audits. 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.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Burden Statement: EPA estimates the annual burden per respondent is approximately 85 hours and the total annual respondent burden imposed by these collections is estimated to be 2,890 hours (34 respondents).[1] These estimates include time for summarizing data as well as reporting summaries. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 24, 2004.

Robert Brenner,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 04–7478 Filed 4–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6649–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental

[1] A draft of the Supporting Statement, which includes detailed information about the burden estimate, is available in the EPA Docket at *http://www.epa.gov/edocket.*

Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

Summary of Rating Definitions
Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.

On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EIS

ERP No. D–AFS–F65045–MN

Rating EC1, Virginia Forest Management Project Area, Resource Management Activities on 101,000 Acres of Federal Land, Implementation, Superior National Forest, Eastern Region, St. Louis County, MN.

Summary: EPA expressed environmental concerns with potential impacts from mining activities and requested that more specific information on mitigation and monitoring be included in the final EIS.

ERP No. D–BLM–L65446–AK

Rating EO2, Alpine Satellite Development Plan, Construction and Operation of Five Oil Production Pads, Associated Well, Roads, Airstrips, Pipelines and Powerlines, Northeast Corner of the National Petroleum Reserve—Alaska, Colville River Delta, North Slope Borough, AK.

Summary: EPA expressed environmental objections with Alternatives A and C because of the potential for significant adverse impacts to environmental and subsistence resources and the users of the plan area. Neither alternative would be consistent with oil and gas lease stipulations in the 1998 NW NPR–A Record of Decision. In addition, the Draft EIS does not contain adequate information regarding other reasonable alternatives, such as the State of Alaska's proposed road to Nuiqsut, and additional mitigation for impacts if stipulations are excepted or amended. EPA recommends changes to the proposed alternative to address these issues and that the final EIS include mitigation measures and environmental safeguards to minimize significant adverse impacts.

ERP No. D–COE–K36138–AZ

Rating LO, EL Rio Antigua Feasibility Study, Ecosystem Restoration along the Rillito River, Pima County, AZ.

Summary: EPA supported the goals and objectives of the proposed El Rio Antiquo Restoration, and had no objections to the proposed project. EPA requested clarification on the recreation and parking improvements proposed as part of the project.

ERP No. D–HUD–C81018–NY

Rating EC2, Generic EIS—World Trade Center Memorial and Redevelopment Plan, To Remember, Rebuild and Renew what was lost on September 11, 2001, Construction in the Borough of Manhattan, New York County, NY.

Summary: EPA expressed environmental concerns regarding both the direct and cumulative impacts to air quality (NO_X, ozone, and conformity with the SIP), and impacts to water quality (storm water discharge). Additional information and discussion to address these concerns should be included in the final EIS.

ERP No. DB–NOA–A91065–00

Rating LO, Proposed Rule to Implement Management Measures for the Reduction of Sea Turtle Bycatch and Bycatch Mortality in the Atlantic Pelagic Longline Fishery.

Summary: EPA has no objections to the proposed action.

ERP No. DS–BOP–K81025–CA

Rating LO, Fresno Federal Correctional Facility Development, Additional Information, Orange Cove, Fresno County, CA.

Summary: EPA supports the proposed alternative for the Fresno Correctional

Facility in Fresno County. EPA has no objections to the proposed project.

Final EIS

ERP No. F–AFS–E65061–SC

Sumter National Forest Revised Land and Resource Management Plan, Implementation, Oconee, Chester, Fairfield, Laurens, Newberry, Union-Abbeville, Edgefield, Greenwood, McCormick and Saluda Counties, SC.

Summary: EPA continues to have environmental concerns about designation of watershed restoration areas and provided additional comments on strengthening forestwide standards and monitoring commitments to protect water quality.

ERP No. F–AFS–E65062–TN

Cherokee National Forest Revised Land and Resource Management Plan, Implementation, Carter, Cocke, Greene, Johnson, McMinn, Monroe, Polk, Sullivan and Unicoil, TN.

Summary: EPA continues to have environmental concerns about designation of source water protection areas and provided additional comments on strengthening forestwide standards to protect water quality.

ERP No. F–AFS–E65063–GA

Chattahoochee-Oconee National Forests Revised Land and Resource Management Plan, Implementation, several Counties, GA.

Summary: EPA continues to have environmental concerns about development of management plans for wild and scenic rivers and provided additional comments on strengthening forestwide standards to protect water quality.

ERP No. F–FHW–E40797–MS

Airport Parkway Extension, Improvements to MS–475 from I–20 to Old Brandon Road, U.S. Army COE Section 404 Permit, Rankin County, MS.

Summary: EPA has no objections to the proposed project. EPA does recommend that MDOT include a draft mitigation plan regarding wetland and stream impacts in the Record of Decision.

ERP No. F–FHW–K40224–CA

I–880/CA–92 Interchange Reconstruction, I–880 from Winton Avenue to Tennyson Road and CA–92 from Hesperian Boulevard to Santa Clara Street, Updated Information, Funding, City of Hayward, Alameda County, CA.

Summary: EPA continues to have environmental concerns with the proposed project regarding construction-related air quality impacts and the potential for environmental justice impacts. EPA recommends that the Federal Highway Administration (FHWA) develop a detailed construction emissions mitigation plan for adoption in the ROD and that FHWA elicit and consider the views of effected minority and low-income populations on the construction mitigation plan.

ERP No. F–IBR–K39079–CA

Programmatic EIS—Environmental Water Account Project, Water Management Strategy to Protect the At-Risk Native Delta-Dependent Fish Species and Water Supply Improvements, U.S. Fish and Wildlife Service Endangered Species Act Section 7 and U.S. Army Corps Section 10 Permits Issuance, CA.

Summary: EPA expressed continued environmental concerns with the project, including the need to strengthen the scientific basis for EWA actions, incorporate upcoming proposed facilities and operations, and address in more detail potential impacts to, and monitoring and protection of, water quality for drinking water and other uses. EPA recommended that these issues be addressed in a separate long-term EWA EIR/EIS, which is being prepared for release later this year.

ERP No. F–NRS–K36137–HI

Lahaina Watershed Flood Control Project, Flooding and Erosion Problems Reduction, U.S. Army COE Section 404 and NPDES Permits Issuance, Maui County, HI.

Summary: EPA has continuing environmental concerns regarding impacts to the near shore marine environment and water quality.

ERP No. FC–NOA–B91017–00

Atlantic Sea Scallop Fishery Management Plan (FMP), Amendment 10, Introduction of Spatial Management of Adult Scallops, Essential Fish Habitat (EFH), from the Gulf of Maine and Georges Banks to Cape Hatteras, NC.

Summary: EPA's previous issues were resolved, EPA has no objection to the action as proposed.

ERP No. FR–DOE–A09824–00

Hanford Site Solid (Radioactive and Hazardous) Waste Program, New Information on Waste Management Alternatives, Waste Management Practices Enhancement for Low-Level Radioactive Waste, Mixed Low-Level Radioactive Waste and Transuranic Waste, Richland, Benton County, WA.

Summary: EPA expressed environmental concerns with the characterization that affects from past and current activities result in irreversible and irretrievable impacts to groundwater and recommend that the record of decision clarify that groundwater impacts from the proposed project do not represent irreversible and irretrievable effects. EPA also recommended that additional analysis be conducted if T Plant is not included in the preferred alternative or implemented project.

ERP No. FS–AFS–K65226–00

Sierra Nevada Forest Plan Amendment, New Information on a Range of Alternatives for Amending Land and Resource Management Plans, Modoc, Lasser, Plumas, Tahoe, Eldorado, Sequoia, Stanislaus, Sierra, Inyo and Humboldt-Toiyabe National Forest and the Lake Tahoe Basin Management Unit, Several Counties, CA and NV.

Summary: EPA expressed continuing environmental objections to the proposed management plans on the basis of impacts to water quality and habitat, and the removal of mitigation measures to protect old-growth forest and dependent species.

Dated: March 30, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–7479 Filed 4–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6649–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements Filed March 22, 2004 Through March 26, 2004 Pursuant to 40 CAR 1506.9

EIS No. 040135, Final EIS, AFS, CA

McNealy/Sherman Pass Restoration Project, Proposal to Remove Fire-Kill Trees, Road Construction and Associated Restoration of the Area Burned, Sequoia National Forest, Cannel Meadow Ranger District, Tulane County, CA, Wait Period Ends: May 3, 2004, Contact: Tom Simonson (559) 784–1500.

EIS No. 040136, Draft EIS, AFS, MT

Snow Talon Fire Salvage Project, Proposes to Salvage Harvest Trees Burned in the Fire, Helena National

Forest, Lincoln Ranger District, Lewis and Clark County, MT, Comment Period Ends: May 17, 2004, Contact: Dan Seaforth (406) 362–4265.

EIS No. 040137, Draft EIS, AFS, OR

Diamond Lake Restoration Project, Improve Water Quality and the Recreational Fishery, Umpqua National Forest, Diamond Lake Ranger District, Umpqua River Basin, Douglas County, OR, Comment Period Ends: May 17, 2004, Contact: Sherrie Chambers (541) 496–3532. This document is available on the Internet at: *http://www.fs.fed.us/r6/umpqua.*

EIS No. 040138, Final EIS, FHW, AR, MS, I–69

Mississippi River Crossing, Construction from a western terminus at US 65 near McGehee, AR, to an eastern terminus at State Highway 1 near Benoit, MS, US Coast Guard Bridge Permit, US Army Corps Section 10 and 404 Permits, NPDES Permit, Desha County, AR and Bolivar County, MS, Wait Period Ends: May 3, 2004, Contact: Randal Looney (501) 324–6430.

EIS No. 030139, Draft EIS, FHW, WI

Wisconsin Highway Project, Enhance the Mobility of Motorized and Nonmotorized Travel, US 18/151 (Verona Road) and the US 12/14 (Beltine) Corridors, Dane County, WI, Comment Period Ends: May 17, 2004, Contact: Johnny M. Gerbitz (608) 829–7500.

EIS No. 040140, Draft EIS, DOI, UT

Utah Lake Drainage Basin Water Delivery System (ULS), Construction and Operation, Bonneville Unit of the Central Utah Project (CUP), Utah, Salt Lake, Wasatch and Juab Counties, UT, Comment Period Ends: June 11, 2004, Contact: Reed Murray (801) 379–1237.

EIS No. 040141, Draft EIS, AFS, ID

Clearwater National Forest, Proposes to Approve Plans-of-Operation for Small-Scale Suction Dredging in Lolo Creek and Moose Creek, Clearwater National Forest, North Fork Ranger District, Clearwater and Idaho Counties, ID, Comment Period Ends: May 17, 2004, Contact: Vern Bretz (208) 476–4541.

EIS No. 040142, Final EIS, NPS, WI

Apostle Islands National Lakeshore Wilderness Study, Wilderness Designation or Nondesignation, Ashland and Bayfield Counties, WI, Wait Period Ends: May 4, 2004, Contact: Robert Krumenaker (715) 779–3397.

EIS No. 040143, Draft EIS, NPS, OH

Fallen Timbers Battlefield and Fort Miamis National Historic Site, General Management Plan, Implementation, Lucas County, OH, Comment Period Ends: June 1, 2004, Contact: James Speck (419) 535–3050.

EIS No. 040144, Draft EIS, AFS, NV

Martin Basin Rangeland Project, Authorize Continued Livestock Grazing in Eight Allotments: Martin Basin, Indian, West Side Flat Creek, Buffalo, Bradshaw, Buttermilk, Granite Peak and Rebel Creek Cattle and Horse Allotments, Humboldt-Toiyable National Forest, Santa Rosa Ranger District, Humboldt County, NV, Comment Period Ends: May 17, 2004, Contact: Steve Williams Ext 112 (775) 623–5025.

EIS No. 040145, Draft EIS, AFS, MT

Grasshopper Fuels Management Project, Modify Vegetation Conditions, Reduce Fuel Loads and Break up Fuel Continuity, Beaverhead-Deerlodge National Forest, Dillon Ranger District, Beaverhead County, MT, Comment Period Ends: May 17, 2004, Contact: Great Clark (406) 683–3935.

EIS No. 040146, Draft EIS, NPS, WI

Arrowhead-Weston Transmission Line Right-of-Way Crossing of the St. Croix National Scenic Riverway, US Army COE Section 10 and 404 Permits, Washburn County, WI, Comment Period Ends: May 17, 2004, Contact: Jill Medland (715) 483–3284.

EIS No. 040147, Draft Supplement, AFS, OR

Rimrock Ecosystem Restoration Projects, New Information on the Commercial and Non-commercial Thinning Treatments in the C3 Management Area, Umatilla National Forest, Heppner Ranger District, Grant, Morrow and Wheeler Counties, OR, Comment Period Ends: May 17, 2004, Contact: David Centrex (541) 676–9187. This document is available on the Internet. at: *http://www.fs.fed/us/r6/uma/projects/readroom/.*

EIS No. 040148, Final EIS, FTA, CA

Transbay Terminal/Caltrain Development Downtown Extension/Redevelopment Project, New Multi-Modal Terminal Construction, Peninsula Corridor Service Extension and Establishment of a Redevelopment Plan, Funding, San Francisco, San Mateo and Santa Clara Counties, CA, Wait Period Ends: May 3, 2004, Contact: Jerome Wiggins (415) 744–3115.

Amended Notices

EIS No. 040027, Draft EIS, IBR, NB, CO, WY

Programmatic ES—Platte River Recovery Implementation Program, Assessing Alternatives, Cooperative, Endangered Species Recovery Program, The Four Target Species are Whooping Crane, Interior Least Tern, Piping Plover and Pallid Sturgeon, NB, WY and CO, Comment Period Ends: June 2, 2004, Contact: Curt Brown (303) 445–2096. Revision of FR Notice Published on 1/30/2004: CEQ Comment Period Ending 4/2/2004 has been Extended to 6/2/2004.

Dated: March 30, 2004.

Ken Mittlelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–7482 Filed 4–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7641–5]

Drinking Water Contaminant Candidate List 2; Notice

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, requires the Environmental Protection Agency (EPA) to publish a list of contaminants which, at the time of publication, are not subject to any proposed or promulgated national primary drinking water regulations, that are known or anticipated to occur in public water systems, and which may require regulations under SDWA (section 1412(b)(1)). SDWA, as amended, specifies that EPA must publish the first list of drinking water contaminants no later than 18 months after the date of enactment, *i.e.*, by February 1998 (henceforth referred to as the 1998 Contaminant Candidate List or the 1998 CCL), and every five years thereafter. Today's notice announces EPA's preliminary decision to carry over the remaining 51 contaminants on the 1998 CCL as the draft CCL 2, provides information on EPA's efforts to expand and strengthen the underlying CCL listing process to be used for future CCL listings, and requests comment on CCL-related activities to improve the drinking water contaminant listing process. Today's draft CCL includes 42 chemicals or chemical groups and nine microbiological contaminants. The

Agency's approach to the draft CCL 2 is to continue using the remaining contaminants on the 1998 CCL for prioritizing research and making regulatory determinations while working with the National Drinking Water Advisory Council (NDWAC) and stakeholders to complete a review of the National Research Council (NRC) recommendations for developing a more comprehensive and transparent CCL listing process. The EPA seeks comment on the range of CCL issues and activities addressed in this notice.

DATES: The Agency requests comment on today's notice. Comments must be received or postmarked by midnight June 1, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in section I.C of the Supplementary Information section. The official public docket for this action is located at EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For questions about this notice contact Dan Olson at (202) 564–5239 or e-mail *olson.daniel@epa.gov*. For general information contact the EPA Safe Drinking Water Hotline at (800) 426–4791 or e-mail: *hotline-sdwa@epa.gov*. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5:30 p.m.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Impose Any Requirements on My Public Water System?

Neither this draft CCL 2 nor the final CCL 2, when published, imposes any requirements on anyone. Instead, it notifies interested parties of the availability of EPA's Draft CCL 2 and seeks comment on this draft list as well as EPA's efforts to improve the contaminant selection process for future CCLs. Contaminants on the list may become the subject of future regulations. At that time, the public would be provided additional opportunities to comment as part of the rule making process.

B. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2003–0028. The official public docket is a collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket material, please call (202) 566–2426 to schedule an appointment.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1.

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 identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

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

a. 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 No. OW–2003–0028. 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.

b. E-mail. Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov*, Attention Docket ID No. OW–2003–0028. 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.

c. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 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 an original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code: 4101T, 1200 Pennsylvania Ave., NW.. Washington DC, 20460, Attention Docket ID number OW–2003–0028.

3. *By hand delivery or courier.* Deliver your comments to: Water Docket, Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID number OW–2003–0028. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background and Summary of Today's Notice

This section summarizes the purpose of today's notice and provides a brief background on the CCL requirements and prior activities related to the CCL.

A. What Is the Purpose of Today's Action?

The drinking water CCL is the primary source of priority contaminants for evaluation by EPA's drinking water program. Contaminants on the CCL are currently not subject to any proposed or promulgated national primary drinking water regulation, but are known or anticipated to occur in public water systems, and may require regulation under SDWA. The EPA conducts research on health, analytical methods, treatment technologies and effectiveness, and contaminant occurrence for priority drinking water contaminants on the CCL. The Agency also develops drinking water guidance and health advisories, and makes regulatory determinations for priority contaminants on the CCL.

Today's **Federal Register** notice explains why EPA is carrying over the remaining 51 contaminants on the 1998 CCL as the draft CCL 2 and provides background information on the list. Additionally, this notice describes efforts to improve on the CCL selection process, the NRC recommendations to EPA on developing future CCLs, and related issues being evaluated by EPA and NDWAC to implement the NRC recommendations. (The NDWAC provides independent advice, consultations, and recommendations to EPA on matters related to the activities, function, and policies of the Agency under the SDWA, as amended. See section V for further discussion on NDWAC.) The EPA requests comment on the draft CCL 2 and on the process for developing future CCLs.

B. The Background of the CCL

The SDWA is the core statute addressing drinking water at the Federal level. Under SDWA, EPA sets public health goals and enforceable standards for drinking water quality. In 1996, Congress amended SDWA to emphasize sound science and risk-based priority-setting. Congress also changed the way drinking water regulatory priorities are set by establishing the CCL requirements. The 1996 SDWA amendments require EPA to (1) publish every five years a list of currently unregulated contaminants in drinking water that may pose risks, and (2) make determinations on whether or not to regulate at least five contaminants on a five year cycle, or three and a half years after each CCL (SDWA section 1412(b)(1)).

Following the 1996 SDWA Amendments, EPA sought NDWAC's recommendations on the process that should be used to identify contaminants for inclusion on the CCL. For chemical contaminants, the Agency developed screening and evaluation criteria based on recommendations from NDWAC and identified 262 potential chemical contaminants. For microbiological contaminants, NDWAC recommended that the Agency seek external expertise to identify and select potential waterborne pathogens. As a result, the Agency convened a workshop of microbiologists and public health experts, developed screening and evaluation criteria based on workshop recommendations, and evaluated an initial list of 25 potential microbiological contaminants.

The 1998 CCL process benefitted from considerable input from the scientific community and the public through stakeholder meetings and the public comments received on the draft CCL published in 1997. The EPA published the final CCL containing 50 chemical and 10 microbiological contaminants in March of 1998 (63 FR 10273). A detailed discussion of how EPA developed the 1998 CCL is presented in section III of this notice.

After publication of the final 1998 CCL, EPA began collecting occurrence data and conducting research on the CCL contaminants. Data collection efforts include assessing the occurrence of contaminants in public water systems through the Unregulated Contaminant Monitoring Regulation (64 FR 50556), as well as evaluating occurrence data from national surveys and considering State-level contaminant occurrence information. Research efforts focused on obtaining the information needed to characterize the adverse health effects of contaminants. drinking water treatment options, and the development of analytical methods to detect contaminants in drinking water.

As noted above, the 1996 SDWA also directs EPA to select at least five contaminants from the CCL every five years to determine if regulating the contaminants with a national primary drinking water regulation would present a meaningful opportunity for health risk reduction (SDWA section 1412 (b)(1)). In order to make regulatory determinations on contaminants, EPA must have sufficient data to evaluate

when and where contaminants occur, human exposure, and the risk to public health.

On July 18, 2003, EPA announced its final determinations for a subset of contaminants on the 1998 CCL (68 FR 42898), which concluded that sufficient data and information were available to make the determination that a regulation was not appropriate for the following nine contaminants: Acanthamoeba, aldrin, dieldrin, hexachlorobutadiene, manganese, metribuzin, naphthalene, sodium, and sulfate.

III. Developing Today's Draft Drinking Water Contaminant Candidate List

This section provides the approach EPA used to develop the draft CCL 2, explains the rationale to support the approach, and presents the draft CCL 2.

A. Approach and Rationale for the Draft CCL 2

The EPA's approach for the draft CCL 2 is to continue to use contaminants identified on the 1998 CCL to set drinking water research priorities and make regulatory determinations. The EPA believes that it is appropriate for the draft CCL 2 to be based on the 1998 CCL because (1) in developing the 1998 CCL, the Agency used peer-reviewed data and information to evaluate contaminants; (2) EPA relied on significant input from experts and stakeholders to develop a high quality process for selecting the contaminants on the CCL; (3) the Agency has invested in research and data collection activities related to the CCL, and is preparing to make regulatory determinations in the 2006 time-frame using the data collected from these activities; and (4) continued reliance on high priority contaminants remaining from the 1998 CCL allows the Agency to focus resources on completing ongoing work on an expanded process for classifying drinking water contaminants based on recent recommendations of the National Research Council (NRC, 2001). A more detailed discussion of this approach follows.

1. Organizing and Extracting Data

a. *Evaluating available chemical contaminant listings.* The EPA reviewed contaminants from seven well-known lists, as well as contaminants recommended by stakeholders, to develop the 1998 CCL (Table III–1). These lists contained chemicals that could be of potential concern in drinking water. In addition, EPA evaluated a number of other contaminants identified by stakeholders during the December 2–3, 1996, stakeholder meeting for potential inclusion on the CCL. In the process of creating the final list, EPA removed from consideration 23 contaminants suspected of being endocrine disruptors and 35 pesticides, because both groups of chemicals were the focus of additional data collection efforts under other programs in the Agency. The EPA intends to consider both groups of chemicals as part of the next CCL screening and evaluation process.

TABLE III.—I INITIAL CHEMICAL LISTS CONSIDERED FOR DEVELOPMENT OF THE 1998 CCL

List	Description
1991 Drinking water priority list (DWPL, EPA, 1991)	56 contaminants.
Health advisories (HAs)	108 contaminants, (included all contaminants with HAs or HAs under development).
EPA's Integrated Risk Information System database	48 contaminants, based on a risk-based screen developed by EPA for the 1994 DWPL.
Contaminants identified by public water systems	22 "non-target" contaminants identified by public water systems for the 1994 DWPL.
Agency for Toxic Substances and Disease Registry's list of contaminants found at Comprehensive Environmental Response, Compensation and Liability Act sites.	Top 50 contaminants from the 1995 list of 275 prioritized hazardous substances.
Stakeholder summary list	59 contaminants proposed as candidates by participants in a December 2–3, 1997 stakeholder meeting.
Toxic Release Inventory (TRI) list	51 contaminants that met the criteria for assessing the potential to occur in public water; derived from an original 1994 TRI list of 343 chemicals.

b. *Screening chemical contaminants.* In 1997, EPA developed screening criteria to evaluate the potential occurrence and health effects of chemical contaminants gathered from the lists based on the recommendation of experts in the drinking water field, including NDWAC. These screening criteria focused on the following two questions:

1. Is a given contaminant found in water at levels of health concern?

2. If no data exists on contaminant occurrence, is the contaminant likely to be found in water based on surrogates for occurrence?

An affirmative answer to either question moved the contaminant to the health effects phase of the evaluation. Contaminants met the criteria if the available data indicated occurrence in a drinking water system serving a population of 100,000 or more, occurrence in two or more States, or occurrence in 10 or more small public water systems at levels that would trigger concern for human health. If a contaminant did not have specific occurrence data, EPA assessed the potential for a contaminant to occur in drinking water based on surrogates for occurrence. Surrogates for occurrence included: TRI release estimates, production amounts from industry data, and physical-chemical properties. A contaminant was considered to have the potential to occur if, using the TRI, the release to surface water was in excess of 400,000 pounds per year and the physical-chemical properties indicated persistence and mobility of the contaminant. A contaminant was also considered to have the potential to occur if the production volume exceeded 10 billion pounds per year, and physical-chemical properties indicated persistence and mobility of the contaminant.

If a pollutant met the occurrence screening criteria, EPA then screened it for potential health effects. The health effects phase of the evaluation had one major criterion: Was there evidence, or was there suggestion, that the contaminant causes adverse human health effects? This criterion was met if a contaminant had one or more of the following elements: (1) Listed by California Proposition 65, (2) addressed by an EPA Health Advisory, (3)

considered a likely (based on animal data) or known (based on human data) carcinogen by EPA or the International Agency for Research on Cancer, (4) evaluated by more than one human epidemiological study (indicating adverse effects), (5) received an oral value in EPA's Integrated Risk Information System, (6) regulated in drinking water by another industrial country, (7) identified as a member of a chemical family of known toxicity, or (8) characterized by a structural activity relationship indicating toxicity. If a contaminant had none of these elements, then EPA did not include it in the 1998 CCL.

A contaminant that met both the occurrence screening criteria and received an affirmative response to any of the above health effects screening elements resulted in that contaminant's inclusion into the draft 1998 CCL.

c. *Selecting microbiological contaminants.* In May of 1997, at the recommendation of NDWAC, EPA convened a workshop on microbiology and public health to develop a list of pathogens for possible inclusion in the 1998 CCL (62 FR 52193). Participants included experts from academia, the drinking water industry, EPA, and other Federal agencies. The EPA prepared and distributed a list of 25 microorganisms (6 protozoa, 8 viruses, 7 bacteria, and 4 algal toxins) for initial consideration by workshop members. Microorganisms were included on this initial list if they were identified in disease outbreak data, if published literature documented the occurrence of known or suspected pathogens in water, or if other information suggested the possibility of a public health risk. The workshop participants established screening criteria for deciding whether an organism should appear on the CCL. These criteria were (1) public health significance, (2) known waterborne transmission, (3) occurrence in source water, (4) effectiveness of current water treatment, and (5) adequacy of analytical methods.

All of the microorganisms included on the initial EPA list, as well as other organisms that arose during the discussions, were evaluated against these criteria. The results of the deliberations of the microbiology workshop were adopted by NDWAC and subsequently utilized by the Agency to select 13 microbiological contaminants placed on the draft 1998 CCL.

2. Input From Stakeholders, Experts, and the Public

The EPA relied on significant input from experts and stakeholders to develop a high quality process for selecting the contaminants on the 1998 CCL. The Agency sought stakeholder input from a number of sources and at several different junctures in the CCL development process. First, EPA convened a day-long meeting of over 50 experts, including representatives from industry, academia, consultants, and other government agencies to review a draft of the strategy for developing the CCL. The EPA also convened NDWAC to review the strategy and make recommendations on the development of the CCL. Experts on the NDWAC met numerous times to discuss the CCL process and data on potential contaminants.

As mentioned in the prior section, EPA also relied on the advice of nationally recognized experts in the field of microbiology, during a separate meeting, to classify microbiological contaminants. These experts identified and selected the microbiological contaminants for initial consideration.

Additionally, EPA consulted with the Agency's Science Advisory Board which is a public advisory group that provides extramural scientific information and advice to EPA.

The draft CCL containing 58 chemical and 13 microbiological contaminants was published on October 6, 1997 (62 FR 52193). The EPA requested comment on the approach used to develop the CCL, and on whether specific contaminants should be on the list. The EPA received 71 comments from many segments of the drinking water community including trade associations, environmental groups, industries, chemical manufacturers, State and local health regulatory agencies, water utilities, and private citizens. Commenters provided data and information on specific contaminants and included suggestions on the process for future CCL development. Based on these comments, EPA removed 10 chemical and 4 microbiological contaminants, and added 2 chemical and 1 microbiological contaminant to the final list. The final 1998 CCL contained 50 chemical and 10 microbiological contaminants and was published on March 2, 1998 (63 FR 10273).

3. Research and Data Collection for Contaminants on the 1998 CCL

The EPA has made data collection and research on the CCL contaminants a priority and continues to collect information and conduct research in the areas of health effects, analytical methods, treatment, and occurrence. As noted previously, the Agency is preparing to make regulatory determinations in the 2006 time-frame using the data collected from these activities.

a. *Research on health effects, treatment, and analytical methods.* The Drinking Water Research Program's Multi-Year Plan identifies over 50 projects for contaminants on the CCL. These projects are scheduled for completion in the next two years and span three research areas: health effects, treatment, and analytical methods. The results of these activities will provide the information needed to characterize potential health impacts, assess the ability to detect selected contaminants in drinking water, and verify treatment capability and cost.

b. *Data collection on occurrence.* To assess whether the CCL contaminants are occurring in drinking water systems, EPA identified occurrence priorities and determined whether analytical methods were available to monitor for priority CCL contaminants. Because SDWA requires EPA to limit monitoring requirements to 30 contaminants in any 5-year cycle, only a subset of the CCL contaminants were monitored in the first round of data collection. Data will be available for use from the first five-year cycle of monitoring in mid-2004. The second cycle of data collection is expected to begin in 2006 and will be completed in mid-2010, after EPA proposes and promulgates a new list of contaminants for monitoring. Research is also underway to develop methods for contaminants currently without adequate analytical methods, or where the current analytical method detection limit was above the known adverse health effect level of concentration. Completion of these methods will allow EPA to make regulatory determinations in the future.

Because data from ongoing research and data collection activities will become available in the next few years, EPA believes that it is appropriate to maintain current focus on gathering this information in preparation for making regulatory determinations in 2006.

4. Development of an Improved Classification Process for Future CCLs

Continued focus on many of the priority contaminants from the 1998 CCL allows the Agency to target resources to complete its ongoing work on an expanded process for classifying drinking water contaminants, so that contaminants identified in many more sources can be effectively screened.

After the 1998 CCL was published, the Agency asked the National Research Council, the operating arm of the National Academy of Sciences, to review the 1998 CCL selection process and provide recommendations on how

the process could be improved. These recommendations were developed over several years and provided to the Agency in late 2001 (see section IV). On balance, the NRC found the 1998 CCL to be an important first step and noteworthy effort to identify and select unregulated chemical and microbiological drinking water contaminants. As with any new initiative, the NRC identified a number of opportunities to strengthen and expand the analytical process upon which the 1998 CCL was based. The NRC recommendations focused on developing a larger initial list (universe) and on identifying new approaches for screening larger numbers of potential CCL contaminants. While the NRC recommendations greatly expand the universe of contaminants and suggest a change in the manner in which contaminants are selected for the CCL, they are based on the same fundamental principles used in developing the 1998 CCL—a focus on health impacts and occurrence. The NRC approach addresses the expansion of the universe of contaminants and recommends a process that combines expert judgement with the use of computerized data sources and classification processes to screen contaminants (see section IV.C for more information). The use of automated classification processes would allow EPA to evaluate many more contaminants than experts alone can evaluate in the absence of these processes. The much broader and more complex approach recommended by the NRC may enable EPA to gather information from sources that were not used to develop the 1998 CCL, and thus strengthen the Agency's ability to identify emerging contaminants.

The EPA agrees that an approach that combines expert judgement with automated classification processes should be explored. The Agency is continuing to assess and refine the approach recommended by the NRC. The Agency believes that the CCL proposed today is sound, and should continue to be the source of contaminants for making additional regulatory determinations in the near term. This, however, should not be interpreted to mean that EPA is restricted to the contaminants on this CCL for making regulatory determinations. The EPA may add contaminants to this list and make regulatory determinations for any unregulated contaminant not on today's CCL, as necessary, to address an urgent threat to public health.

B. The Draft CCL 2

Table III–2 lists the contaminants on the draft CCL 2. These contaminants are identified by name and, where available, the Chemical Abstracts Service Registry Number (CASRN). The draft CCL 2 consists of nine microbiological contaminants and 42 chemical contaminants or contaminant groups.

TABLE III–2.—DRAFT DRINKING WATER CCL 2

Microbiological contaminant candidates
Adenoviruses
Aeromonas hydrophila
Caliciviruses
Coxsackieviruses
Cyanobacteria (blue-green algae), other freshwater algae, and their toxins
Echoviruses
Helicobacter pylori
Microsporidia (Enterocytozoon and Septata)
Mycobacterium avium intracellulare (MAC)

Chemical contaminant candidates	CASRN
1,1,2,2-tetrachloroethane	79–34–5
1,2,4-trimethylbenzene	95–63–6
1,1-dichloroethane	75–34–3
1,1-dichloropropene	563–58–6
1,2-diphenylhydrazine	122–66–7
1,3-dichloropropane	142–28–9
1,3-dichloropropene	542–75–6
2,4,6-trichlorophenol	88–06–2
2,2-dichloropropane	594–20–7
2,4-dichlorophenol	120–83–2
2,4-dinitrophenol	51–28–5
2,4-dinitrotoluene	121–14–2
2,6-dinitrotoluene	606–20–2
2-methyl-Phenol (o-cresol)	95–48–7
Acetochlor	34256–82–1
Alachlor ESA & other acetanilide pesticide degradation products	N/A
Aluminum	7429–90–5
Boron	7440–42–8
Bromobenzene	108–86–1
DCPA mono-acid degradate	887–54–7
DCPA di-acid degradate	2136–79–0
DDE	72–55–9
Diazinon	333–41–5
Disulfoton	298–04–4
Diuron	330–54–1
EPTC (s-ethyl-dipropylthiocarbamate)	759–94–4
Fonofos	944–22–9
p-Isopropyltoluene (p-cymene)	99–87–6
Linuron	330–55–2
Methyl bromide	74–83–9
Methyl-t-butyl ether (MTBE)	1634–04–4
Metolachlor	51218–45–2
Molinate	2212–67–1
Nitrobenzene	98–95–3
Organotins	N/A
Perchlorate	14797–73–0
Prometon	1610–18–0
RDX	121–82–4
Terbacil	5902–51–2
Terbufos	13071–79–9
Triazines and degradation products of triazines[1].	
Vanadium	7440–62–2

[1] Including, but not limited to Cyanazine 21725–46–2 and atrazine-desethyl 6190–65–4.

IV. The National Research Council's Recommended Approach for Developing Future CCLs

This section summarizes the NRC recommendations to EPA for developing future CCLs and discusses other issues related to contaminant selection and prioritization.

The EPA sought the advice of the NRC in response to comments received during the development of the 1998 CCL, which indicated a need for a broader, more systematic approach for selecting contaminants.

The Agency asked the NRC to address three key topics related to drinking water contaminant selection and prioritization:

1. What approach should be used to develop future CCLs?

2. How best should EPA assess emerging drinking water contaminants and related databases to support future CCL efforts?

3. What approach should EPA use to set priorities for contaminants on the CCL?

The NRC's findings and recommendations on these topics were published in the following three NRC reports: Setting Priorities for Drinking Water Contaminants (NRC, 1999a), Identifying Future Drinking Water Contaminants (NRC, 1999b), and Classifying Drinking Water Contaminants for Regulatory Consideration (NRC, 2001). The discussion in today's notice focuses on the 2001 report, which synthesizes key findings from the prior reports.

In its report entitled Classifying Drinking Water Contaminants for Regulatory Consideration, the NRC recommended that EPA use a two-step process for generating future CCLs. The first step in the process is to select contaminants from a broad universe of chemical, microbiological, and other types of potential drinking water contaminants for inclusion on a preliminary CCL (PCCL), based on a screening assessment of human health impacts, occurrence data, and expert judgement (NRC, 2001). The second step in the process is to use a classification algorithm (a formula or set of steps for solving a particular problem), in conjunction with expert judgement, to select from the PCCL contaminants to be included on the CCL. The NRC believes that this process of selecting

contaminants for future CCLs will result in a more systematic, transparent, and comprehensive approach to classifying drinking water contaminants.

A. Screening the Universe of Contaminants

The NRC suggests that the universe of potential drinking water contaminants could contain tens of thousands contaminants and recommends that EPA consider a range of contaminants including naturally occurring substances, emerging waterborne pathogens, chemical agents, byproducts, degradates of chemical agents, radionuclides, and biological toxins as part of the universe. The NRC's approach to assembling the universe is to begin with data sources that are currently available and to work with the public, the drinking water industry, and the scientific community to develop a strategy for assessing contaminants that are not found in existing databases or lists (NRC, 2001). This approach could greatly expand on the number of contaminants to be reviewed and the number of databases and lists to be searched.

B. Compiling the PCCL

The NRC further suggested that EPA develop a well-conceived set of screening criteria that can be applied rapidly and routinely, in conjunction with expert judgement, to screen the universe of potential drinking water contaminants to a much smaller PCCL.

To compile the PCCL, the NRC recommends an approach that relies on health effects and occurrence information. The NRC suggests a screening process that selects contaminants from a hierarchy of information based on the following criteria related to both health effects and occurrence:

1. Contaminants that are demonstrated to cause adverse health effects and are demonstrated to occur in drinking water.
2. Contaminants that have the potential to cause adverse health effects and are demonstrated to occur in drinking water.
3. Contaminants that are demonstrated to cause adverse health effects and that have the potential to occur in drinking water.
4. Contaminants that have the potential to cause adverse health effects and that have the potential to occur in drinking water.

The NRC advises EPA to acquire input from the public and other "stakeholders" on the PCCL. This approach will assist EPA in making any policy judgements about the PCCL and will encourage transparency in the process.

C. Contaminant Selection From the PCCL to the CCL

The second step is the selection of drinking water contaminants on the PCCL for inclusion on the CCL.

The NRC evaluated a number of screening and assessment processes and recommended that EPA consider the prototype classification method, combined with expert judgement, as an effective approach for selecting contaminants. Prototype classification uses computer-based computational tools to weigh selected contaminant characteristics (also called attributes) against the characteristics of drinking water contaminants that are known to occur in drinking water and are recognized as having negative health impacts. These attributes could include various measures of toxicity, occurrence, and surrogates for these measures where primary data do not exist. A prototype classification algorithm would need to be "trained" to recognize features of contaminants that should be on the CCL by inputting key information about contaminants that we know should and should not be on the CCL.

For demonstration purposes, the NRC used a prototype classification approach known as a "neural network." Neural networks are being used in investment analysis to predict foreign exchange rates, credit worthiness, and signature analysis. The approach relies on expert judgement to determine which attributes should be used to characterize the contaminants and the relative importance of the attributes. The neural network then uses mathematical formulas to evaluate attributes of contaminants against those of known contaminants and makes a prediction based on the importance placed on the contaminants' attributes.

In addition to suggesting a sample prototype classification method, the NRC also identified possible attributes for use in comparing the characteristics of potential contaminants. They suggested the following attributes: potency, severity, prevalence, magnitude, and persistence-mobility. The NRC considered these attributes because of their applicability to both chemicals and microbes, and noted that, after additional analysis and advice, EPA might well determine that other attributes were more appropriate for developing the CCL.

D. Virulence Factor Activity Relationships for Assessing Emerging Waterborne Pathogens

The NRC also addressed the issue of how best to examine emerging waterborne pathogens, opportunistic microorganisms, and other newly identified microorganisms in Classifying Drinking Water Contaminants for Regulatory Consideration (NRC, 2001). The panel recognized several difficulties in classifying microbiological drinking water contaminants. These include difficulties in characterizing microbiological contamination of drinking water, identifying the organism responsible for outbreaks, and developing databases for emerging pathogens. The NRC recommended that EPA explore virulence factor activity relationships (VFARs) to address this problem. The VFAR principle can be described as comparing the gene structure of newly identified waterborne pathogens to pathogens with known genetic structures which have been associated with human disease.

Virulence factors are defined broadly by the NRC as the ability of a pathogen to persist in the environment, gain entry into a host (*e.g.*, humans), reproduce, and cause disease or other health problems either because of its architecture or because of its biochemical compounds. A number of virulence factors are known, including the ability of a microbe to move within a host under its own power, the ability of mechanisms to protect the microbe against the body's defenses (*e.g.*, anti-phagocytosis mechanisms), the ability of a microbe to adhere or attach to the surface of a host cell, and the ability of microbes to produce toxins that injure host cells.

Genetic information in the form of gene sequences has been stored in several computerized "libraries" or "gene banks" for the use of the research community. The NRC described several of these gene banks and provides a list of microorganisms whose genomes have already been studied. The NRC noted that the genetic information of additional microbes are being added to gene banks at a rapid pace (NRC, 2001).

The NRC also recommended that EPA explore the use of gene chip technology (also referred to as biochips, deoxyribonucleic acid (DNA) chips, DNA microarrays, and gene arrays) to assist in classifying drinking water contaminants. Gene chips are devices not much larger than postage stamps. Thousands of tiny cells are typically placed on a glass wafer. Each holds deoxyribonucleic acid, or DNA, from a different human or microbiological

gene. The array of cells on a gene chip makes it possible to carry out a large number of genetic tests on a sample at one time. At the moment, the devices are used in pharmaceutical laboratories to investigate which genes are involved in various normal and disease processes and to speed up the process of finding new drugs.

The NRC believed that this approach has major and far reaching potential and indicated that, in the near future, microarrays could be developed that are labeled with genes for a variety of virulence factors and could be used to assay drinking water samples for the presence of genetic virulence factors of concern.

The NRC recognized that use of the VFAR approach to identify potential waterborne pathogens would require a multi-year commitment and significant cooperation and collaboration by EPA and other participating organizations before the technology can be used to develop the CCL.

V. Implementation of the National Research Council Recommendations

The NRC recommendations provided a possible framework for evaluating a larger number of contaminants and making decisions about contaminants for which data are limited through the use of innovative technologies and expert advice. In making these recommendations, the NRC stressed that more work is needed in the area of research and encouraged EPA to explore different approaches for effective implementation.

The EPA has requested the assistance of NDWAC to evaluate and provide advice on the NRC's recommended classification process. This section describes the role played by NDWAC in assisting EPA's evaluation and implementation of the NRC recommendations and the development of the classification approach.

A. The National Drinking Water Advisory Council Background and Charge

As previously noted, the 1974 SDWA established NDWAC to provide independent advice, consultations, and recommendations to EPA on matters related to the activities, functions, and policies of the Agency under SDWA. To assist in this process, the NDWAC forms work groups of experts to perform assessments of specific drinking water issues. The work groups prepare reports and recommendations that the NDWAC considers when making its recommendations to EPA. The NDWAC CCL Work Group began its deliberations in September 2002. The Work Group is comprised of 21 recognized technical and public health experts representing an array of backgrounds and perspectives.

The NDWAC CCL Work Group is charged with discussing, evaluating, and providing advice to the Agency on methodologies, activities, and analysis needed to implement the NRC recommendations on an expanded approach for the CCL listing process. The EPA is working with the NDWAC CCL Work Group to explore issues related to a contaminant classification approach including (1) collecting and organizing the data, (2) screening the contaminants in the universe to compile the PCCL, (3) classifying contaminants from the PCCL to the CCL, and (4) developing the VFAR concept and classifying microorganisms. The NDWAC CCL Work Group is currently discussing and evaluating the issues related to implementing the NRC recommendations. EPA is assisting the NDWAC CCL Work Group by conducting analyses and investigations that inform the Work Group discussions. The NDWAC CCL Work Group expects to present its recommendations to the NDWAC in 2004.

The NDWAC CCL Work Group and EPA have made great progress in evaluating the NRC recommendations. The EPA recognizes that the recommended approach would require a significant, sustained effort to screen many more data sources for potential CCL contaminants and to adapt computer programs for environmental contaminant selection. The efforts to date have provided substantial information about the scope of the effort and the challenges ahead.

B. Ongoing Analysis of the Classification Approach

1. Organizing and Extracting Data

The NRC recommended that EPA begin by considering a broad universe of chemical, microbiological, and other types of potential drinking water contaminants and contaminant groups. The NRC projects that the scope of the universe could be on the order of tens of thousands of contaminants, which represent a dramatically larger set of substances to be initially considered in terms of types and numbers of contaminants than that used for the creation of the 1998 CCL (262 contaminants from 8 data sources). Considering that there is no comprehensive list of potential drinking water contaminants, and limited data on health effects, occurrence, and other related data for many of the potential contaminants, EPA is challenged with defining the universe of potential drinking water contaminants, determining how it will identify data sources, and identifying what approach it will use for extracting information.

Based on the NRC recommendations, EPA is considering two guiding principles for construction of the CCL universe: (1) The universe should include those contaminants that have demonstrated or potential occurrence in drinking water, and (2) the universe should include those contaminants that have demonstrated or potential adverse health effects. These inclusionary principles apply to selection of contaminants to be included in the CCL universe. The proposed process involves the identification of information and data sources and the development of a means of extracting data to be merged into a CCL universe data set.

The NDWAC CCL Work Group and EPA have identified a number of data sources as potentially useful resources. The data sources vary widely in their intended use (*e.g.*, research, survey, and compliance monitoring); type of data (*e.g.*, concentrations, health effects, chemical information, microbiological occurrence, environmental fate, and genetic sequences); data format; availability; and possible applicability to the universe of contaminants. The data sources include the following:

- Databases recommended by the NRC (NRC 1999a, 1999b, and 2001)
- Databases required by SDWA 1412(b)
- Chemical structure databases (*e.g.*, molecular structure information used for predictive toxicology)
- Chemical property databases (*e.g.*, chemical boiling point and solubility)
- Bibliographic databases (*i.e.*, references to published literature)
- Subscription/commercial databases
- Genomic sequence databases
- International databases
- Other sources of information recommended by NDWAC and other organizations

In addition to data availability and extraction issues, EPA must also address data quality concerns. The Agency is required under SDWA to use the best available peer-reviewed science and data collected by accepted methods or best available methods. While the standards of quality depend on the use to which the data is put, and screening level analyses require less rigorous standards than some other uses (*e.g.*, rule development), the data used to define the CCL universe of contaminants must nonetheless be accurately characterized and its quality

clearly understood. To satisfy these quality assurance objectives, EPA is in the process of developing a Quality Assurance Project Plan to cover all phases of the CCL process, from defining the universe of contaminants to making regulatory determinations.

2. Compiling the PCCL

The NRC recommended that EPA develop a set of screening criteria that could be applied rapidly and routinely, in conjunction with expert judgement, to screen the universe of potential drinking water contaminants for inclusion on the PCCL. The NRC considered this a significant challenge, but did not deliberate extensively on the criteria to be used for this screening. Thus, this screening step has become an area of significant analysis by EPA and the NDWAC CCL Work Group. Work to develop a process and criteria for screening is ongoing, as is the analysis of methods that would enable the screening of contaminants with little or no primary data or information.

In addition to exploring screening criteria, EPA is evaluating how expert judgement could be used to quickly reduce a broad universe to a manageable set of contaminants for the PCCL. While the NRC reports only provided a conceptual recommendation for screening the universe to a PCCL, the NRC indicated that the process should not involve an extensive analysis of data. The NRC suggested that EPA develop coarse screening criteria that can eliminate chemicals with low production volume and low potential for adverse health effects, unless expert judgement of health effects would place a chemical on the PCCL.

As previously described, EPA is coordinating efforts with the NDWAC CCL Work Group to develop a list of occurrence databases to be used in the analysis and will evaluate available human exposure or potential human exposure databases such as production and use databases, environmental release databases, and environmental media and biological tissues monitoring databases. The toxicological or health effects databases being evaluated include health assessment databases and waterborne disease outbreak databases as well as other information.

For health effects screening, EPA is focusing on contaminants that may be potent at levels near those found in drinking water and substances with irreversible or life threatening health effects. The NDWAC CCL Work Group is considering a number of options for processing data and information in order to examine the relationship between adverse health effects and occurrence in drinking water to make decisions on movement to the PCCL.

3. Classifying Contaminants From the PCCL to the CCL

The challenge of classifying a potentially large number of contaminants for movement from the PCCL to the CCL raises the question of what kind of process or method is best suited for performing this task. The NRC panel recommended the use of a prototype classification approach combined with expert judgement. The EPA has asked NDWAC for advice in this area and is exploring several alternative models including: artificial neural networks, classification and regression trees, logistic regression (a specific form of a generalized linear model), and multivariate adaptive regression splines. Work is ongoing to identify and test models and conduct trial classifications using a subset of the contaminants that will be in the universe.

Use of the prototype classification approach necessitates assigning a score to each attribute for a given contaminant. Attributes are descriptive properties which allow different types of contaminants to be compared in a consistent manner. The NRC recommended the following attributes: potency (*i.e.*, the amount of a contaminant that is needed to cause illness); severity (*i.e.*, the seriousness of the health effect); prevalence (*i.e.*, how common does or would a contaminant occur in water); magnitude (*i.e.*, the concentration or expected concentration of a contaminant relative to a level that causes a perceived health effect); and persistence-mobility (*i.e.*, a surrogate for occurrence when occurrence information is unavailable). The EPA and NDWAC CCL Work Group are examining the five attributes recommended by the NRC, as well as exploring other possible attributes.

The EPA and NDWAC CCL Work Group are also exploring how attributes (*e.g.*, potency) for a given contaminant might be scored using differing data elements (*e.g.*, the reference dose (RfD), the no observable adverse effect level (NOAEL), and the lowest observable adverse effect level (LOAEL)), so that the score for an attribute would reflect the degree of the health effect or occurrence relative to other contaminants.

The NDWAC CCL Work Group and EPA have undertaken significant analysis with regard to the severity attribute. For example, the following range of scores was used by the NRC to represent the severity of a given contaminant for health effects as follows:

0. No effect
1. Changes in organ weights with minimal clinical significance
2. Biochemical changes with minimal clinical significance
3. Pathology of minimal clinical significance
4. Cellular changes that could lead to disease; minimal functional change
5. Significant functional changes that are reversible
6. Irreversible changes, treatable disease
7. Single organ system pathology and function loss
8. Multiple organ system pathology and function loss
9. Disease likely leading to death
10. Death

The EPA and NDWAC CCL Work Group are exploring ways that the severity scale provided by the NRC might be modified so that effects in the middle of the scale (*e.g.*, 4–8) would be more easily differentiated and to allow for appropriate scoring of reproductive and developmental effects. The EPA and NDWAC CCL Work Group are also examining possible approaches to scoring chemicals that lack information on a critical effect for severity.

Similarly, EPA is engaged in substantial technical analysis with the NDWAC CCL Work Group of a possible scoring methodology for the attribute potency. The NRC suggested that potency could be measured in terms of the RfD, the NOAEL, the LOAEL, or by other measures.

Additional issues and challenges the NDWAC CCL Work Group is considering include:

1. Which data elements are best suited to estimate the score for an attribute? For example, for the attribute potency, values exist for RfDs, NOAELs, and LOAELs.
2. In what order should data for a given contaminant be considered given the quality, confidence, and certainty of data sources? For example, should EPA score a contaminant using an RfD over an oral LOAEL if both are available?
3. If no RfD or LOAEL is available, then which value should be used to score a contaminant?
4. Should EPA review all types of data elements even when an RfD exists?
5. How should contaminants be scored when data from different sources suggest conflicting scores?
6. When should surrogates be used in place of the preferred data elements? For example, using production and release data to estimate the potential for occurrence may be a better approximation than limited sampling in one location.

7. How should surrogates be expressed and scored?

8. For the health effects attributes, which populations should be targeted in scoring (*e.g.*, adults, children, or sensitive subpopulations)? Is it possible to make that distinction given the data that are available?

9. Should an assessment of certainty and confidence be incorporated into the scoring process to reflect the quality of the data?

10. How should scoring for occurrence data elements be addressed?

11. How should subjectivity of severity scoring process be addressed? For example, some disorders are treatable depending upon when treatment is initiated. How should treatability be accounted for without subjectively referring to a person's ability to obtain medical treatment?

12. What data quality guidelines would be appropriate for classifying contaminants from a PCCL to the CCL? Would different guidelines for screening contaminants be appropriate from a CCL universe to a PCCL?

13. Which models or other approaches would be best suited for classification given the scoring approach?

4. The Virulence Factor Activity Relationship Concept and Classifying Microorganisms

The VFAR process offers a possible alternative to identifying and characterizing microbiological contaminants that lack information. As previously discussed, the VFAR concept can be described as comparing the gene structure of newly identified waterborne pathogens to pathogens with known genetic structures that have been associated with human disease. The NRC recommends the use of the VFAR approach for assessing emerging waterborne pathogens, opportunistic microorganisms, and other newly identified microorganisms. While this approach may offer significant improvements for the future, it may not be sufficiently developed in time for the next CCL (*i.e.*, the 2008 CCL). Some of the challenges to overcome include the ability of microbiological genes to exhibit considerable adaptability by frequently gaining or losing genetic elements. The presence of multiple genetic elements, together with the relative frequency of chromosomal recombinations, results in highly dynamic genes that make predictability difficult.

Researchers have mapped about 100 entire genomes of bacteria and viruses, and the number of mapped genomes, especially of pathogens, is growing rapidly. Researchers store the information in several computerized libraries, or gene banks. Sophisticated computer software programs can sort and match genetic information in these libraries, which can allow researchers to predict the ability of a microbe to produce virulence factors, and compare a microbe to known pathogens. Some waterborne pathogens have similar toxins, surface proteins, and mechanisms of infection, and some of the genes for these factors have been identified.

The NDWAC CCL Work Group and EPA are exploring a means of using gene banks for drinking water applications. For example, EPA searched for genetic sequences associated with virulence using the National Center for Biotechnology Information's GenBank database. The database contains a large list of such sequences, most of which are associated with pathogens or microbes used in laboratory studies. Initial findings indicate that some relevant sequence data are available, however, the data were in a form that proved difficult to use for this purpose.

The EPA is also coordinating efforts with the NDWAC CCL Work Group to evaluate an approach based on bioinformatics to extract relevant information from databases and literature sources on known waterborne pathogen gene sequences. The information could provide the gene sequences needed to demonstrate the potential use of gene chip technology in performing VFAR analysis.

The EPA is also exploring alternative approaches to screen microbes for the next CCL, given the uncertainty surrounding the time frame for a fully developed VFAR approach. For example, EPA is exploring an approach that would construct a microbiological universe, define microbiological attributes, and score the attributes.

The EPA believes that the NRC recommendations hold substantial promise and is exploring ways to take the recommendations beyond the conceptual framework to development and implementation. Additionally, EPA is working with the NDWAC CCL Work Group to define the dimensions of the microbiological universe as part of a step-wise process for defining the CCL. The EPA welcomes comments on these and other relevant microbiological issues to assist the Agency in addressing the NRC recommendations.

VI. Request for Comment

The EPA seeks comments on the range of CCL issues and activities addressed in this notice. EPA is also requesting comment on its decision to carry over the remaining contaminants on the 1998 CCL as the draft CCL 2. The Agency is asking for public comments on the following questions related to the process for developing the 2008 CCL:

1. Which data sources should the Agency use to assemble the universe of potential CCL contaminants?

2. Should the Agency adopt the general framework of moving from a broad universe of potential candidates to a PCCL and finely to a CCL?

3. If so, what criteria should be used for inclusion of a contaminant on the PCCL, and in selecting contaminants from the PCCL to the CCL?

4. How should EPA address contaminants that lack data on toxicity, occurrence, and exposure?

In addition, the Agency welcomes comments on other aspects of the approach recommended by the NRC.

The EPA expects that public comments on these and other relevant issues will assist the Agency in addressing remaining questions posed by the NRC and the NDWAC and welcomes comments from the public. The Agency recognizes that, while the draft CCL 2 has not been compiled using the new approach recommended by the NRC, many of the underlying principles and objectives remain the same. Information and comments submitted on this notice will be considered in determining the final CCL 2 list, as well as in the development of future CCLs and in the Agency's efforts to set drinking water priorities in the future.

VII. References

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Dated: March 16, 2004.

Benjamin H. Grumbles,

Acting Assistant Administrator, Office of Water.

[FR Doc. 04–7416 Filed 4–1–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE & TIME: Meeting closed to the public.
This meeting was cancelled.
* * * * *

DATE AND TIME: Thursday, April 1, 2004. at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Certification for Payment of Presidential Primary Marching Funds: Rev. Alfred C. Sharpton/Sharpton 2004.

FOR FURTHER INFORMATION CONTACT: Robert Biersack, Acting Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–7551 Filed 3–31–04; 9:39 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 2004.

A. Federal Reserve Bank of Cleveland (Nadine W. Wallman, Assistant Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Sky Financial Group, Inc., Bowling Green, Ohio; to merge with Second Bancorp, Inc., Warren, Ohio, and thereby indirectly acquire voting shares of The Second National Bank of Warren, Warren, Ohio.

Board of Governors of the Federal Reserve System, March 29, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–7430 Filed 4–1–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Credit Suisse First Boston, and Credit Suisse Group; both of Zurich, Switzerland; to acquire up to 24.9 percent of Silver Acquisition Corp., Montgomery, Alabama, and thereby indirectly acquire shares of Gold Banc, Leawood, Kansas, and thereby operate a savings association, pursuant to section 225.58(b)(4)(ii) of Regulation Y. Gold Banc proposes to convert to a savings association.

Board of Governors of the Federal Reserve System, March 29, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–7431 Filed 4–1–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0236]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Financial Summary of Obligation and Expenditure of Block Grant Funds (45 CFR 96.30) and SF 269A.

Form/OMB No.: OS–0990–0236.

Use: This collection is needed to allow HHS to verify the financial status of block grant funds and determine aggregate obligations, expenditures and available balances in order to close out the grant account in accordance with Public Law 101–51.

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Annual Number of Respondents: 620.

Total Annual Responses: 620.

Average Burden Per Response: 1 hour.

Total Annual Hours: 620.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0236), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: March 26, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–7422 Filed 4–1–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure (NHII).

Time and Date: 8:30 a.m.–2:30 p.m. April 9, 2004.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 425A, Washington, DC 20201.

Status: Open.

Purpose: The Workgroup will meet to discuss plans for the NHII Conference being hosted by the U.S. Department of Health and Human Services July 21–23, 2004 (see *http://www.hsrnet.net/nhii*) and the meeting of the NCVHS NHII Workgroup that will take place on July 23..

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Mary Jo Deering, Lead Staff Person for the NCVHS Workgroup on the National Health Information Infrastructure, Office of the Assistant Secretary for Public Health and Science, DHHS, Room 738G, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 260–2652, or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: March 26, 2004.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–7493 Filed 4–1–04; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; AoA Nutrition and Physical Activity Campaign

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by May 3, 2004.

ADDRESSES: Submit written comments on the collection of information by fax (202) 395–6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Brenda Aguilar, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Kathleen Loughrey, *kathleen.loughrey@aoa.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance. This notice solicits comments on the information collection requirements relating to organizations that wish to enroll as a partner with AoA in a campaign to create awareness and make nutrition and physical activity programs available to older Americans. The requested information includes providing general information about the entity, its programs, and counts of populations served.

AoA estimates the burden of this collection of information as follows: AoA estimates a total of no more than 500 hours will be required to collect this information. This estimate is based on these assumptions: AoA estimates that 2,000 organizations will complete an entry form to become a campaign partner. Completion of each entry form will require a total of 15 minutes per organization including five minutes to answer questions, five minutes to insert a program description, and five minutes to look up data from existing program records.

Dated: March 30, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–7452 Filed 4–1–04; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: National Center for Injury Prevention and Control (NCIPC) Initial Review Group (IRG).

Times and Dates: 6:30 p.m.–9:30 p.m., April 12, 2004. 8 a.m.–9:30 p.m., April 13, 2004. 8 a.m.–5 p.m., April 14, 2004.

Place: Four Seasons Hotel Atlanta, 75 Fourteenth Street, Atlanta, Georgia 30309.

Status: Open: 6:30 p.m.—7 p.m., April 12, 2004. Closed: 7 p.m.–9:30 p.m., April 12, 2004. Closed: 8 a.m.–3:30 p.m., April 13, 2004. Open: 6:30 p.m.–7 p.m., April 13, 2004. Closed: 7 p.m.–9:30 p.m., April 13, 2004. Closed: 8 a.m.–5 p.m., April 14, 2004

Purpose: This group is charged with providing advice and guidance to the Secretary of Health and Human Services and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and

private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control and supports Injury Control Research Centers (ICRCs).

Matters To Be Discussed: Agenda items include an overview of the injury program, discussion of the review process and panelists' responsibilities, and the review of and vote on grant applications. Beginning at 7 p.m., April 12, through 3:30 p.m., April 13, the Group will review individual research grant applications submitted in response to 12 Program Announcements (PAs) related to the following individual research grant applications: #04044, Grants for Acute Care, Rehabilitation, and Disability Prevention Research; #04045, Grants for Violence-Related Injury Prevention Research: Youth Violence Suicidal Behavior, Child Maltreatment, Intimate Partner Violence, and Sexual Violence; #04046, Grants for New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Biomechanics, and Acute Care, Disability, and Rehabilitation-Related Research; #04047, Grants for Traumatic Injury Biomechanics Research; #04048, Research Grants to Prevent Unintentional Injuries; #04049, Grants for Dissertation Awards for Doctoral Candidates for Violence-Related and Unintentional Injury Prevention Research in Minority Communities; #04053, Practices to Improve Training Skills of Home Visitors; #04054, Youth Violence Prevention Through Community-Level Change; #04055, Efficacy Trials of Parenting Programs for Fathers; #04056, Sociocultural and Community Risk and Protective Factors for Child Maltreatment and Youth Violence; #04060, Cooperative Agreement for Research on the Association Between Exposure to Media Violence and Youth Violence; and #04062, Studies to Determine the Prevalence of a History of Traumatic Brain Injury (TBI) in an Institutionalized Population. In addition, the IRG will vote on the results of site visits conducted in response to Program Announcement #04011 pertaining to Injury Control Research Center (ICRC) applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6),title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Executive Secretary, NCIPC IRG, CDC, 4770 Buford Highway, NE., M/S K02, Atlanta, Georgia 30341–3724, telephone (770) 488–4655.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 24, 2004.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7434 Filed 4–1–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–290 and CMS–379]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Program: Process for Making National Coverage Determinations; *Form No.:* CMS–R–290 (OMB# 0938–0776); *Use:* These information collection requirements provide the process CMS uses to make a national coverage decision for a specific item or service under sections 1862 and 1871 of the Social Security Act. This streamlines our decision making process and increases the opportunities for public participation in making national coverage decisions.; *Frequency:* Other: as needed; *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 8,000.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* The Financial Statement of Debtor and Supporting Regulations in 42 CF Section 405.376; *Form No.:* CMS–379 (OMB# 0938–0270); *Use:* This form is used to collect financial information which is needed to evaluate requests from physicians/suppliers to pay indebtedness under an extended repayment schedule, or to compromise a debt less than the full amount; *Frequency:* Other: as needed; *Affected Public:* Business or other for-profit, individuals or households; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 1,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 25, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–7421 Filed 4–1–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Meeting of the Advisory Committee on Organ Transplantation.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the sixth meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human Services (HHS). The meeting will be held from approximately 9 a.m. to 5:30 p.m. on May 6, 2004, and from 9 a.m. to 5 p.m. on May 7, 2004, at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (*see* below).

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. section 217a, section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 41 members, including the Chair. Members are serving as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

ACOT will hear and discuss reports from the following ACOT subcommittees: Valuable Consideration Subcommittee, Fair Treatment Subcommittee, and Wait List Subcommittee.

The draft meeting agenda will be available on April 16 on the Department's donation Web site at *http://www.organdonor.gov/acot.html.*

A registration form will be available on April 5 on the Department's donation Web site at *http://www.organdonor.gov/acot.html.* The completed registration form should be submitted by facsimile to Professional and Scientific Associates (PSA), the logistical support contractor for the meeting, at fax number (703) 234–1701. Individuals without access to the Internet who wish to register may call Bryan Slattery with PSA at (703) 234–1734. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACOT Executive Director, Jack Kress, in advance of the meeting. Mr. Kress may be reached by telephone at (301) 443–8653, e-mail: *jkress2@hrsa.gov*, or in writing at the address of the Division of Transplantation provided below. Management and support services for ACOT functions are provided by the Division of Transplantation, Special Programs Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 16C–17, Rockville, Maryland 20857; telephone number (301) 443–7577.

After the presentation of the subcommittee reports, members of the public will have an opportunity to provide comments on the subcommittee reports. Because of the Committee's full agenda and the timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting.

Dated: March 24, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–7457 Filed 4–1–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, February 26, 2004, 11 a.m. to February 26. 2004, 12 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the Federal Register on February 23, 2004, 69 FR 8212.

The meeting will be held on April 5, 2004 and the time has been changed to 10 a.m. to 11 a.m. The meeting location remains the same. The meeting is closed to the public.

Dated: March 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7500 Filed 4–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Science; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: May 13–14, 2004.

Closed: May 13, 2004, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 45 Center Drive, Bethesda, MD 20892.

Open: May 13, 2004, 10:30 a.m. to 5 p.m.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities, and other business of Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 45 Center Drive, Bethesda, MD 20892.

Closed: May 14, 2004, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, PhD, Acting Associate Director, Division of Extramural Activities, 45 Center Drive, Room 2AN24G, MSC6200, Bethesda, MD 20892–6200, (301) 594–3910, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when

applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7501 Filed 4–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 10, 2004, 9:30 a.m. to March 10, 2004, 10:30 a.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on March 8, 2004, 69 FR 10727–10730.

The meeting will be held April 2, 2004. The meeting time and location remain the same. The meeting is closed to the public.

Dated: March 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7502 Filed 4–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review AMCB Overflow.

Date: April 2, 2004.

Time: 11 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kenneth A. Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Protein Drug Formulation.

Date: April 7, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7826, Bethesda, MD 20892, (301) 435–1159, *ameros@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Synaptic Biochemistry, Neurosecretion, Neuronal Cell Biology, Cytoskeleton, and Protein.

Date: April 8, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP AARR E(03).

Date: April 8, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kenneth A Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, (301) 435–1166, *roebuckk@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP AARR E (02).

Date: April 14, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kenneth A Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892. (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR.

Date: April 20, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW, Washington, DC 20036.

Contact Person: Joseph Kimm, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249, *kimmj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Searching for Psychiatric Disorder Genes.

Date: April 26, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *remondid@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–

93.878, 93.892, 93.893. National Institutes of Health, HHS)

Dated: March 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7503 Filed 4–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Inhibitors of 3-Hydroxy-3-Methylglutaryl Coenzyme A Reductase as a Modality in Cancer Therapy

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent 6,040,334 issued March 21, 2000, entitled "Use of Inhibitors of 3-Hydroxy-3-Methylglutaryl Coenzyme A Reductase as a Modality in Cancer Therapy" (DHHS Reference No. E–146–1992/0), and all related foreign patents/patent applications, to Bionaut Pharmaceuticals, Inc., which is located in Cambridge, MA. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human pharmaceutical use of inhibitors of 3-Hydroxy-3-Methylglutaryl Coenzyme A Reductase as anti-cancer agents.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 1, 2004, will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: George G. Pipia, PhD, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; telephone: (301) 435–5560; facsimile: (301) 402–0220; e-mail: *pipiag@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The invention provides a method for treating mammalian adenocarcinomas and sarcomas comprising administration of an effective amount of an inhibitor of HMG Co-A or homologues of the inhibitor. Adenocarcinoma is known to afflict the prostate, stomach, lung, breast, and colon, as well as other sites. An example of a sarcoma within the meaning of the present invention is Ewing's sarcoma, which is a medullary bone tumor typically attacking the long bones.

Examples of compounds useful in the present invention are lovastatin and simvastatin as well as their homologues. Also included are compounds classified as HMG Co-A inhibitors, as well as their homologues or analogues. Generally, these HMG Co-A inhibitors are known to lower serum cholesterol in humans. However, the present invention is not so limited. That is, an inhibitor of HMG Co-A or one of its homologues may work in the method of the present invention without necessarily lowering serum cholesterol. The invention focuses not on the compound's ability to lower cholesterol, but rather on the compound's ability to treat selected cancers, such as adenocarcinomas of the prostate, stomach, lung, breast, and colon and certain sarcomas such as Ewing's sarcoma. Typically, the oral route is preferred.

Also provided by the invention is a method of reducing prostate specific antigen (PSA) levels in a patient having prostatic adenocarcinoma comprising administration of an effective amount of a compound which is an inhibitor of HMG Co-A or a homologue of such inhibitor. The invention also includes a method of reducing PSA in conjunction with another treatment modality.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 24, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–7504 Filed 4–1–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS" National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301–443–6014 (voice), 301–443–3031 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to

conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917, Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200/800–735–5416.

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 1120 Stateline Rd. West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.).

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE. 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 S., Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories , P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891 x8991.

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750 (Formerly: Associated Pathologists Laboratories, Inc.).

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130.

Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409.

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–7025 Filed 4–1–04; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Request for Applications for State Incentive Grants for Treatment of Persons with Co-Occurring Substance Related and Mental Disorders (COSIG)

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of request for applications for State Incentive Grants for Treatment of Persons with Co-Occurring Substance Related and Mental Disorders (COSIG).

Authority: Sections 509 and 520A of the Public Health Service Act.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), and Center for Mental Health Services (CMHS), are accepting applications for Fiscal Year 2004 grants to develop and enhance the infrastructure of States and their treatment service systems to increase the capacity to provide accessible, effective, comprehensive, coordinated/integrated, and evidence-based treatment services to persons with co-occurring substance abuse and mental health disorders, and their families. COSIG also provides an opportunity to participate in an evaluation of the feasibility, validity and reliability of the proposed co-occurring performance measures for the future Performance Partnership Grants (PPGs), and to participate in a national evaluation of the COSIG program.

DATES: Applications are due on June 8, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on program issues contact: Richard E. Lopez, J.D., PhD., SAMHSA/CSAT/DSCA, 5600 Fishers Lane, Rockwall II, Suite 8–147, Rockville, MD 20857, Phone: (301) 443–7615; E-Mail: *rlopez@samhsa.gov*; or Lawrence Rickards, PhD., SAMHSA/CMHS/DSSI, 5600 Fishers Lane, Room 11C–05, Rockville, MD 20857; Phone: 301–443–3707; E-mail : *lrickard@samhsa.gov*.

For questions on grants management issues contact: Kathleen Sample, SAMHSA/Division of Grants Management, 5600 Fishers Lane, Suite 630, Rockville, MD 20857, Phone: (301) 443–9667; E-mail: *ksample@samhsa.gov*.

SUPPLEMENTARY INFORMATION:

State Incentive Grants for Treatment of Persons with Co-Occurring Substance Related and Mental Disorders (SM 04–012) (Initial Announcement)

Catalog of Federal Domestic Assistance (CFDA) No.: CFDA No. 93.243.

Key Dates

Application Deadline.—Applications are due by June 8, 2004.

Intergovernmental Review (E.O. 12372).—Letters from State Single Point of Contact (SPOC) are due August 7, 2004.

Table of Contents

I. Funding Opportunity Description

1. Introduction

As authorized under Section 509 and 520A of the Public Health Services Act, the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), and Center for Mental Health Services (CMHS), announce the availability of funds for Fiscal Year 2004 grants. These grants will develop and

enhance the infrastructure of States and their treatment service systems to increase the capacity to provide accessible, effective, comprehensive, coordinated/integrated, and evidence-based treatment services to persons with co-occurring substance abuse and mental health disorders, and their families.

2. Expectations

2.1 Background

There is a growing consensus among key stakeholders about the critical importance of improving services to people with co-occurring disorders and the action steps that are needed to do so. SAMHSA released a landmark Report to Congress on Co-occurring Disorders (RTC) on December 2, 2002, creating a critical opportunity for SAMHSA to provide leadership to support State efforts to improve services for people with co-occurring disorders.

COSIG provides funding to the States to develop or enhance their infrastructure to increase their capacity to provide accessible, effective, comprehensive, coordinated/integrated, and evidence-based treatment services to persons with co-occurring substance abuse and mental disorders. COSIG also provides an opportunity to participate in an evaluation of the feasibility, validity and reliability of the proposed co-occurring performance measures for the future Performance Partnership Grants (PPGs), and to participate in a national evaluation of the COSIG program.

COSIG is built on the following concepts and principles:

• COSIG uses the definition of co-occurring disorders developed by the consensus panel convened to draft SAMHSA's Treatment Improvement Protocol (TIP), *Substance Abuse Treatment for Persons with Co-occurring Disorders:* People with co-occurring substance abuse and mental disorders are `* * * individuals who have at least one psychiatric disorder as well as an alcohol or drug use disorder. While these disorders may interact differently in any one person (*e.g.*, an episode of depression may trigger a relapse into alcohol abuse, or cocaine use may exacerbate schizophrenic symptoms) at least one disorder of each type can be diagnosed independently of the other."

• COSIG will support infrastructure development and services across the continuum of co-occurring disorders from least severe to most severe (*i.e.*, Quadrants I, II, III, and IV of the State Directors' Conceptual Framework " See Appendix E). However, under COSIG, SAMHSA's emphasis is on Quadrants II & III.

• COSIG is appropriate for States at any level of infrastructure development. States will not be at a disadvantage either for being at an early stage of development or at a more advanced stage. Some States and communities throughout the country already have initiated system-level changes and developed innovative programs that overcome barriers to providing services for individuals of all ages who have co-occurring substance abuse and mental disorders. The COSIG grant program reflects the experience of States to date. [See Appendix D for summaries of case studies of these efforts.]

2.2 Program Requirements

In developing their COSIG applications, States will select one or more of the capacity building goals enunciated in SAMHSA's Report to Congress on Co-Occurring Disorders and will implement infrastructure development and enhancement activities (tailored to State needs) that will support the selected goal(s) (Report to Congress on the Prevention and Treatment of Co-Occurring Substance Abuse Disorders and Mental Disorders, USDHHS, SAMHSA, November 2002; Chapter V, Five-Year Blueprint for Action, Capacity, SAMHSA State Services and Treatment Capacity Goals, page 113). Applicants will identify measurable outcomes for each goal, establish targets, and describe how progress will be tracked and measured over the course of the grant. In addition, all COSIG grantees will be required to report on the proposed co-occurring performance measures for the PPGs and may be required to participate in an evaluation study to determine the feasibility, validity, and reliability of the co-occurring performance measures. This evaluation will be funded through a separate contract, though data collection and reporting costs are to be borne by the COSIG grantees.

COSIG program will have two phases:

• Phase I—The first three years of the grant will focus on infrastructure development/enhancement (as described below). Awards will be for up to $1.1 million per year for the first three years.

• Phase II—An additional 2 years of funding will be provided at a lower level for evaluation and continued collection/reporting of performance data. Grantees without service pilots (see below) will receive up to $100,000 per year in years 4 and 5. Grantees with service pilots will receive up to half of their third year award in year 4 and up to $100,000 in year 5.

The capacity building goals in SAMHSA's Co-Occurring Report to Congress are as follows:

• Screen all individuals for the presence of co-occurring disorders;

• Assess the level of severity of co-occurring disorders;

• Treat both disorders in a comprehensive and coordinated manner that is seamless to the client and, where feasible, that involves the client's family. This may involve consultation/collaboration with other providers, if the provider does not have the ability to offer comprehensive treatment;

• Train providers to screen, assess, and develop preventive interventions and treatment plans for people who have co-occurring disorders;

• Evaluate the impact of prevention and treatment services on individuals who have co-occurring disorders and their families.

States will have flexibility to identify specific infrastructure development and enhancement activities that support the goals selected and respond to the needs and priorities identified by the State. However, the experience of other States suggests that certain areas of infrastructure development (*e.g.*, standardized screening and assessment, complementary licensure and credentialing requirements, service coordination and network building, financial planning, and information sharing) reflect critical pathways for establishing complementary service delivery capacity in substance abuse and mental health service systems. Although COSIG awardees are not required to use COSIG funds in each of these areas, applicants must discuss in their applications the status of the State with regard to each area of infrastructure development, identify the area(s) that will be targeted with COSIG funds and describe how the State proposes to use COSIG funds in each area selected.

• *Standardized Screening and Assessment:* A number of screening and assessment instruments exist that can be used to identify and effectively assess the needs of persons with co-occurring disorders. At present, there is no standard for using these instruments or for ensuring that screening and assessment are even done in existing programs throughout the States. Adoption of acceptable protocols Statewide can help ensure that the initial objectives of the SAMHSA Report to Congress are achieved.

• *Complementary Licensure and Credentialing Requirements:* State licensure, credentialing policies, and legal requirements often act as barriers to providing effective integrated services

for persons with co-occurring disorders. Review and revision of these laws and policies are a critical initial step toward improving services and extending effective substance abuse treatment to existing mental health treatment programs and vice versa.

• *Service Coordination and Network Building:* Conventional boundaries between single-focus agencies impede the clinical progress of persons with co-occurring disorders. Network building will help States develop more effective linkages across systems of care. This activity area also includes the development of a permanent State-level coordinating body and assignment of specific "boundary spanning" responsibilities designed to ensure continuous coordination which yields the most efficient use of agency resources and the elimination of service redundancies.

• *Financial Planning:* Current reimbursement practices inhibit coordination/integration of services and effective treatment for persons with co-occurring disorders. Mental health and substance abuse services are funded through separate Federal, State, local, and private funding sources. The goal of comprehensive financial planning is the development of effective and innovative approaches for coordinating funds from these multiple programs to fund seamless services for individuals with co-occurring disorders—while maintaining accountability—and the removal of barriers that inhibit effective resource coordination.

• *Information Sharing:* Often there is little or no communication among various departments and levels of government that have separate administrative structures, constituencies, mandates, and target groups. The goal of information sharing, ideally through utilization of the State's integrated MIS, is to ensure communication between providers so that treatment is more suited to the person's personal needs and characteristics by linking services and information across different systems of care.

The program will allow (but not require) up to 50% of the grant to be used for services pilots to test the infrastructure enhancements that are being made through the grant. In other words, these service pilots will help States that choose to implement them to determine whether the enhancements are feasible and whether they are resulting in the intended outcomes. Patient services are required in a pilot.

Applicants must commit to cooperating with, coordinating with, and supporting the efforts of SAMHSA's Co-occurring Cross Training and Technical Assistance Center (separately funded). The purpose of the Center is to provide a broadly focused technical assistance and training to States and community agencies to enable them to provide effective prevention and treatment services to meet the needs of persons with, or at-risk of developing, co-occurring disorders (including the homeless), whether in the mental health, substance abuse, criminal justice, or other social/public health systems.

Pre-Application Assistance: In addition to other application materials, applicants may want to obtain a draft copy of SAMHSA's *Treatment Improvement Protocol (TIP), Substance Abuse Treatment for Persons with Co-occurring Disorders* and the *Co-Occurring Disorders: Integrated Dual Disorders Treatment Implementation Resource Kit*, referred to in this grant announcement. These SAMHSA-funded resources are not yet available for distribution to the general public. We fully expect that the TIP will be available for use when the grant awards are made. The Resource Kit is currently undergoing pilot testing. In the interim, to assist the States in preparing applications in response to this RFA, a limited number of copies of the TIP and Resource Kit are available exclusively for use by potential applicants.

Potential applicants must not reproduce these copies and should discard them after completing their grant application.

To receive draft copies of Treatment Improvement Protocol (TIP), Substance Abuse Treatment for Persons with Co-occurring Disorders and the Co-Occurring Disorders: Integrated Dual Disorders Treatment Implementation Resource Kit for use in preparing the application, provide your *name, position title, mailing address* for receipt of packages, *email address,* and *phone number* to:

Richard E. Lopez, J.D., Ph.D., SAMHSA/CSAT/DSCA, 5600 Fishers Lane/Rockwall II, 8–147, Rockville, MD 20857, (301) 443–7615, E-mail: *rlopez@samhsa.gov,*

or

Lawrence Rickards, Ph.D., SAMHSA/CMHS/DSSI, 5600 Fishers Lane, 11C–05, Rockville, MD 20857, (301) 443–3707, E-mail: *lrickard@samhsa.gov.*

2.3 Data and Performance Measurement

All awardees will use the co-occurring performance measures adopted by National Association of State Alcohol and Drug Abuse Directors (NASADAD), and the National Association of State Mental Health Program Directors (NASMHPD), in conjunction with SAMHSA, to monitor the growth of their service capacity for treating persons with co-occurring disorders. Costs for collecting and reporting data on these measures should be included in the proposed budget for the COSIG. The co-occurring performance measures are as follows:

• Percentage of clients (adults and children/adolescents) in mental health and substance abuse programs with symptoms of the corresponding co-occurring problem;

• Percent of treatment programs that:

—Screen for co-occurring disorders;
—Assess for co-occurring disorders;
—Provide treatment to clients through collaborative, consultative and integrated models of care;

• Percentage of clients who experience reduced impairment from their co-occurring disorders following treatment.

Applicants must describe their current capacity to collect data relating to each of these measures, must present baseline data if available, and must project targets for these measures for each year of the COSIG grant. Applicants must describe how they will collect and report data related to the PPG measures during the first 6–8 months of the grant, and must demonstrate a capacity to do so.

These measures will be used by all COSIG awardees. SAMHSA may award a separate contract to evaluate the interim measures for validity and reliability and to develop final standards.

The terms and conditions of the grant award also will specify the data to be submitted to SAMHSA and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

Applicants should be aware that SAMHSA is working to develop a set of required core performance measures for four types of grants (*i.e.*, Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants). As this effort proceeds, some of the data collection and reporting requirements included in SAMHSA's programs may change. All grantees will be expected to comply with any changes in data collection requirements that occur during the grantee's project period.

2.4 Grantee Meetings

Grantees must attend (and, thus must budget for) two technical assistance meetings during each year of the grant. Each meeting will be three days. At a

minimum, three persons (Project Director, Project Evaluator, and staff from the Governor's Office) are expected to attend each meeting. These meetings will usually be held in the Washington, DC area.

SAMHSA will provide post award support to grantees through technical assistance on clinical, programmatic, and evaluation issues. Applicants must agree to participate in these activities.

2.5 Evaluation

SAMHSA may require COSIG grantees to participate in an evaluation of the feasibility, validity, and reliability of the proposed co-occurring performance measures for the PPGs.

Grantees must evaluate their projects, and applicants are required to describe their evaluation plans in their applications. The evaluation should be designed to provide regular feedback to the project to improve services. The evaluation must include both process and outcome components. Process and outcome evaluations must measure change relating to project goals and objectives over time compared to baseline information. Control or comparison groups are not required. You must consider your evaluation plan when preparing the project budget.

Process components should address issues such as:

- How closely did implementation match the plan?
- What types of deviation from the plan occurred?
- What led to the deviations?
- What impact did the deviations have on the intervention and evaluation?
- Who provided (program, staff) what services (modality, type, intensity, duration), to whom (individual characteristics), in what context (system, community), and at what cost (facilities, personnel, dollars)?

Outcome components should address issues such as:

- What was the effect of infrastructure development on service capacity and other system outcomes?
- What program/contextual factors were associated with outcomes?
- What individual factors were associated with outcomes?
- How durable were the effects?

If the project includes an implementation pilot involving services delivery, the evaluation should include client and system outcomes.

SAMHSA *may* choose to implement a cross-site evaluation of the COSIG grant program. If conducted, the cross-site evaluation will be managed through a public/private collaboration. States will be required to collaborate in the evaluation by attending up to two meetings annually, participating in the development of a cross-site evaluation plan, and by submitting information consistent with the plan. Applicants must specifically agree to participate in a cross-site evaluation and must budget for attendance by two persons at two meetings annually. These two annual meetings are in addition to the two annual technical assistance meetings discussed above. Once the final standards for the performance measures are developed, COSIG awardees will be required to collect and report outcomes using the final standards for the remainder of their grants.

No more than 20% of the total grant award may be used for evaluation and data collection. The evaluation and data collection may be considered "Infrastructure" and/or "Implementation Pilots" expenditures, depending on their purpose.

CMHS has developed a variety of evaluation tools and guidelines that may assist applicants in the design and implementation of the evaluation. These materials are available for free downloads from: *http://www.tecathsri.org.*

II. Award Information

1. Award Amount

It is expected $4.5 million will be available to fund up to 4 COSIG awards in FY 2004. The awards will range from $500,000 to $1.1 million in total costs (direct and indirect) per year. Grantees in years 1–3 will receive up to $1.1 million per year. Grantees with service pilots will receive up to half of the third year award in the 4th year to phase down the services pilot and up to $100,000 for evaluation in year 5. For example, if you ask for $1.1 million in year 3, you can request up to $550,000 in Year 4. If you request less than $1.1 million in year 3, then your year 4 request must be proportionately less. Grantees without service pilots will receive up to $100,000 for evaluation in both years 4 and 5. Proposed budgets cannot exceed the allowable amount in any year of the proposed project. The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of the applications received.

2. Funding Mechanism

Awards will be made as grants.

III. Eligibility Information

1. Eligible Applicants

Only the immediate Office of the Governor of States may apply. State-level agencies are not considered to be part of the immediate Office of the Governor. This means, for example, that the State Mental Health, or Substance Abuse Authorities, or other State-level agencies within the Office of the Governor, cannot apply independently. SAMHSA has limited the eligibility to Governors of States because the immediate Office of the Governor has the greatest potential to provide the multi-agency leadership needed to develop the State's infrastructure/treatment service systems to increase the State's capacity to provide accessible, effective, comprehensive, coordinated/integrated, and evidence-based services to persons with co-occurring substance abuse and mental health disorders, and their families.

The Governor may designate a lead official to be Program Director for the grant. The application must reflect substantial involvement of the State Mental Health Authority (SMHA) and the State Substance Abuse Authority (SSA), and other relevant agencies, and must reflect substantial involvement and oversight by the immediate Office of the Governor.

The application face page (form 424) must be signed by the Governor.

As defined in the Public Health Service (PHS) Act, the term "State" includes all 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. Applications from State agencies other than the Office of the Governor, or from government entities that do not meet the definition of "State," are not eligible for funding.

This grant program is appropriate for all States regardless of their level of infrastructure development.

2. Cost-Sharing

Cost-sharing (see Appendix B. Glossary) is not required in this program, and applications will not be screened out on the basis of cost-sharing. However, you may include cash or in-kind contributions (see Glossary) in your proposal as evidence of commitment to the proposed project.

3. Other

Applications must comply with the following requirements or they will be screened out and will not be reviewed: use of the PHS 5161–1 application; application submission requirements in Section IV–3 of this document; and formatting requirements provided in Section IV–2.3 of this document.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix A of this document.)

1. Address to Request Application Package

You may request a complete application kit by calling one of SAMHSA's national clearinghouses:

- National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686; or
- National Mental Health Information Center at 1–800–789–CMHS (2647).

You also may download the required documents from the SAMHSA Web site at *http://www.samhsa.gov*. Click on "Grant Opportunities."

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants;
- Standard terms and conditions for SAMHSA grants;
- Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and
- Enhanced instructions for completing the PHS 5161–1 application.

2. Content and Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following documents:

- PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. You must use the PHS 5161–1. Applications that are not submitted on the required application form will be screened out and will not be reviewed.
- Request for Applications (RFA)—Includes instructions for the grant application. This document is the RFA.

You must use the above documents in completing your application.

2.2 Required Application Components

To ensure equitable treatment of all applications, applications must be complete. In order for your application to be complete, it must include the required ten application components (Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist).

- *Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [**Note:** Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]
- *Abstract*—Your total abstract should not be longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.
- *Table of Contents*—Include page numbers for each of the major sections of your application and for each appendix.
- *Budget Form*—Use SF 424A, which is part of the 5161–1. Fill out Sections B, C, and E of the SF 424A.
- *Project Narrative and Supporting Documentation*—The Project Narrative describes your project. It consists of Sections A through C. These sections in total may not be longer than 30 pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information" of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections D through G. There are no page limits for these sections, except for Section F, Biographical Sketches/Job Descriptions.

- *Section D*—Literature Citations. This section must contain complete citations, including titles and all authors, for any literature you cite in your application.
- *Section E*—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. Be sure to show that no more than 20% of the total grant award will be used for data collection and evaluation, and no more than 50% of the grant will be used for services pilots, if applicable.
- *Section F*—Biographical Sketches and Job Descriptions.

—Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.
—Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.
—Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

- *Section G*—Confidentiality and SAMHSA Participant Protection/Human Subjects. Section IV–2.4 of this document describes requirements for the protection of the confidentiality, rights and safety of participants in SAMHSA-funded activities. This section also includes guidelines for completing this part of your application.
- *Appendices 1 through 3*—Use only the appendices listed below. Do not use more than 30 pages (excluding data collection instruments and interview protocols) for the appendices. Do not use appendices to extend or replace any of the sections of the Project Narrative. Reviewers will not consider them if you do.

—*Appendix 1:* Letters of Commitment/Support from stakeholders and project participants/involved agencies.
—*Appendix 2:* Sample Consent Forms
—*Appendix 3:* Data Collection Instruments/Interview Protocols. (Note: Appendix 3 has no page limit.)
—*Assurances*—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1. Because grantees in the COSIG program may use some of the grants funds to provide direct substance abuse services, applicants are required to complete the Assurance of Compliance with SAMHSA Charitable Choice Statutes and Regulations, Form SMA 170. This form will be posted on SAMHSA's web site with the RFA and provided in the application kits available at the National Clearinghouse for Alcohol and Drug Information and the National Mental Health Information Center.
—*Certifications*—Use the "Certifications" forms found in PHS 5161–1.
—*Disclosure of Lobbying Activities*—Use Standard Form LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or

use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots" lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

—*Checklist*—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

2.3 Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

• Information provided must be sufficient for review.

• Text must be legible.

—Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

—Text in the Project Narrative cannot exceed 6 lines per vertical inch.

• Paper must be white paper and 8.5 inches by 11.0 inches in size.

• To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

—Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the 30-page limit for the Project Narrative.

—Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by 30. This number represents the full page less margins, multiplied by the total number of allowed pages.

—Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

• The 30-page limit for Appendices 1 and 2 cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help reviewers to consider your application.

• Pages should be typed single-spaced with one column per page.

• Pages should not have printing on both sides.

• Please use black ink, and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

Send the original application and two copies to the mailing address in Section IV–6.1 of this document. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

2.4 SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

You must describe your procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section G of your application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of your application may result in the delay of funding.

Confidentiality and Participant Protection:

All applicants *must* address each of the following elements relating to confidentiality and participant protection. You must describe how you will address these requirements.

1. Protect Clients and Staff From Potential Risks

• Identify and describe any foreseeable physical, medical, psychological, social, and legal risks or potential adverse effects as a result of the project itself or any data collection activity.

—Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.

—Identify plans to provide guidance and assistance in the event there are adverse effects to participants.

—Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. Fair Selection of Participants

• Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other targeted groups.

• Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, and individuals who are likely to be particularly vulnerable to HIV/AIDS.

• Explain the reasons for *including or excluding* participants.

• Explain how you will recruit and select participants. Identify who will select participants.

3. Absence of Coercion

• Explain if participation in the project is voluntary or required. Identify possible reasons why participation is required, for example, court orders requiring people to participate in a program.

• If you plan to compensate participants, state how participants will be awarded incentives (*e.g.*, money, gifts, etc.).

• State how volunteer participants will be told that they may receive services intervention even if they do not participate in or complete the data collection component of the project.

4. Data Collection

• Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.

• Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for

evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.

• Provide in Appendix 3, "Data Collection Instruments/Interview Protocols," copies of *all* available data collection instruments and interview protocols that you plan to use.

5. Privacy and Confidentiality

• Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.

• Describe:

—How you will use data collection instruments.
—Where data will be stored.
—Who will or will not have access to information.
—How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. Adequate Consent Procedures

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.

• State:

—Whether or not their participation is voluntary.
—Their right to leave the project at any time without problems.
—Possible risks from participation in the project.
—Plans to protect clients from these risks.

• Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must obtain *written* informed consent.

• Indicate if you will obtain informed consent from participants or assent from minors along with consent from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include, as appropriate, sample consent forms that provide for: (1) Informed consent for participation in service intervention; (2) informed consent for participation in the data collection component of the project; and (3) informed consent for the exchange (releasing or requesting) of confidential information. The sample forms must be included in Appendix 2, "Sample Consent Forms", of your application. If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data?

• Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. Risk/Benefit Discussion

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations

Depending on the evaluation and data collection requirements of the particular funding opportunity for which you are applying or the evaluation design you propose in your application, you may have to comply with the Protection of Human Subjects Regulations (45 CFR part 46).

Applicants must be aware that even if the Protection of Human Subjects Regulations do not apply to all projects funded under a given funding opportunity, the specific evaluation design proposed by the applicant may require compliance with these regulations.

Applicants whose projects must comply with the Protection of Human Subjects Regulations must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, these applicants will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and that IRB approval has been received prior to enrolling any clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the web at *http://ohrp.osophs.dhhs.gov.* You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

3. Submission Dates and Times

Applications are due by close of business on June 8, 2004. Your application must be received by the application deadline. Applications sent through postal mail and received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) Web site at *www.whitehouse.gov/omb/grants/spoc.html.*

• Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.

• If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.

• For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.

• The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland

20857, ATTN: SPOC—Funding Announcement No. [fill in pertinent funding opportunity number from the NOFA].

5. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

- Institutions of Higher Education: OMB Circular A–21
- State and Local Governments: OMB Circular A–87
- Nonprofit Organizations: OMB Circular A–122
- Appendix E Hospitals: 45 CFR Part 74

In addition, grant recipients must comply with the following funding restrictions:

- Grant funds must be used for purposes supported by the program.
- Grant funds may not be used to pay for the purchase or construction of any building or structure to house any part of the grant project. Applications may request up to $75,000 for renovations and alterations of existing facilities.

6. Other Submission Requirements

6.1 Where to Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch,5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857.

Be sure to include the short title and funding announcement number (COSIG, SM 04–012) in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

6.2 How to Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

1. Criteria

Your application will be reviewed and scored according to the *quality* of your response to the requirements listed below for developing the Project Narrative (Sections A–C). These sections describe what you intend to do with your project.

- In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative" instructions found in the PHS 5161–1.
- You must use the three sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section.
- Reviewers will be looking for evidence of cultural competence in each section of the Project Narrative. Points will be assigned based on how well you address the cultural competence aspects of the evaluation criteria. SAMHSA's guidelines for cultural competence can be found on the SAMHSA Web site at *http://www.samhsa.gov*. Click on "Grant Opportunities."
- The Supporting Documentation you provide in Sections D–G and Appendices 1–3 will be considered by reviewers in assessing your response, along with the material in the Project Narrative.
- The number of points after each heading below is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within each section.

Section A: Documentation of Need/ Proposed Approach (55 points)

Note: If the applicant *does not* propose a Services Pilot, 55 points are allocated to Section A.1. If the applicant *does* propose a Services Pilot, 40 points are allocated to Section A.1. and 15 points are allocated to Section A.2.]

Section A.1. Current System and Proposed Activities

Specifically state in this section that the applicant is the Office of the Governor and that the Governor has signed the application. Describe the current system and the proposed activities for affecting positive system change. Address plans to implement the requirements in Section I–2.2, Program Requirements. Applicants are encouraged to use organizational charts and/or logic model depictions (see Appendix C) to illustrate the current elements, linkages, lines of communications, coordination mechanisms, responsibilities, and authorities, as well as areas where potential improvements or attention are needed.

- State that the applicant is the Office of the Governor and that the Governor has signed the application.
- Demonstrate a thorough understanding of co-occurring substance abuse and mental disorders, and the state-of-the art in providing a system of services for persons with co-occurring disorders.
- Demonstrate a thorough understanding of the State's current system of services for persons with co-occurring disorders. Describe the State's current infrastructure and capacity for providing coordinated/integrated services to persons with co-occurring disorders within both the State Mental Health Authority (SMHA) and Substance AbuseAuthority (SSA) and other relevant agencies/systems. Describe structural components, such as dedicated staff time, routine training activities, organizational roles and responsibilities, and relationships and priority areas for the provision of coordinated/integrated services to persons with co-occurring disorders across all four Quadrants. Describe any major limitations or challenges within both the SMHA and the SSA and other relevant agencies/systems including staffing limitations, limits to statutory authorities, organizational imperatives, or budget constraints.
- Present and justify the State's plan for using COSIG funds to improve infrastructure and capacity to serve persons with co-occurring disorders. State clearly which (one or more) of the five SAMHSA capacity building goals the State is selecting to implement. Describe how the State will implement these goals, through specific infrastructure development/ enhancement activities. Applicants must identify measurable outcomes for each goal, establish targets, and describe how progress will be tracked and measured over the course of the grant. Be sure to address all the critical areas of infrastructure development identified in Section I–2.2, Program Requirements. Specify how gaps in the system will be narrowed and other expected results, including any products to be developed through the project. State which Quadrants will be affected by proposed activities and demonstrate how the proposed plan is consistent with SAMHSA's emphasis on infrastructure improvements within Quadrants II and III.
- Describe the involvement of the SMHA and the SSA and of other relevant systems/agencies, such as primary care, criminal justice, labor, housing, and social service agencies in the proposed project. Demonstrate how involvement of these systems or

agencies will contribute to enduring infrastructure improvements. Note: Applicants are required to include letters of commitment and cooperation from these agencies. [Letters of Commitment/Support from each of the involved agencies and stakeholders must be provided in Appendix 1 of the application]. Identify any cash or in-kind contributions that will be made to the project.

• Describe the process for linking State-level planning and infrastructure development to regional, county, and community-based mental health and substance abuse organizations and their representatives. Describe the process for obtaining input and involving a diverse array of participants, including representation from cultural/ethnic communities, potential service recipients, mental health consumers and their families, the recovery communities, public and private service providers, businesses, faith communities, primary care professionals and other relevant community groups. Demonstrate that these processes will contribute to enduring infrastructure improvements.

• Demonstrate that the proposed project is feasible and practical. Demonstrate that the applicant's history of working toward systems coordination/integration will contribute to the success of the project. Demonstrate the scope and feasibility of successful collaboration among State entities involved in the proposed project—*e.g.*, inclusion of treatment and prevention; inclusion of public health entities other than those dealing with mental health and/or substance abuse (*e.g.*, primary care providers, communicable diseases, school health); inclusion of funding-related entities, especially Medicaid; inclusion of corrections and criminal justice; linkage with drug courts; collaborations with social/welfare/vocational services, etc.

Section A.2. Services Pilot

In this Section, the applicant should describe and justify the implementation of a Services Pilot Project, if applicable. Applicants that do not plan to conduct a services pilot must state this intent.

• Describe and justify the proposed services pilot. State the goals and objectives of the proposed pilot and document that the services pilot will support the overall goals of your grant project. Describe the geographic area to be served. What are the demographic and clinical characteristics of persons who will receive services? Who will provide the services, and what services? Demonstrate the need for implementing the services pilot in the proposed area(s) and with the proposed population(s). Provide an unduplicated estimate of the number of persons to be served through the pilot for each year of the grant.

• Provide relevant and recent literature supporting your services pilot plan. Demonstrate that the proposed service model is a science/evidence-based practice based on scientifically derived theory.

• Demonstrate that the services pilot will help test the feasibility of the infrastructure enhancement at various levels, with the goal of improving the effectiveness and efficiency of service delivery, and will contribute to statewide changes in the system.

• Describe how the project will address age, race/ethnic, cultural, language, sexual orientation, disability, literacy, and gender issues relative to the target population.

• Demonstrate the effective involvement of the target population in the planning and design of the proposed services pilot and in interpretation of results.

Section B: Organizational and Staffing Plans (30 points)

• Demonstrate the organizational capability to implement the proposed plan. Describe the organizational structure, lines of supervision, and management oversight for the proposed project. Specifically, describe the plans for partnership between the Governor's Office, the SMHA and the SSA, and proposed protocols for ongoing communications and joint planning activities. Identify a lead agency, if appropriate, for purposes of administering the grant, and describe the rationale for selecting this agency as the lead.

• Demonstrate the qualifications and roles of key personnel including evaluation staff and the Program Director.

• Provide an organizational chart showing the organizational placement of key personnel involved in the project. The applicant may also provide other visual diagrams showing key organizational components involved in the planning efforts and the structure for the involvement of organizational leadership.

• Demonstrate that the facilities and equipment that will be used to implement the proposed work plan are adequate. Indicate if the facilities will be compliant with the requirements of the American with Disabilities Act (ADA).

• Affirm a commitment to comply with reporting requirements, to attend two technical assistance meetings annually, to participate in technical assistance activities, and to cooperate and coordinate with SAMHSA's Co-occurring Cross Training and Technical Assistance Activity [see Section I–2.2, Program Requirements], and to participate in the cross-site evaluation, if SAMHSA elects to conduct it [see Section I–2.3 Data and Performance Measurement].

Section C: Evaluation/Methodology (15 points)

• Describe the State's current capacity to collect data related to the PPG measures. Present baseline data, if available, and project targets for these measures for each year of the grant. Describe plans to collect and report data related to the PPG measures during the first 6–8 months of the grant, and demonstrate a capacity to do so. Describe steps to be taken to enable the State to comply fully with PPG reporting requirements, and demonstrate the feasibility of implementing these steps.

• Describe a local evaluation plan that will provide useful information to the State about project progress. Describe plans for using evaluation findings to monitor and improve project implementation and to help implement durable improvements in the service delivery system. Describe and justify the targets and measures the applicant will use to track progress toward accomplishing implementation of the goals, plans to assess implementation fidelity, process and outcome, and plans to ensure the cultural appropriateness of the evaluation.

• Demonstrate appropriate plans for including members of the target population and/or their advocates in the design and implementation of the evaluation and in the interpretation of findings.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered. Please remember that Grantees in years 1–3 will receive up to $1.1 million per year. Grantees with service pilots will receive up to half of the third year award in the 4th year to phase down the services pilot and up to $100,000 for evaluation in year 5. For example, if you ask for $1.1 million in year 3, you can request up to $550,000 in Year 4. If you request less than $1.1 million in year 3, then your year 4 request must be proportionately less. Grantees without service pilots will receive up to $100,000 for evaluation in both years 4 and 5. The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of the applications received.

2. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

Only one award will be made per State.

Decisions to fund are based on:

- The strengths and weaknesses of the application as identified by peer reviewers and, when appropriate, approved by the appropriate National Advisory Council.
- Availability of funds.
- Considerations to help achieve the COSIG goal of being a national program based on population, geographic, and service characteristics. To achieve this goal, SAMHSA may distribute awards to achieve balance among areas of the country, or with differing population, or urban/rural characteristics.
- It is SAMHSA's intent to make awards to States at different levels of readiness or infrastructure development.
- SAMHSA will not award a COSIG grant to a State that already has one.
- After applying the aforementioned criteria, the following method for breaking ties: When funds are not available to fund all applications with identical scores, SAMHSA will make award decisions based on the application(s) that received the greatest number of points by peer reviewers on the evaluation criterion in Section V–1 with the highest number of possible points, Section A: Documentation of Need/Proposed Approach (55 points). Should a tie still exist, the evaluation criterion with the next highest possible point value will be used, continuing sequentially to the evaluation criterion with the lowest possible point value, should that be necessary to break all ties.

VI. Award Administration Information

1. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project and it contains the terms and conditions of the grant. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

2. Administrative and National Policy Requirements

- You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA Web site *http://www.samhsa.gov/grants/2004/useful_info.asp.*
- Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be negotiated with the grantee prior to grant award. These may include, for example:

—Actions required to be in compliance with human subjects requirements;
—Requirements relating to additional data collection and reporting;
—Requirements relating to participation in a cross-site evaluation; or
—Requirements to address problems identified in review of the application.

- You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.
- In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants." This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

3. Reporting Requirements

3.1 Progress and Financial Reports

- Grantees must submit quarterly progress reports and a final report. Each report must include evaluation results and required co-occurring performance measures.
- The final report must summarize information from the quarterly reports and describe the accomplishments of the project and planned next steps for continuing to implement service delivery improvements after the grant period.
- Grantees must provide annual and final financial status reports. These reports may be included as separate sections of progress reports or can be separate documents. Because SAMHSA is extremely interested in ensuring that infrastructure development and enhancement efforts can be sustained, your financial reports must explain plans to ensure the sustainability (see Glossary) of efforts initiated under this grant. Initial plans for sustainability should be described in year 1 of the grant. In each subsequent year, you should describe the status of the project, successes achieved and obstacles encountered in that year.
- SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

3.2 Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

- Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.
- Include acknowledgment of the SAMHSA grant program as the source of funding for the project.
- Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts for Additional Information

For questions about program issues, contact:

Richard E. Lopez, J.D., PhD, SAMHSA/CSAT/DSCA, 5600 Fishers Lane/Rockwall II, 8–147, Rockville, MD

20857, (301) 443–7615, E-mail: *rlopez@samhsa.gov;*
or
Lawrence Rickards, PhD, SAMHSA/CMHS/DSSI, 5600 Fishers Lane, 11C–05, Rockville, MD 20857, (301) 443–3707, E-mail: *lrickard@samhsa.gov.*

For questions on grants management issues, contact: Gwendolyn Simpson, SAMHSA/Division of Grants Management, 5600 Fishers Lane, Room 13–103, Rockville, MD 20857, (301) 443–4456, E-mail: *gsimpson@samhsa.gov.*

Appendix A—Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be stated in the specific funding announcement. Please check the entire funding announcement before preparing your application.

- Use the PHS 5161–1 application.
- Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.
- Information provided must be sufficient for review.
- Text must be legible.

—Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

—Text in the Project Narrative cannot exceed 6 lines per vertical inch.

- Paper must be white paper and 8.5 inches by 11.0 inches in size. To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

—Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.

—Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the total number of allowed pages. This number represents the full page less margins, multiplied by the total number of allowed pages.

—Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

- The page limit for Appendices stated in the specific funding announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

- The 10 application components required for SAMHSA applications should be included.

These are:

Face Page (Standard Form 424, which is in PHS 5161–1)
Abstract
Table of Contents
Budget Form (Standard Form 424A, which is in PHS 5161–1)
Project Narrative and Supporting Documentation
Appendices
Assurances (Standard Form 424B, which is in PHS 5161–1)
Certifications (a form in PHS 5161–1)
Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)
Checklist (a form in PHS 5161–1)

- Applications should comply with the following requirements:

—Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the specific funding announcement.

—Budgetary limitations as specified in Sections I, II, and IV–5 of the specific funding announcement.

—Documentation of nonprofit status as required in the PHS 5161–1.

- Pages should be typed single-spaced with one column per page.
- Pages should not have printing on both sides.
- Please use black ink, and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.
- Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix B—Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available regarding effectiveness and acceptability.

Catchment Area: A catchment area is the geographic area from which the target population to be served by a program will be drawn.

Cooperative Agreement: A cooperative agreement is a form of Federal grant. Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost-Sharing or Matching: Cost-sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost-sharing or matching is not required, and applications will not be screened out on the basis of cost-sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Fidelity: Fidelity is the degree to which a specific implementation of a program or practice resembles, adheres to, or is faithful to the evidence-based model on which it is based. Fidelity is formally assessed using rating scales of the major elements of the evidence-based model. A toolkit on how to develop and use fidelity instruments is available from the SAMHSA-funded Evaluation Technical Assistance Center at *http://tecathsri.org* or by calling (617) 876–0426.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Logic Model: A logic model is a diagrammatic representation of a theoretical framework. A logic model describes the logical linkages among program resources, conditions, strategies, short-term outcomes, and long-term impact. More information on how to develop logics models and examples can be found through the resources listed in Appendix C.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Sustainability: Sustainability is the ability to continue a program or practice after SAMHSA grant funding has ended.

Target Population: The target population is the specific population of people whom a particular program or practice is designed to serve or reach.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Appendix C—Logic Model Resources

Chen, W.W., Cato, B.M., & Rainford, N. (1998–9). Using a logic model to plan and evaluate a community intervention program: A case study. *International Quarterly of Community Health Education, 18*(4), 449–458.

Edwards, E.D., Seaman, J.R., Drews, J., & Edwards, M.E. (1995). A community approach for Native American drug and alcohol prevention programs: A logic model framework. *Alcoholism Treatment Quarterly, 13*(2), 43–62.

Hernandez, M. & Hodges, S. (2003). *Crafting Logic Models for Systems of Care: Ideas into Action.* [Making children's mental health services successful series, volume 1]. Tampa, FL: University of South Florida, The Louis de la Parte Florida Mental Health Institute, Department of Child & Family Studies. *http://cfs.fmhi.usf.edu* or phone (813) 974–4651

Hernandez, M. & Hodges, S. (2001). Theory-based accountability. In M. Hernandez & S. Hodges (Eds.), *Developing Outcome Strategies in Children's Mental Health*, pp. 21–40. Baltimore: Brookes.

Julian, D.A. (1997). Utilization of the logic model as a system level planning and evaluation device. *Evaluation and Planning, 20*(3), 251–257.

Julian, D.A., Jones, A., & Deyo, D. (1995). Open systems evaluation and the logic model: Program planning and evaluation tools. *Evaluation and Program Planning, 18*(4), 333–341.

Patton, M.Q. (1997). *Utilization-Focused Evaluation* (3rd Ed.), pp. 19, 22, 241. Thousand Oaks, CA: Sage.

Wholey, J.S., Hatry, H.P., Newcome, K.E. (Eds.) (1994). *Handbook of Practical Program Evaluation.* San Francisco, CA: Jossey-Bass Inc.

Appendix D: State Case Studies

Arizona

The SAPT and CMHS Block Grants have been used creatively to promote the development of services for people with co-occurring disorders. The original impetus for the Arizona Integrated Treatment Initiative was a SAMHSA Community Action Grant for Service System Change, coupled with other resources, including State appropriations and tobacco settlement funds.

Recognizing that individuals with co-occurring disorders were commonly found in both substance abuse and mental health service settings, the Arizona Department of Health Services' Division of Behavioral Health Services launched a major initiative in 1999 to develop a best practice treatment model for individuals with co-occurring disorders. The result was a statewide refocusing of service practices in the behavioral health care system.

In particular, the State chose to pursue a consensus-based practice development model to identify the principles and practices of integrated treatment within Arizona, with the knowledge that implementation of this model would vary within the State based on local resources and the characteristics of the individuals being served. Among the outcomes of this effort were:

1. *New Contract Language.* Contracts for regional behavioral health authorities were revised to include language regarding co-occurring disorders consistent with that contained in the CMHS Block Grant statute.

2. *New Policies and Guidelines.* A work group of local and national experts developed Service Planning Guidelines for Co-Occurring Disorders and revised the State's eligibility policy for people with serious mental illnesses. The new policy expedites entry into services, regardless of concurrent substance use, and allows for an expanded time frame to gather necessary records. This means that individuals are not denied eligibility based on the inability to clinically differentiate multiple disorders or for lack of information.

Consensus-Based System Change. One of the most significant findings of the Arizona initiative was that consensus-based system change encourages and sustains community action. System planners determined that had the initiative been developed in isolation at the State level and simply mandated by administrative requirement, the level of community "buy-in" needed to make change happen simply would not have taken place.

Connecticut

In 1995 the State of Connecticut created the Department of Mental Health and Addiction Services (DMHAS) as the Single State Agency for both mental health and substance abuse services for adults. The Connecticut Department of Children and Families (DCF) is charged with the care of youth for behavioral health services.

SAPT Block Grant funds are distributed across all DMHAS-funded substance abuse treatment programs, including programs that provide addiction services for people with both substance abuse disorders and co-occurring mental disorders. DMHAS, in coordination with DCF, uses CMHS Block Grant funds to fund and administer services for youth with serious emotional disturbances and adults with serious mental illness. Over the past several years, both an Alcohol and Drug Policy Council and a Mental Health Policy Council, with broad stakeholder representations jointly address policy and service issues related to the planning and coordination of adult and children's behavioral health services including those persons with co-occurring disorders.

DMHAS has directly focused SAPT Block Grant funds to provide services to adults with co-occurring substance abuse disorders and mental disorders in three methadone maintenance programs. These programs have implemented screening and assessment protocols to help identify clients with co-occurring mental disorders. Clients identified as possibly having a mental health disorder receive a full psychiatric assessment.

Clients determined to have a mild or moderate mental illness are seen by an on-site psychiatrist for medication review. They are assigned to a dual diagnosis counselor, and receive ongoing case management. The counselors also provide intensive, individual, or group counseling to these clients. Individuals diagnosed with a serious mental illness are referred to appropriate mental health services; care is coordinated across the two programs.

DMHAS continues to explore ways to enhance access to appropriate care for people with co-occurring substance abuse disorders and mental disorders. Various policy making and planning bodies within the State are involved in ongoing discussions regarding care coordination and implementation of best practices. The State has used State general fund dollars and other non-Block Grant resources to promote a coordinated system of care for individuals with co-occurring disorders.

New Mexico

In 1997, the State of New Mexico combined the Division of Mental Health and the Division of Substance Abuse into the Behavioral Health Services Division. The Division administers the SAPT and CMHS Block Grants and non-Medicaid mental health and substance abuse treatment funds. This integration has fostered significant collaboration between disciplines in policy and program implementation.

SAPT and CMHS Block Grant funds, as well as State appropriations in mental health and substance abuse, are used to develop system capacity for people with co-occurring disorders. As part of a statewide managed care initiative, the Behavioral Health Service Division implemented a regional model of service delivery that includes the following features:

I. Five regional contractors that are responsible for the delivery of continuum of care in mental health and substance abuse treatment;

II. Comprehensive Behavioral Health Standards established by the Division to guide service delivery, network management, and performance/outcome requirements; and

III. A Behavioral Health Information System to monitor contract compliance and service delivery protocols through standardized reporting and site visits.

Because New Mexico's system is based on the assumption that co-occurring disorders are an expectation and not an exception, both substance abuse and mental health treatment programs must screen all individuals for the presence of both disorders on a routine basis. All programs employ a "no wrong door" approach that welcomes and supports the individual. In addition to screening, standard practices include assessment by appropriately licensed practitioners, integrated treatment planning, and direct services for both substance abuse and mental disorders provided at the same time.

Some programs for individuals with co-occurring disorders have the in-house capacity to deliver services for both disorders; others coordinate services as part of a network of community partners. In addition, the system includes the capacity to address treatment and service needs throughout the entire continuum, including residential and hospital-based levels of care. The goal is to create a system that meets the standards of accessibility, integration, continuity, and comprehensiveness (Minkoff, 1998). A more comprehensive report on New Mexico's integrated services can be obtained by contacting SAMHSA's Office of Program, Planning, and Budget at (301) 443–4111.

Pennsylvania

In 1997, the Office of Mental Health and Substance Abuse Services in the Department of Public Welfare and the Bureau of Drug and Alcohol Programs in the Department of Health jointly sponsored a statewide Mental Illness and Substance Abuse (MISA) Consortium to examine integrated approaches in working with people who have co-occurring substance abuse disorders and mental disorders. Stakeholders from the mental health and drug and alcohol systems participated. The group's 1999 report recommended service and systems integration in four areas: assessment, professional credentialing and training, service standards, and adolescent services. Pennsylvania's MISA Pilot Project is the embodiment of those recommendations.

The MISA Pilot Project is a product of a collaboration between the State Departments of Health and the State Department of Public Welfare. Designed to promote systems and services integration for individuals with co-occurring substance abuse disorders and mental disorders, the project is composed of five county systems and a network of 11 providers offering integrated services. The network continues to expand as additional providers meet the required integrated service criteria. The projects total funding is $3.3 million annually and comes from the combined resources of three funding sources: State Intergovernmental Transfer Funds, CMHS Block Grant Funds, and the SAPT Block Grant Funds. Traditional reporting mechanisms are used for tracking and accountability.

Based on the consortium's recommendations, the State issued a solicitation for pilot projects to interested county mental health administrators and substance abuse directors. Available funds were to be used as seed money for development of program models that combine resources and expertise from both the community mental health and drug and alcohol systems. Four adult and one child/adolescent proposal were selected for funding.

Mental health and drug and alcohol funds have been allocated to the projects over a 2-year period, with an additional year for evaluation by the Center for Mental Health Policy and Services Research at the University of Pennsylvania. All pilot projects provide a varying number of services that meet criteria for enhanced/integrated services for co-occurring disorders.

The pilot projects are being evaluated to determine the impact of integrated treatment and systems of care on client outcomes; the impact on client satisfaction; the potential of specialized co-occurring disorders integrated treatment and support services; and best practice models of system integration, representing a variety of strategies that can be replicated for adult and adolescent services. Ultimately, the projects are expected to generate ideas for future policy and program development and identify potential funding sources for co-occurring disorders services.

Texas

The Texas Commission on Alcohol and Drug Abuse and the Texas Department of Mental Health and Mental Retardation created and funded a dual diagnosis coordinator position in 1995 to help ensure coordination between the two agencies. This position is funded with SAPT and CMHS Block Grant and general revenue funds. These monies also are funding 16 dual diagnosis projects throughout Texas.

The Commission on Alcohol and Drug Abuse purchases "dual diagnosis specialized services" to offer a coordinated approach to the delivery of integrated substance abuse and mental health services. The programs link patients to mainstream substance abuse and mental health services through research-based engagement strategies, and provide specialized dual diagnosis training and case consultation to service providers.

The target population includes people with substance abuse or dependence and a serious mental illness, including schizophrenia, major depression, and bipolar disorder. The State requires that "dual diagnosis specialized services" respond competently to age, gender, sexuality, geography, and culture for all people needing services in Texas. The Commission also provides statewide conferences on co-occurring disorders throughout the year to train staff and expand capacity to serve this population.

The Texas alcohol and drug and mental health agencies also have implemented significant system changes. To strengthen the ability of substance abuse providers to meet the multiple needs of people with co-occurring disorders and their families, the Commission on Alcohol and Drug Abuse has adopted statewide rules and regulations which require that mental health expertise be incorporated into existing programs and/or coordinated with other providers. These rules address requirements, including those for screening and admission, assessment, and treatment services for facilities licensed by the Commission. The two agencies operate under a Memorandum of Understanding (MOU) that addresses principles and practices for treating individuals with co-occurring disorders.

Wisconsin

In May 1996, then-Governor Tommy Thompson of Wisconsin, created the Blue Ribbon Commission on Mental Health to examine the mental health delivery system and propose changes that fostered system effectiveness in an environment emphasizing managed care, client outcomes, and performance contracting. The Bureau of Substance Abuse Services and the Bureau of Community Mental Health are currently working cooperatively to develop a coordinated and flexible managed care model of service delivery, that includes the design, implementation and evaluation of a single entry point for consumers of mental health, alcohol, and drug services. The initiative emphasizes recovery principles and a consumer-focused approach with long-term care enrollees. The target group for this model includes individuals with severe and persistent mental illness, including individuals in that group who have co-occurring disorders.

During fiscal year 2000, Wisconsin developed a coalition to address co-occurring substance abuse disorders and mental disorders among the aging population. Five regional training sessions with over 450 participants in attendance educated about, and enhanced coordination of, mental health and substance abuse interventions, including the provision of integrated treatment, for older adults. Both the coalition and training efforts have been in operation for approximately 2 years. Funding is aggregated from multiple sources, including the CMHS Block Grant.

In addition, the Bureau of Substance Abuse Services used SAPT Block Grant funding to develop eight women-specific treatment programs that either provide or refer their clients to qualified mental health services. Coordination of mental health services for substance abuse clients is required for State program certification.

Appendix E: Text from State Directors' Conceptual Framework

Just as individuals with co-occurring disorders are unique, so too are the service

systems through which they receive their care. The conceptual framework that meeting participants proposed, which is outlined in this section, provides a common set of reference points and allows policy makers, providers, and funders to plan services for individuals regardless of their specific diagnoses or the current structure of the health care delivery system in their State or community.

The New York Model

James Stone, M.S.W., Commissioner of the New York State Office of Mental Health, presented a model his State uses to locate individuals with co-occurring mental health and substance abuse disorders on a continuum of care. The underlying assumption of the New York model is the fact that people with co-occurring disorders vary in the severity of their mental health and substance abuse disorders, from less severe mental health and substance abuse disorders to more severe mental health and substance abuse disorders. Individuals for whom one or the other disorder is predominant fall between these two groups.

Further, the model is based on the fact that these differences in severity determine the service system location in which individuals receive their care, including the primary health care, mental health care, and alcohol and other drug treatment systems, as well as the criminal justice system, the homeless service system, and so on.

Participants chose to elaborate on the framework by expanding on these specific areas of concern. Most importantly, it was agreed that the framework could accommodate service coordination needs and (at some future point) funding sources quite well. Each of three areas—severity, primary locus of care, and service coordination—is discussed below.

The Revised Framework

The conceptual framework that meeting participants developed expands on the New York model and represents a new paradigm for considering both the needs of individuals with co-occurring substance abuse and mental health disorders and the system characteristics required to address these needs. Unique features of this approach include the following:

- The revised framework is based on symptom multiplicity and severity, not on specific diagnoses, and uses language familiar to both mental health and substance abuse providers. As such, it encompasses the full range of people who have co-occurring substance abuse and mental health disorders. In addition, it points to windows of opportunity within which providers can act to prevent exacerbation of symptom severity.
- The framework permits discussion of co-occurring disorders along several dimensions, including symptom multiplicity and severity, locus of care, and degree of service coordination. It permits a number of key decisions to flow from it, including the level of service coordination required and the best use of available resources.
- The framework accommodates different levels of service coordination rather than specifying discrete service interventions. It represents a flexible approach that can be adopted or adapted for use in any service setting.
- The framework identifies two levels of service coordination—consultation and collaboration—that do not require fully integrated services. It points to the fact that individuals can be appropriately served with interventions that do not require full service integration. This is important for those service settings in which integration is not feasible or desirable, and for those individuals whose needs can be addressed with a minimum amount of system change.

Regardless of specific diagnoses, meeting participants agreed that individuals with co-occurring disorders fall into one of four major quadrants based on the severity of their mental health and substance abuse disorders:

- Quadrant I: Less severe mental disorder/less severe substance disorder.
- Quadrant II: More severe mental disorder/less severe substance disorder.
- Quadrant III: Less severe mental disorder/more severe substance disorder.
- Quadrant IV: More severe mental disorder/more severe substance disorder.

This is a simplified categorization that permits further discussion. Individuals at various stages of recovery from mental health and substance abuse disorders may move back and forth among these quadrants during the course of their disease. States need to be most concerned with individuals in quadrants I and IV, meeting participants agreed. While individuals in quadrants II and III may be receiving some level of care in the substance abuse and mental health systems, respectively, quadrant I—those individuals whose disorders are not severe enough to bring them to the attention of the mental health or substance abuse treatment systems at this time—is largely ignored. This group is of particular concern because it includes many children and adolescents at risk for developing more serious disease. Meeting participants agreed that providers may have the greatest impact in minimizing future disease by providing appropriate prevention and early intervention strategies for people in quadrant I.

Members of quadrant IV—those with more severe mental health and substance abuse disorders—are more likely to be found in inappropriate settings (*e.g.*, jails, homeless), to use the most resources, and to have the worst outcomes. This group includes those with severe, chronic disease who may be the most difficult to serve. Because those in quadrant IV consume the bulk of a system's resources, attention to people in this group may help reduce treatment costs and produce better consumer outcomes.

Using the revised framework, States can decide how best to direct their mental health and substance abuse efforts. For example, the framework encourages States to respond to the needs of those individuals who fall into quadrant I by expanding their prevention and early intervention efforts. By the same token, States may choose to reduce expenses and improve outcomes associated with serving persons in quadrant IV by diverting them from inappropriate and more costly treatment settings. In general, the framework supports State-directed efforts to work toward meaningful integration of services for these persons with the most severe mental health and substance abuse disorders.

Based on the severity of their disorders, people with co-occurring mental health and substance abuse disorders currently tend to receive their care in the following settings:

- Setting I: Primary health care settings, school-based clinics, community programs; no care.
- Setting II: Mental health system.
- Setting III: Substance abuse system.
- Setting IV: State hospitals, jails, prisons, forensic units, emergency rooms, homeless service programs, mental health and/or substance abuse system; no care.

As with categories of illness, the use of such clearly delineated settings is for ease of discussion. In reality, there is a great deal of overlap between and among these settings; individuals with different combinations of severity are served in all of the systems highlighted above. In addition, individuals may move back and forth throughout the system of care based on their level of recovery at any given time.

Service Coordination by Severity

Based on the severity of their disorders and the location of their care, the following levels of coordination among the substance abuse, mental health and primary health care systems is recommended to address the needs of individuals with co-occurring mental health and substance abuse disorders:

- Level I: Consultation. Those informal relationships among providers that ensure both mental illness and substance abuse problems are addressed, especially with regard to identification, engagement, prevention, and early intervention. An example of such consultation might include a telephone request for information or advice regarding the etiology and clinical course of depression in a person abusing alcohol or drugs.
- Levels II & III: Collaboration. Those more formal relationships among providers that ensure both mental illness and substance abuse problems are included in the treatment regimen. An example of such collaboration might include interagency staffing conferences where representatives of both substance abuse and mental health agencies specifically contribute to the design of a treatment program for individuals with co-occurring disorders and contribute to service delivery.
- Level IV: Integrated Services. Those relationships among mental health and substance abuse providers in which the contributions of professionals in both fields are merged into a single treatment setting and treatment regimen.

Putting the Pieces Together

The revised framework has implications for funding strategies. For example, Dr. Bert Pepper strongly recommended making better use of existing resources through coordinated or shared funding at the local service delivery level. This may be of particularly value for those individuals who fall in quadrants II and III. Reducing the use of inappropriate service settings (*e.g.* jails and prisons) for people in quadrant IV would

help save costs. Recognizing that a topic of such significance could not adequately be addressed within the scope of the current meeting, participants stressed that future attention be paid to the topic of funding opportunities.

Finally, the framework is a necessary, but not sufficient, piece of the puzzle. To accomplish system change for people with co-occurring mental health and substance abuse disorders, policy makers, funders, and providers must define an effective system of care and delineate what successful consultation, collaboration, and integration look like.

The complete report is available for free download from: *http://www.nasadad.org/Departments/Research/ConsensusFramework/national_dialogue_on.htm.*

Dated: March 26, 2004.

Margaret Gilliam,

Acting Director, Office of Policy Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–7400 Filed 4–1–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2261–03]

Notice of Circuit Ride Location Changes for the Chicago and Houston Asylum Offices

AGENCY: Bureau of Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice informs asylum applicants and applicants for relief under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA 203) of changes in certain asylum and NACARA 203 interview locations. Specifically, this notice advises certain asylum and NACARA 203 applicants within the jurisdiction of the Bureau of Citizenship and Immigration Services (CIS), Chicago, Illinois Asylum Office and the Houston, Texas Asylum Office of a change in the location where they will be scheduled for an asylum interview.

DATES: This notice is effective May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Joanna Ruppel, Deputy Director, Asylum Division, Office of Asylum and Refugee Affairs, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., Attn: ULLICO, Third Floor, Washington, DC 20536; telephone (202) 305–2714.

SUPPLEMENTARY INFORMATION:

Background

The CIS has eight Asylum Offices at the following locations: Arlington, Virginia; Chicago, Illinois; Houston, Texas; Los Angeles, California; Miami, Florida; Lyndhurst, New Jersey; San Francisco, California; and Rosedale, New York. Asylum Office locations were chosen because they are close to where most asylum applicants reside.

While most asylum interviews within the jurisdiction of six of the eight Asylum Offices are conducted at the home Asylum Offices, Asylum Officers also routinely travel to CIS District and Sub Offices to interview asylum applicants and NACARA 203 applicants who reside farther from the local Asylum Offices. Interviews conducted at these District and Sub Office locations are known as circuit ride interviews. As populations of asylum seekers have changed over time, the number of individuals interviewed at circuit ride locations has significantly increased for the Houston and Chicago Asylum Offices. In fiscal year 1995, just over 30 percent of applications received by the Houston Asylum Office and just over 50 percent of the applications received by the Chicago Asylum Office were from individuals to be interviewed at circuit ride locations. Since fiscal year 2000, however, approximately 57 percent of the applications received by the Houston Asylum Office and 64 percent of the applications received by the Chicago Asylum Office have been from individuals to be interviewed at circuit ride locations. In contrast, between 4 percent and 20 percent of the applications filed at the other five Asylum Offices that circuit ride to CIS District Offices to conduct interviews were filed by individuals who reside within the circuit ride jurisdictions of those offices.

Section 208 of the Immigration and Nationality Act provides that, in the absence of exceptional circumstances, the first asylum interview or hearing on an asylum application shall commence before 45 days after the date an application is filed, and the final administrative adjudication of the asylum application, excluding administrative appeal, shall be completed within 180 days after the date an application is filed. If a final determination is not made on the asylum application within 150 days, the applicant becomes eligible to apply for employment authorization. If the asylum application is still pending after 180 days, CIS must grant the application for employment authorization. This statutory provision is based on a key component of the success of asylum reform, which was to minimize the number of individuals who could obtain employment authorization by submitting an application for asylum.

Applicants at circuit ride locations are more likely to become eligible for employment authorization based on the fact that their asylum applications often are not adjudicated within 180 days (because of the infrequency in which circuit ride interviews can be scheduled). Eliminating and consolidating circuit ride locations would enable the Chicago and Houston Asylum Offices to adjudicate more asylum applications within the 180 day timeframe, thus preventing ineligible applicants from obtaining employment authorization based solely on the filing of an asylum application and more quickly providing benefits to those who qualify for asylum.

Conducting asylum interviews at circuit ride locations is less efficient and more resource intensive than conducting asylum interviews at Asylum Offices. While on circuit rides Asylum Officers do not have access to many of the decision-making tools normally available when interviewing in their home office. Circuit ride interview space is limited, which restricts the number of interviews that can be scheduled at the circuit ride site. The time Asylum Officers spend traveling to circuit ride locations significantly detracts from the overall number of asylum interviews the Houston and Chicago Asylum Offices are able to complete each year, resulting in delays in asylum determinations for many asylum seekers interviewed at circuit ride locations.

To improve its asylum case processing, the CIS will eliminate two Houston Asylum Office circuit ride locations, Harlingen, Texas, and New Orleans, Louisiana, requiring certain applicants currently residing within those jurisdictions to travel to the Houston Asylum Office for their interview. Also, CIS will eliminate two Chicago Asylum Office circuit ride locations, Cincinnati, Ohio, and Louisville, Kentucky. Asylum applicants currently interviewed in Cincinnati will travel to the CIS District Office in Cleveland, Ohio for their interview. Applicants currently interviewed in Louisville, Kentucky, will travel to the Chicago Asylum Office for their interview.

Nationally, most existing circuit ride locations will be unchanged and Asylum Officers will continue to circuit ride to the majority of existing circuit

ride locations. However, elimination and/or consolidation of the circuit ride locations noted below will reduce the number of interview locations that require Asylum Officer travel and enable Asylum Officers to conduct more interviews each trip at the consolidated circuit ride locations. In making the determination to eliminate certain circuit ride locations, the CIS has carefully considered the additional burden the changes will make to some asylum seekers and NACARA 203 applicants who will be required to travel greater distances for their asylum interviews. However, the CIS determined that the benefit of more timely adjudications for a larger number of asylum seekers outweighs the burden certain asylum seekers will experience in traveling a greater distance to their interviews. Consequently, the CIS is giving notice of the following changes.

Houston Asylum Office

Effective May 3, 2004, all asylum and NACARA 203 applicants who reside within the jurisdiction of the CIS District Office in Harlingen, Texas, will have their asylum and/or NACARA 203 interviews conducted at the Houston Asylum Office. Also, all asylum and NACARA 203 applicants who reside within the jurisdiction of the CIS District Office in New Orleans, Louisiana, except residents of Arkansas, Tennessee, and Mississippi (who currently interview in Memphis, Tennessee) will have their asylum and/or NACARA 203 interviews conducted at the Houston Asylum Office. The Houston Asylum Office will no longer circuit ride to Harlingen, Texas, or New Orleans, Louisiana. Residents of Arkansas, Tennessee and Mississippi who are currently being interviewed in the Memphis Sub Office will continue to be interviewed there. All other Houston Asylum Office circuit ride sites—Denver, Colorado; El Paso, Texas; Memphis, Tennessee; and Salt Lake City, Utah—will continue to serve as circuit ride interview locations.

Chicago Asylum Office

Effective May 3, 2004, the Chicago Asylum Office will no longer circuit ride to Cincinnati, Ohio. All asylum and NACARA 203 applicants who reside within the state of Ohio zip code areas 43000–43399 (the Columbus zip code area), 43400–43699 (the Toledo zip code area), 44800–44999 (the Mansfield zip code area), 45000–45299 (the Cincinnati zip code area), 45300–45599 (the Dayton zip code area), 45600–45699 (the Chilicothe zip code area), 45800–45899 (the Lima zip code area), and the State of Indiana zip code areas 47000–47099 will have their asylum and/or NACARA 203 interviews conducted in the Chicago Asylum Office.

All asylum and NACARA 203 applicants who reside within the state of Ohio zip code areas 43700–43899 (the Zanesville zip code area) and 45700–45799 (the Athens zip code area) will have their circuit ride interviews conducted at the CIS District Office in Cleveland, Ohio, instead of at the CIS Sub Office in Cincinnati, Ohio.

All asylum and NACARA 203 applicants who reside in the state of Kentucky zip code areas 40000–40299 (the Louisville zip code area) and 41000–41099 (the Cincinnati zip code area) will have their interviews conducted in the Chicago Asylum Office, instead of at the CIS Sub Office in Louisville, Kentucky.

Each asylum and NACARA 203 applicant affected by these changes in interview locations will be notified of the changed interview location when he or she is sent an Interview Notice, notifying the applicant of the date, time, and place of the interview. Interviews that have already been scheduled to take place will not be affected by this notice and will be conducted as scheduled.

Dated: March 29, 2004.

Eduardo Aguirre,

Director, Bureau of Citizenship and Immigration Services.

[FR Doc. 04–7403 Filed 4–01–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Tuna—Tariff-Rate Quota

The tariff-rate quota for Calendar Year 2004, on tuna classifiable under subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS).

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

ACTION: Announcement of the quota quantity of tuna in airtight containers for calendar year 2004.

SUMMARY: Each year the tariff-rate quota for tuna described in subheading 1604.14.22, HTSUS, is based on the apparent United States consumption of tuna in airtight containers during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2004.

EFFECTIVE DATES: The 2004 tariff-rate quota is applicable to tuna entered or withdrawn from warehouse for consumption during the period January 1, through December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Connie Chancey, Chief, Quota Branch, Textile Enforcement and Operations Division, Trade Compliance and Facilitation, Office of Field Operations, U.S. Customs and Border Protection, Washington, DC 20229, (202) 927–5850.

Background: It has now been determined that 22,894,238 kilograms of tuna in air-tight containers may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 2004, at the rate of 6 percent ad valorem under subheading 1604.14.22, HTSUS. Any such tuna which is entered or withdrawn from warehouse for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: March 19, 2004.

Robert C. Bonner,

Commissioner.

[FR Doc. 04–7524 Filed 4–1–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3192–EM]

Connecticut; Amendment No. 1 to Notice of an Emergency Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Connecticut, (FEMA–3192–EM), dated January 15, 2004, and related determinations.

EFFECTIVE DATE: March 19, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Connecticut is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 15, 2004:

New London County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–7438 Filed 4–1–04; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1510–DR]

Oregon; Amendment No. 2 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oregon (FEMA–1510–DR), dated February 19, 2004, and related determinations.

EFFECTIVE DATE: March 24, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oregon is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 19, 2004: Crook and Grant Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–7437 Filed 4–1–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–10]

Notice of Proposed Information Collection: Comment Request; Survey of Neighborhood Networks Centers

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: June 1, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Delores A. Pruden, Director, Neighborhood Networks, Office of Housing Assistance and Contract Administration Oversight, Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–4135 x2496 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Survey of Neighborhood Networks Centers—Amended Title: Neighborhood Networks Data Collection Management and Tracking Data Collection Instruments.

OMB Control Number, if applicable: 2502–0553.

Description of the need for the information and proposed use: Launched by HUD's Office of Multifamily Housing Programs in September 1995, Neighborhood Networks is a community-based initiative that encourages the development of resource and community technology centers in HUD insured and assisted housing. In 2003, HUD conducted a national survey of Neighborhood Networks center directors to document center characteristics and identify commonalities and trends to guide the direction of the Neighborhood Networks initiative.

The Office of Multifamily Housing Programs is requesting clearance for a more comprehensive data collection instrument in 2004. The data collection is designed with the objective of merging information currently captured in a paper business plan with data currently collected through the survey of center directors. This approach will be a multi-step iterative process as the business plan is evolving from a paper submission to an enhanced and more comprehensive online tool known as START—the Strategic Tracking and Reporting Tool. Once the transition is complete, START will be the mechanism by which all center data are collected.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: There are approximately 1200 Neighborhood Networks Centers located in HUD insured and assisted housing properties. The hourly burden per respondent for the one-time telephone survey is estimated at 40 minutes. The hourly burden for referencing and completing the Data Collection Worksheet (if necessary) is estimated at 30 minutes. The survey response rate is estimated at 70 percent, resulting in an overall response burden of 560 hours for the telephone survey.

A response rate of 70 percent and 30 minutes to gather data will result in an overall response burden of 420 hours for completing the Data Collection Worksheet. The total annualized burden is estimated at 980 hours.

The hourly burden per respondent for the online business plan and reporting tool (START) is estimated at 3.5 hours. This includes time for reviewing and completing the workbook and users guide. Approximately 80 of the 1200 Neighborhood Networks centers currently in operation are using START—a participation rate of approximately 7 percent. It is anticipated that online business plan development and reporting will increase to roughly 10 percent over the next few months. A participation rate of 10 percent and an average of 3.5 hours to complete the tool will result in an overall annual response burden of 420 hours.

Approximately 800 (or 67 percent) of the 1,200 Neighborhood Networks centers currently have a formal paper business plan. Based on an average of 2 hours to complete/update a business plan, the estimated overall annual response burden is 1,600 hours.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 29, 2004.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 04–7506 Filed 4–1–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–14]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 2, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 25, 2004.

Mark R. Johnston,

Acting Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–7121 Filed 4–1–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4920–N–01]

Multifamily Inventory of Units for the Elderly and Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD's "Multifamily Inventory of Units for the Elderly and Persons with Disabilities" (Inventory). The Inventory is designed to assist prospective applicants with locating units in certain projects with FHA insured financing and HUD subsidized multifamily properties that serve the elderly or persons with disabilities. HUD will update the Inventory on an annual basis to reflect changes in property status and to reflect new projects available for occupancy.

FOR FURTHER INFORMATION CONTACT: Kimberly Munson, Office of Asset Management, Policy and Participation Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone number (202) 708–1320 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Title VI, subtitle D of the Housing and Community Development Act of 1992 (42 U.S.C. 13611) (Title VI–D) authorizes owners of certain section 8 subsidized projects and other federally assisted projects to elect preferences or to continue occupancy restrictions for the elderly. Although owners are not required to notify HUD of elections under Title VI–D, HUD reserves the right at any time to verify the accuracy of an owner's preferences or restrictions.

The House Appropriations Committee in its Committee Report on Fiscal Year 2000 appropriations for HUD, directed HUD to "establish, maintain, and publish annually, an inventory of all housing that is designated in whole or in part for occupancy by elderly families, disabled families, or both. The inventory shall include, but not be limited to, the number of apartments in buildings designated for occupancy only by disabled families, and the number of apartments in buildings with special features designed to accommodate disabled persons." The Committee also directed HUD to work with the Committee in developing this inventory.

Accordingly, today's notice announces HUD's Multifamily Inventory of Units for the Elderly and Persons with Disabilities (Inventory). As noted above, the Inventory is designed to assist prospective applicants with locating units in certain projects with FHA insured financing and HUD subsidized multifamily properties that serve the elderly or persons with disabilities. The Inventory will be updated annually to reflect changes in property status and to add new projects available for occupancy.

This notice further advises of the availability of the Inventory on the Web, which can be accessed at *http://www.hud.gov/offices/hsg/mfh/hto/inventorysurvey.cfm.*

Dated: March 25, 2004.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 04–7505 Filed 4–1–04; 8:45 am]

BILLING CODE 4920–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with

endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 3, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESS** above).

Applicant: Van C. Bethancourt, Jr., Mesa, AZ, PRT–077021

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Philip J. Guarino, Rockford, IL, PRT–084882

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada prior to February 18, 1997, for personal use.

Applicant: John McNiell, Whiteville, NC, PRT–084795

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada prior to February 18, 1997, for personal use.

Dated: March 26, 2004.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–7458 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973, as amended.

Endangered Species

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
079368	Iowa State University	69 FR 5569; February 5, 2004	March 26, 2004.

Endangered Marine Mammals and Marine Mammals

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
080857	Trevor Ahlberg	68 FR 75618; December 31, 2003	March 23, 2004.
082018	Ronald K. Montgomery	69 FR 5568; February 5, 2004	March 23, 2004.

Dated: March 26, 2004.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–7459 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Technical/Agency Draft Implementation Schedule for the South Florida Multi-Species Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service ("we," "our," or "Service") announces the availability of the implementation schedule for the South Florida Multi-Species Recovery Plan (MSRP) for public review. The MSRP, as approved in 1999, included a discussion of the need for a coordinated effort to develop an implementation schedule. This implementation schedule was prepared with the assistance of the South Florida Multi-species/Ecosystem Recovery Implementation Team (MERIT). The implementation schedule prioritizes the recovery tasks as described in the MSRP on a community level, and identifies the associated participating parties, time frame, and costs necessary to accomplish those tasks. We are asking for the public's review and comment on the recovery plan implementation schedule.

DATES: Comments on the draft implementation schedule must be received on or before June 1, 2004 to ensure consideration by the Service.

ADDRESSES: Copies of the draft implementation schedule can be obtained by contacting the U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960. We encourage requests for the CD–ROM version of the implementation schedule, as the hard (paper) copies encompasses approximately 221 pages. Written comments and materials regarding the implementation schedule should be addressed to Cindy Schulz at the address above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the South Florida Ecological Services Office.

FOR FURTHER INFORMATION CONTACT: Cindy Schulz at the South Florida Ecological Services Office, (772) 562–3909, ext. 305.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We are asking for written comments on the MSRP implementation schedule as described above. All comments received by the date identified above will be considered. We particularly seek comments concerning: (1) Recommended changes to the Priority Number for recovery tasks; (2) recommendations for additions or deletions to the participants identified for each recovery task; and (3) additional information to assist us with determining costs for accomplishing recovery tasks.

Please note that these recovery tasks are taken directly from the MSRP. Any changes needed to update the language of the tasks themselves would be addressed in a future revision of the MSRP rather than at this time. These changes, if any, would be subject to public comment only during such future revision.

We will take into account all comments and any additional information we receive. Such communications may lead to a final version of this implementation schedule that differs from this Technical/Agency draft.

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining components of their ecosystems is a primary goal of our threatened and endangered species program. To help guide the recovery effort, we prepare recovery plans for listed species native to the United States, pursuant to section 4(f) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. *et seq.*), which requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans describe actions that may be necessary for conservation of these species, establish criteria for reclassification from endangered to threatened status or removal from the list, and estimate the time and cost for implementing the needed recovery measures.

Section 4(f) of the Act also requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. Accordingly, the MSRP was made available for public review and comment, before its approval in May 1999. The MSRP identifies the recovery needs of the 68 threatened and endangered species and 23 natural communities in the South Florida ecosystem, which encompasses 67,346 square kilometers (26,002 square miles), covering the 19 southernmost counties in Florida.

The final chapter of the MSRP describes the process for developing an implementation schedule. This process involved the collaborative effort of a team appointed by the Service to focus specifically on recovery implementation efforts. This team, known as MERIT, is comprised of 36 members representing Federal, State and local government agencies; Tribal governments; academia; industry; and the private sector. MERIT members assisted in assigning priorities to recovery tasks, and estimating the expected duration and cost to complete each task. They also identified the organizations or agencies that would likely be involved in accomplishing each task.

The implementation schedule for the MSRP contains recovery tasks for those species that occur only in South Florida, and for which the South Florida Ecological Services Office has recovery lead. Other Service field offices have recovery responsibility for those species that occur in South Florida but also occur elsewhere. Implementation schedules for those species can be found in the approved individual recovery plans for those species. Recovery tasks are provided in this implementation schedule for the following species:

Status/species	Scientific name
Mammals:	
E Key deer	*Odocoileus virginianus clavium*
E Key Largo cotton mouse	*Peromyscus gossypinus allapaticola*
E Key Largo woodrat	*Neotoma floridana smalli*
E Silver rice rat	*Oryzomys palustris natator* (= *O. argentatus*)
E Lower Keys marsh rabbit	*Sylvilagus palustris hefneri*

Status/species	Scientific name
Birds:	
T Audubon's crested caracara	*Polyborus plancus audubonii*
E Cape Sable seaside sparrow	*Ammodramus* (= *Ammospiza*) *maritimus mirabilis*
E Snail kite	*Rostrhamus sociabilis plumbeus*
E Florida grasshopper sparrow	*Ammodramus savannarum floridanus*
Reptiles:	
E American crocodile	*Crocodylus acutus*
T Bluetail (blue-tailed) mole skink	*Eumeces egregius lividus*
T Sand skink	*Neoseps reynoldsi*
Invertebrates:	
E Schaus swallowtail butterfly	*Heraclides* (= *Papilio*) *aristodemus ponceanus*
T Stock Island tree snail	*Orthalicus reses*
Plants:	
E Avon Park harebells	*Crotalaria avonensis*
E Beach jacquemontia	*Jacquemontia reclinata*
E Beautiful pawpaw	*Deeringothamnus pulchellus*
E Carter's mustard	*Warea carteri*
E Crenulate lead-plant	*Amorpha crenulata*
E Deltoid spurge	*Chamaesyce* (= *Euphorbia*) *deltoidea*
E Florida perforate cladonia	*Cladonia perforata*
E Florida ziziphus	*Ziziphus celata*
E Four-petal pawpaw	*Asimina tetramera*
E Fragrant prickly-apple	*Cereus eriophorus* var. *fragrans*
T Garber's spurge	*Chamaesyce* (= *Euphorbia*) *garberi*
E Garrett's mint	*Dicerandra christmanii*
E Highlands scrub hypericum	*Hypericum cumulicola*
E Key tree-cactus	*Pilosocereus* (= *Cereus*) *robinii*
E Lakela's mint	*Dicerandra immaculata*
E Lewton's polygala	*Polygala lewtonii*
E Okeechobee gourd	*Cucurbita okeechobeensis* ssp. *okeechobeensis*
T Papery whitlow-wort	*Paronychia chartacea* (= *Nyachia pulvinata*)
T Pigeon wings	*Clitoria fragrans*
E Pygmy fringe-tree	*Chionanthus pygmaeus*
E Sandlace	*Polygonella myriophylla*
E Scrub blazing star	*Liatris ohlingerae*
E Scrub mint	*Dicerandra frutescens*
E Short-leaved rosemary	*Conradina brevifolia*
E Small's milkpea	*Galactia smallii*
E Snakeroot	*Eryngium cuneifolium*
E Tiny polygala	*Polygala smallii*
E Wireweed	*Polygonella basiramia* (= *ciliata* var. *b.*)

We will consider all information presented during this 60-day public comment period prior to approval of this implementation schedule.

See **ADDRESSES** section above to request copies of the draft implementation schedule. Note that paper copies of both the MSRP and the draft implementation schedule are available for public inspection at the following locations:

U.S. Fish and Wildlife Service South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960, (772) 562–3909;

U.S. Fish and Wildlife Service, Merritt Island National Wildlife Refuge, 4 miles east of Titusville, State Road 402, Titusville, Florida 32782, (321) 861–0667;

U.S. Fish and Wildlife Service, J.N. "Ding" Darling National Wildlife Refuge, 1 Wildlife Drive, Sanibel, Florida 33957, (239) 472–1100;

U.S. Fish and Wildlife Service, Florida Panther National Wildlife Refuge, 3860 Tollgate Boulevard, Suite 300, Naples, Florida 34114, (239) 353–8442;

U.S. Fish and Wildlife Service, National Key Deer Refuge, Winn Dixie Shopping Plaza, Big Pine Key, Florida 33043–1510, (305) 872–2239;

U.S. Fish and Wildlife Service, Loxahatchee National Wildlife Refuge, 10216 Lee Road, Boynton Beach, Florida 33437–4796, (561) 732–3684.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 24, 2004.

J. Mitch King,

Acting Regional Director.

[FR Doc. 04–7480 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0103

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from applicants who apply to purchase mineral materials from public lands under regulations 43 CFR 3600 and 3610. BLM uses Form 3600–9 (Contract for the Sale of Mineral Materials) to collect information so that we can

evaluate the environmental impacts of their proposals.

DATES: You must submit your comments to BLM at the address below on or before June 1, 2004. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "Attn: 1004–0103" and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: You may contact George Brown, on (202) 452–7765 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Brown.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(1) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(3) Ways to enhance the quality, utility, and clarity of the information collected; and

(4) Ways to minimize the information collection burden on those whose are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Materials Act of 1947, as amended (Act), 30 U.S.C. 601 and 602, provides for the disposal of mineral materials, such as sand, gravel, and petrified wood from public lands by sale or free use. BLM disposes such materials under the regulations at 43 CFR 3600 and 3610. BLM uses Form 3600–9 to collect information to:

(1) Determine if the sale of mineral materials is in the public interest;

(2) Mitigate the environmental impacts of mineral materials development;

(3) Get fair market value for materials sold; and

(4) Prevent trespass removal of the materials.

Applicants must submit a request in writing to BLM to purchase mineral materials. Specific information requirements are not stated in the regulations, but sale agreements are made on Form 3600–9 approved by BLM.

BLM estimates we process 4,400 contracts for mineral materials each year. We estimate it takes 30 minutes to complete and compile supporting documentation. The estimated total annual information collection burden is 2,200 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: March 29, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–7467 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–HY–P; F–14838–A; CAA–9]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Bethel Native Corporation, for lands in Sec. 8, T. 8 N., R. 71 W., Seward Meridian, located in the vicinity of Bethel, Alaska, containing 2.07 acres. Notice of this decision will also be published four times in the *Tundra Drums*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision, shall have until May 3, 2004 to file an appeal.

2. Parties receiving service by certified mail shall have until 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Chris Sitbon at (907) 271–3226, or by e-mail at *Chris_Sitbon@ak.blm.gov*.

Chris Sitbon,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. 04–7461 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–5420–EU–B173; CACA 44409]

Disclaimer of Interest in Lands; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Santa Ynez Band of Mission Indians has applied for the United States to issue a recordable disclaimer of interest in certain lands which were held in trust. The interest proposed to be disclaimed is fee title and not a right-of-way filed under the auspices of RS 2477. The cumulative acreage of these lands is 1.34 acres.

DATES: Comments should be received by May 3, 2004.

ADDRESSES: Comments or objections should be sent to: Chief, Branch of Lands Management, 2800 Cottage Way, Rm. W–1834, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Nancy Alex, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825; 916–978–4674.

SUPPLEMENTARY INFORMATION: The Tribe and the United States agree the following property is not held by the United States in trust for Indians. The lands are outside the surveyed boundary of the Santa Ynez Reservation. Nonetheless, Santa Barbara County records still show it held in trust. The Tribe filed application requesting the United States to issue a recordable disclaimer of the United States' interest pursuant to section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745) for the following described lands:

That parcel delineated by courses 101 to 102 to 103 to 104 to 101B to 101A back to 101, and that parcel delineated

by courses 104 to 105 to 106 to 107 to 108 to 104B to 104A back to 104, as shown on the BLM Dependent Resurvey and Survey for the boundaries of the Santa Ynez Indian Reservation, T. 6 N., R. 31 W., San Bernardino Meridian, approved September 14, 1977.

The lands described above were used and occupied by certain Indian families outside the reservation. In 1903, the lands were deeded to the United States in trust for those particular Indians with a reverter. By 1940, the Tribe and the Solicitor for the Department of the Interior found that the lands described above reverted back to the grantor's successors in interest. Although disclaimers were executed at that time, they were never recorded with the County Recorder, causing the impression that the United States still holds the lands in trust. The United States proposes to issue a disclaimer of interest to remove this cloud on title.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed disclaimer may present their views in writing to the undersigned officer at the above address.

Dated: November 25, 2003.

Howard K. Stark,

Chief, Branch of Lands Management.

[FR Doc. 04–7463 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1990–EX]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) To Analyze Homestake Mining Company's Proposed Modification to the Plan of Operations for Expansion of Its Ruby Hill Mine, Eureka County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Supplemental Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 40 CFR 1500–1508 Council on Environmental Quality Regulations, and 43 CFR Subpart 3809, the Bureau of Land Management's Battle Mountain Field Office will be directing the preparation of a Supplemental Environmental Impact Statement (SEIS) to analyze a proposed expansion of an open-pit mine and associated facilities in Eureka County, Nevada. Expansion of the Ruby Hill Mine, specifically development of the East Archimedes deposit, was defined in the EIS for the existing mine as a reasonably foreseeable future action. The project will involve public and private lands. The SEIS will be prepared by a third-party contractor directed by the BLM.

The BLM invites comments on the scope of the analysis. The purpose of the public scoping meetings is to identify issues to be addressed in the SEIS and potentially viable alternatives that address these issues. BLM personnel will be present to explain the NEPA process, mining regulations, and other requirements for processing the proposed Plan of Operations Amendment and the associated SEIS.

DATES: This notice initiates the public scoping process. Comments on the scope of the SEIS can be submitted in writing to the address below and will be accepted throughout the writing of the Draft SEIS. Scoping meetings will be held in Eureka and in Battle Mountain, Nevada. All public meetings will be announced through the local news media, newsletters or flyers, and will be posted on the Battle Mountain BLM Web site, *http://www.nv.blm.gov/bmountain*, at least 15 days prior to each event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days after the meeting to any participants who wish to clarify the views they expressed.

ADDRESSES: Written scoping comments should be sent to: Bureau of Land Management, Battle Mountain Field Office, 50 Bastian Rd., Battle Mountain, NV 89820, ATTN: Mary Craggett. Written comments may also be faxed to Mary Craggett at (775) 635–4034. Documents pertinent to this proposal as well as comments, including names and street addresses of respondents, may be examined at the Battle Mountain Field Office during regular business hours (7:30 a.m.–4:30 p.m. Monday through Friday, except holidays). Comments may be published as part of the SEIS.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. BLM will not consider anonymous comments.

FOR FURTHER INFORMATION CONTACT: Mary Craggett, Project Manager, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820 (775–635–4060.)

SUPPLEMENTARY INFORMATION: HMC has submitted a proposal to expand its existing Ruby Hill Mine located south of Highway 50, approximately 1 mile northwest of the town of Eureka, Nevada. The project (development of the East Archimedes deposit) would consist of extending the existing open pit, expansion of existing waste rock and heap leach facilities, construction of dewatering facilities, and the continued operation, reclamation, and closure of the existing Ruby Hill Mine, to include mine office and warehouse, truck shop, haul roads, ore stockpiles, access road, diversion ditches, power transmission lines, water wells and pipelines, process solution transmission pipelines and a landfill. The project area is unchanged from the existing Ruby Hill Mine approved Plan of Operations (N64–95–001P) and related Environmental Impact Statement (NV64–EIS96–33), and is within portions of Township 19 North, Range 53 East, MDM, sections 2 to 11, inclusive, 14 to 18, inclusive, and 20 to 23 inclusive and portions of Township 20 North, Range 53 East, sections 28 and 31 to 35, inclusive. Under the proposed action, an estimated additional disturbance of 665 acres would occur. This proposed disturbance includes approximately 484 acres of private land owned by HMC, and 181 acres of BLM-administered public land. Project access will continue to be via an improved gravel road from U.S. Highway 50.

Potentially significant direct, indirect, residual, and cumulative impacts from the proposed action will be analyzed in the SEIS. Significant issues to be addressed in the SEIS include dewatering activities and visual impacts. Additional issues to be addressed may arise during the scoping process. Federal, State, and local agencies, and other individuals or organizations that may be interested in or affected by the BLM's decision on this plan of operations amendment are invited to participate in the scoping process. The life of the project under this modification would increase approximately six years over the timeline outlined in the Ruby Hill Project Final EIS

Dated: February 3, 2004.
Gerald M. Smith,
Field Manager, Battle Mountain Field Office.
[FR Doc. 04–7465 Filed 4–1–04; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–936–04–2823–JM–PJ02]

Notice of Intent To Prepare a Land Use Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This document provides notice that the BLM, Utah State Office, intends to prepare a Land Use Plan Amendment for Fire and Fuels Management for more than three quarters of BLM lands in Utah. This Plan Amendment will amend 21 Land Use Plans that address management of the public lands in the Cedar City, Fillmore, Kanab, Moab, Monticello, Richfield, Salt Lake, and St. George Field Offices (FOs), and the Grand Staircase-Escalante National Monument. The purpose of the Amendment is to incorporate current Federal Wildland Fire Management Policy into Resource Management Plans, Management Framework Plans, and the Grand Staircase-Escalante National Monument Management Plan. The Amendment will address restoring fire as an integral part of fire-adapted ecosystems to meet resource management objectives, to protect human life and property, as well as natural and cultural resources, through the reduction of hazardous fuels, and to establish consistent methods of managing fire and fuels on BLM-administered public lands in Utah. The Amendment will analyze fire and fuels management actions and their impacts on the human environment for public lands administered by the eight Utah BLM Field Offices and the Grand Staircase-Escalante National Monument in one document in order to ensure consistency and collaboration among the offices and the interested public.

DATES: The BLM is now soliciting written comments on issues and concerns that should be considered during the development and analysis of the proposed Land Use Plan Amendment. While written comments will be accepted throughout the planning process, to be most useful, comments should be received on or before the end of the comment period at the addresses listed below. The comment period will last 30 days from the publication of this notice in the **Federal Register**.

ADDRESSES: If you wish to comment, request additional information, or request to be put on the mailing list, you may do so by any of several methods. You may mail, hand deliver, or fax your comments or requests to: Matthew Higdon, Bureau of Land Management, Utah State Office, 324 S. State Street, Salt Lake City, UT 84111–2303; FAX (801) 539–4243. Comments or requests may be submitted via electronic mail as well *(UT_Fire_Comments@blm.gov)*. Upon request, comments, including names and street addresses of respondents, will be available for public review at the BLM Utah State Office during regular business hours 8 a.m. to 4 p.m., Monday through Friday, except holidays, and may be published as part of the Amendment. Current Resource Management Plans, Management Framework Plans, the Monument Management Plan, and all other documents relevant to this planning process are also available for public review at the Utah State Office.

FOR FURTHER INFORMATION CONTACT: Jolie Pollet, Fire Ecologist, (801) 539–4129, or Matthew Higdon, Planner, (801) 539–4052, Utah State Office, 324 S. State Street, Salt Lake City, Utah 84111–2303.

SUPPLEMENTARY INFORMATION: This planning activity encompasses approximately 18 million acres of public lands within the state of Utah. The planning area includes all surface lands managed by BLM in the eight BLM Field Offices described above and the Grand Staircase-Escalante National Monument. This amendment does not affect lands for which BLM only administers the sub-surface, or mineral estate. This Plan Amendment will immediately amend the following: four Resource Management Plans (RMPs) [Cedar Beaver Garfield Antimony (1986), Grand (1985), St. George (1999), San Juan (1991)]; 12 Management Framework Plans (MFPs) [(Escalante (1981), Forest (1977), Henry Mountains (1982), Iso-tract (1985), Mountain Valley (1982), Paria (1981), Park City (1975), Parker Mountain (1982), Pinyon (1983), Randolph (1980), Vermillion (1981), Zion (1981)]; and the Grand Staircase-Escalante National Monument Management Plan (1999). In addition, this action could amend, at a later date, the Resource Management Plans guiding management for western desert areas of the Salt Lake and Fillmore Field Offices.

The proposed Plan Amendment will: (1) Establish landscape level fire management objectives; (2) describe desired wildland fire conditions; (3) identify the suite of management strategies and actions to meet desired wildland fire conditions and desired resource management conditions; (4) describe areas where fire may be restored to the ecosystem; (5) describe areas where fires are unwanted; (6) identify general restrictions on fire management practices; (7) identify criteria used for establishing fire management priorities; and (8) identify the anticipated maximum burned acres and acres treated for hazardous fuel reduction. BLM has identified general issues for this planning effort, including: protection of human life; protection of property; protection of natural/cultural resources; integration of fire and resource management; and protection of air quality. These issues, along with others that may be identified through public participation, will be considered during the planning process.

BLM has identified the following preliminary planning criteria to guide the planning process: (1) Compliance with all legal mandates of the Federal Land Policy and Management Act of 1976, the National Environmental Policy Act of 1969, the Federal Advisory Committee Act, the Administrative Procedures Act, the BLM planning regulations in 43 CFR part 1600, and other relevant laws; (2) the Amendment will recognize the existence of valid existing rights; (3) lands covered in the Amended Land Use Plans will be public lands managed by the BLM and decisions in the Amendment will be made only on lands managed by BLM; (4) the BLM will use a collaborative and multi-jurisdictional approach, where possible, to jointly determine the desired future conditions of public lands; (5) the BLM will make all possible attempts to ensure that its management prescriptions and planning actions are as complimentary as possible to other planning jurisdictions, within the boundaries described by law and policy; (6) the BLM will, to the extent possible, use current scientific information, research, new technologies and the results of resource assessments, monitoring and coordination to determine appropriate management strategies that will enhance or restore impaired ecosystems; and (7) the Amendment will supersede only sections of the existing Land Use Plans that relate to Fire and Fuels Management. Additional planning criteria may be identified during the comment period.

Existing information will be used to develop the Plan Amendment. An interdisciplinary approach will be used to develop the Plan Amendment in order to consider the variety of resource issues and concerns identified.

Disciplines involved in the planning process will include but are not limited to fire and fuels, rangeland, outdoor recreation, cultural resources, wildlife, wilderness, hydrology, soils science, sociology, and economics. Selectable alternatives must contribute to the purpose of the proposed Plan Amendment and protection of communities at risk from catastrophic wildfire. A collaborative process will be used to involve other Federal agencies, Native American tribes, conservation groups, recreationists, the public, and BLM specialists throughout the planning process to ensure that local, regional, and national issues and concerns are addressed, and to participate in developing and analyzing alternatives. The Governor of Utah, County Commissioners for involved counties in Utah, and potentially affected members of the public will be notified of all meetings and comment periods. Agency representatives and interested persons are invited to visit with BLM officials at any time during the planning process. Submitted comments, including names and street addresses of respondents, will be available for public review at the BLM Utah State Office. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

A congressional restriction was placed on land use planning in the western portion of Utah under the National Defense Authorization Act for Fiscal Year 2000. However, in order to address cumulative impacts and increase cost-efficiencies, it is proposed that the Box Elder RMP and Pony Express RMP in Salt Lake FO, and House Range RMP and Warm Springs RMP in Fillmore FO be included as part of the NEPA analysis relating to the LUP amendment. The decision to amend these RMPs will not be signed unless or until the restriction is removed or resolved. At that time, if circumstances have not changed, the decision to amend these four plans would be signed and implemented.

Dated: March 1, 2004.

Gene Terland,

Utah Associate State Director.

[FR Doc. 04–7466 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–4–1430–ES]

Realty Action; Recreation and Public Purpose Act Classification; Oneida County, WI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: In accordance with Section 7 of the Taylor Grazing Act of June 28, 1934 and Executive Order 6964: Withdrawal for Classification of All Public Land in Certain States, dated February 5, 1935, the following described land is classified as suitable for conveyance to the State of Wisconsin Board of Commissioners of Public Lands, under the provisions of the Recreation and Public Purposes (R&PP) Act of 1926, as amended.

Fourth Principal Meridian

T. 36 N., R. 8 E.,
Sec. 22, Lot 12.

The area described contains 32.47 acres in Oneida County.

DATES: The Bureau of Land Management (BLM)–Eastern States, Milwaukee Field Office must receive comments on or before May 17, 2004.

ADDRESSES: BLM–Eastern States, Milwaukee Field Office, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, 414–297–4402.

SUPPLEMENTARY INFORMATION: Detailed information concerning this action is available for review at the office of the BLM-Eastern States, Milwaukee Field Office, Wisconsin.

On April 2, 2004, the above-described land will be segregated from all forms of disposal or appropriation under the public land laws, except for conveyance under the R&PP Act and leasing under the mineral leasing laws. Interested parties may submit comments regarding the proposed conveyance or classification of the land to the Field Manager, BLM Eastern States, Milwaukee Field Office until May 17, 2004.

Classification Comments: Interested parties may submit comments involving the suitability of the land for R&PP Act classification, and particularly, whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, the management plan, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. If no adverse comments are received, the classification will become effective on June 1, 2004.

The State of Wisconsin Board of Commissioners of Public Lands (BCPL) proposes to add Lot 12 to the Lily Lake Outdoor Recreation and Education Project. Lot 12 is bordered on the west and south by two parcels within the Lily Lake Outdoor Recreation and Education Project. The addition of Lot 12 will consolidate BCPL ownership on Lily Lake. This action classifies the land for disposal, to protect natural resource values and provide recreation and environmental education. The subject land was identified in the Wisconsin Resource Management Plan Amendment approved March 2, 2001, as not needed for Federal purposes and having potential for disposal to eliminate scattered tracts and improve land ownership patterns.

The patent when issued will be subject to the following terms, conditions and reservations:

1. Provisions of the R&PP Act of 1926, as amended and to all applicable regulations of the Secretary of the Interior.

2. Valid existing rights.

3. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Terms and conditions identified through the site specific environmental analysis.

5. Any other rights or reservations that the authorized officer deems appropriate to ensure public access and proper management of Federal lands and interest therein.

Authority: 943 U.S.C. 869 *et seq.*; 43 U.S.C. 315f; Executive Order 6964; 43 CFR 2741.5(h)(3).

Dated: February 18, 2004.

Terry Lewis,

Acting Milwaukee Field Manager.

[FR Doc. 04–7464 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT 110–1610–DO–]

Notice of Intent To Prepare a Resource Management Plan for Public Lands and Resources Managed by the Kanab Field Office and Call for Coal Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare a Resource Management Plan (RMP) and EIS for lands managed by the Kanab Field Office. These planning activities encompass approximately 600,000 acres of public land in Garfield and Kane Counties, Utah. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, tribal, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria, including an evaluation of the existing land use plans in the context of the needs and interests of the public.

ADDRESSES: For the Kanab Field Office RMP, written comments should be sent to RMP Comments, Bureau of Land Management, Kanab Field Office, 318 N. 100 E., Kanab, UT 84741; or Fax 435–644–4620. Documents pertinent to this proposal may be examined at the BLM's Kanab Field Office.

All comments and/or data received, including names and street addresses of respondents, will be available for public review at the Field Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. Anonymous comments will not be accepted. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information regarding the Kanab RMP and/or to have your name added to this mailing list, contact Lorraine Christian, RMP Project Manager, Bureau of Land Management, Kanab Field Office, 318 N. 100 E., Kanab, UT 84741, phone: 435–644–4600.

SUPPLEMENTARY INFORMATION: We will hold public meetings throughout the region in order to promote public involvement in this process. In order to ensure local community participation and input, public meetings will be held at a variety of locations, which will likely include Kanab, Escalante, Panguitch, St. George, and Salt Lake City, Utah. These and other locations, if necessary, will be announced in local and regional news media, and planning bulletins. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views he or she expressed. Comments on issues and planning criteria will be most useful if received during the ongoing scoping period at the address listed above. Written comments will be accepted throughout the planning process at the address shown below. In addition to the ongoing public scoping process, formal opportunities for public participation will be provided during a comment period for the draft alternatives and upon publication of the draft RMP/draft EIS. Early participation by all interested parties is encouraged and will help shape the future management of the public lands in the Kanab Field Office.

Preliminary issues and management concerns have been identified by BLM personnel during planning evaluations and pre-planning analysis for the RMP. They represent the BLM's knowledge to date of the existing issues and concerns with current management. The major issues that will be addressed in the plan revisions are: management and protection of public land resources; management of conflicting and competing uses; access to and transportation on the public-lands; and balancing multiple uses. Other specific issues may include cultural resource management, fire management, woodland harvest and management, lands and realty management, rangeland health and management potential, establishment of special designation areas, and special-status species management.

43 CFR 3420.1–2(a) requires that the BLM publish a call for coal and other resource information in the **Federal Register** if there are areas with coal occurrence in the planning area. Parties interested in coal leasing and development should provide coal resource data for their area(s) of interest. Identification of interests in future coal leasing, substantiated with adequate coal resources data, allows the BLM to address development potential during the RMP process and helps avoid unnecessary work, delays, or RMP amendments.

Proprietary data marked as confidential may be submitted in response to this call for coal resource information and other resource information. Please submit all proprietary information submissions to the individual at the address listed above. The BLM will treat submissions marked as "Confidential" in accordance with the laws and regulations governing the confidentiality of such information.

In addition to coal resource data, the BLM seeks resource information and data for other public land values and uses (*e.g.*, air quality, cultural resources, fire/fuels, fisheries, forestry, geologic hazards, lands and realty, oil and gas (including coalbed methane), paleontology, rangeland management, recreation, visual resources, water quality, soils, sociology, economics, and wildlife, among others).

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to the major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase of plan development. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. The Field Office is seeking public involvement at the earliest possible stages of this planning process in order to enhance collaboration. If you have information or concerns you would like to share, including ideas or opportunities that could enhance data

collection, resource inventories, formulation of issues or alternatives, or development of planning criteria that would be applicable to the Kanab planning effort, please submit them to the above address.

A reasonable range of alternatives that resolve those issues and management concerns identified during the scoping process will be developed and analyzed in the Draft RMP/Draft EIS, which will be published and made available for public review.

Sally Wisely,

State Director.

[FR Doc. 04–7417 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

[AZ 020–2004–1150–JP–123A]

Bureau of Land Management

AGENCY: Bureau of Land Management, Phoenix Field Office, Phoenix, AZ.

ACTION: Notice of intent to amend the Lower Gila South Resource Management Plan (RMP).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM), Phoenix Field Office, intends to prepare an Amendment to the Lower Gila South RMP that will include an environmental assessment level analysis. The plan amendment will consider changing the land use allocation on the Cameron Allotment by closing approximately 58,275 acres of public land to domestic livestock grazing in order to implement measures to conserve the endangered Sonoran pronghorn.

DATES: For a period of 30 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, Phoenix Field Office, attn: Field Manager, 21605 N. 7th Avenue, Phoenix, AZ 86027.

Public Participation: Public comments received during the 30-day comment period will be considered during the preparation of the proposed plan amendment and environmental assessment level analysis.

ADDRESSES: Field Manager, Bureau of Land Management, Phoenix Field Office, 21605 N. 7th Avenue, Phoenix, AZ 85027; Fax 623–580–5580. For further information, contact Tim Hughes, Phoenix Field Office, 623–580–5572.

SUPPLEMENTARY INFORMATION: The Cameron Allotment is classified as a Perennial-Ephemeral Allotment. The grazing permit for the allotment prior to June of 2003 authorized 2,532 animal unit months (AUMs) or 211 cows yearlong and provided for ephemeral use during wet years. The BLM completed a rangeland health evaluation, biological evaluation, and National Environmental Policy Act (NEPA) analysis for the grazing allotment in 2003. Based on the results of these evaluations, the grazing permit was modified and reissued with new terms and conditions in 2003. The current permit authorizes 684 AUMs or 57 cows, under the following terms and conditions: (1) The allotment will be operated as a rest-rotation grazing system; (2) seasonal restrictions will be imposed on grazing in pronghorn fawning pastures; (3) ephemeral use can only be authorized when the Sonoran pronghorn population is over 100 animals and increasing and there is an abundance of ephemeral forage available throughout the pronghorn range; (4) lay-down fences will be installed and maintained between the BLM lands and Organ Pipe Cactus National Monument and Cabeza Prieta National Wildlife Refuge, and (5) maintenance of range improvements that involves surface disturbance can only be carried out between July 1 and December 31 annually.

The U.S. population of Sonoran pronghorn has experienced an 87 percent decline since 2001. This population is currently vulnerable to extirpation due to low numbers and continued drought. Limited management options on adjacent lands make the public lands that comprise the Cameron Allotment extremely valuable for implementation of recovery actions for the pronghorn. Continued livestock grazing on the Cameron Allotment would require the continued use of fencing for livestock management, which hinders movement of pronghorn. Water impoundments needed by livestock would continue to provide breeding grounds for biting midges that may transmit disease from domestic livestock to pronghorn. Additionally, continued livestock grazing would hinder or preclude implementation of recovery actions, such as the development of food plots.

The BLM is required by the Endangered Species Act of 1973, as amended, in section 7. (a) (1) to "* * * utilize [its] authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species * * *" Due to the precarious status of the U.S. population of Sonoran pronghorn, it is prudent that the BLM consider actions within their authority to stabilize and recover this endangered species. To that end, it would be consistent with the BLM's authorities and responsibilities to consider closing the Cameron Allotment to domestic livestock grazing and allocate the resources toward the recovery of endangered Sonoran pronghorn.

If a decision is made through the amendment process to use the land for pronghorn recovery, the BLM is required to compensate the permittee for their financial interest in authorized range improvements.

Planning Criteria: This notice also provides the public notice of planning criteria availability. The Federal Land Management Policy and Management Act of 1976 (FLPMA), the Taylor Grazing Act of June 28, 1934, as amended, and the Public Rangelands Improvement Act of 1978 constitute the planning criteria applicable to the proposed amendment to the Lower Gila South RMP.

Teresa Raml,

Field Manager, Phoenix Field Office.

[FR Doc. 04–7462 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–04–9820–BJ–MT01]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Randy W. Thomas, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5134 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the U.S. Forest Service and was necessary to determine unsurveyed Forest Service land. The lands we surveyed are:

Principal Meridian, Montana

Tps. 7 S., Rs. 26 and 27 E.

The plat, in two sheets, representing the dependent resurvey of a portion of the south boundary of the Crow Indian Reservation, through Townships 7 South, Ranges 26 and 27 East, a portion of certain Homestead Entry

Surveys and Tract No. 37, and the survey of a portion of the east boundary, a portion of the subdivisional lines, the subdivision of parcel B, Homestead Entry Survey No. 591, into Parcels C and D, and lot 7, in section 23, and a line connecting Homestead Entry Survey Nos. 165 and 598, Township 7 South, Ranges 26 and 27 East, Principal Meridian, Montana, was accepted March 18, 2004.

We will place copies of the plat, in two sheets, and related field notes we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, in two sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in two sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: March 29, 2004.

Steven G. Schey,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 04–7481 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–04–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David J. Clark, Acting Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, (775) 861–6541.

SUPPLEMENTARY INFORMATION:

1. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on October 16, 2003:

The supplemental plat, showing a subdivision of lot 9, sec. 16, T. 1 S., R. 35 E., Mount Diablo Meridian, Nevada, was accepted October 14, 2003.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

2. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on October 23, 2003:

The supplemental plat, showing a subdivision of original lot 1, sec. 36, T. 3 S., R. 35 E., Mount Diablo Meridian, Nevada, was accepted October 21, 2003.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Supplemental Plats of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on November 13, 2003:

The supplemental plat, showing a subdivision of lots 8, 9, 11, 20 and 31, sec. 6, T. 20 S., R. 60 E., Mount Diablo Meridian, Nevada, was accepted November 12, 2003.

The supplemental plat, showing a subdivision of lots 27 and 29, sec. 33, T. 22 S., R. 61 E., Mount Diablo Meridian, Nevada, was accepted November 12, 2003.

These supplemental plats were prepared to meet certain administrative needs of the Bureau of Land Management.

4. The Supplemental Plats of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on February 26, 2004:

The supplemental plat, showing a subdivision of sec. 12, T. 19 S., R. 59 E., Mount Diablo Meridian, Nevada, was accepted February 24, 2004.

The supplemental plat, showing a subdivision of the N½ and the SE¼ of sec. 6, T. 19 S., R. 60 E., Mount Diablo Meridian, Nevada, was accepted February 24, 2004.

These supplemental plats were prepared to meet certain administrative needs of the Bureau of Land Management.

5. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: March 26, 2004.

David J. Clark,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 04–7451 Filed 4–1–04; 8:45 am]

BILLING CODE 4310–HC–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Advisory Committee on Rules of Appellate Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting and hearing.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. Included in the meeting will be a hearing held on the first morning of the meeting. Both the meeting and hearing will be open to public observation but not participation.

DATES: April 13–14, 2004.

Time and Place:

Hearing: April 13, 8:30 a.m. to 1 p.m., Sentencing Commission, Suite 2–500.

Meeting: April 13, 2 p.m. to 5 p.m., Judicial Conference Center, April 14, 8:30 a.m. to 5 p.m., Judicial Conference Center.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

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: March 29, 2004.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 04–7443 Filed 4–1–04; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Advisory Committee on Rules of Civil Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 15–16, 2004.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

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: March 29, 2004.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 04–7444 Filed 4–1–04; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Advisory Committee on Rules of Evidence, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 29–30, 2004.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Ritz Carlton, Marina del Rey, Admiralty Room, 4375 Admiralty Way, Marina del Rey, California.

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: March 29, 2004.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 04–7445 Filed 4–1–04; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Advisory Committee on Rules of Criminal Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: May 6–7, 2004.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Monterey Plaza Hotel, Ocean Club Library, 400 Cannery Row, Monterey, California.

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: March 29, 2004.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 04–7446 Filed 4–1–04; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 17–18, 2004.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle NE., Washington, DC.

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: March 29, 2004.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 04–7447 Filed 4–1–04; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Advisory Committee on Rules of Bankruptcy Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankuptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: September 9–10, 2004.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: The Ritz Carlton, Montara Room, One Miramontes Point Road, Half Moon Bay, California.

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: March 29, 2004.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 04–7448 Filed 4–1–04; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Civil Rights Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Complaint Form, Coordination and Review Section, Civil Rights Division, correction.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, (202) 616–1167.

Correction

In the **Federal Register** issue of February 25, 2004, in FR Doc. 04–4032, on page 8681, in the Action line, correct the title to read: Complaint Form, Coordination and Review Section, Civil Rights Division

Dated: March 30, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–7453 Filed 4–1–04; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

FY 2004 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of funding availability.

SUMMARY: The Department of Justice Office of Community Oriented Policing Services (COPS) announces the availability of the COPS in Schools grant program, which will assist law enforcement agencies in hiring new, additional School Resource Officers (SROs) to engage in community policing in and around primary and secondary schools. This program provides an incentive for law enforcement agencies to build collaborative partnerships with the school community and to use community policing efforts to combat

school violence. The School Resource Officer must devote at least 75% of their time to work in and around primary and secondary schools, in addition to the time that your agency was devoting in the absence of the COPS in Schools grant.

The COPS in Schools program provides a maximum federal contribution of up to $125,000 per officer position over the three-year grant period, with any remaining costs to be paid with local funds. Officers paid with COPS in Schools funding can only be hired on or after the grant award start date. In addition, all jurisdictions that apply must demonstrate that they have primary law enforcement authority over the school(s) identified in their application and demonstrate their inability to implement this project without federal assistance.

DATES: There will be one application deadline for the COPS in Schools (CIS) program in 2004: May 17, 2004. All applications must be postmarked on or before the final deadline date of May 17, 2004 to be considered for funding. All grant awards are subject to the availability of funding. Previous editions of the COPS in Schools application developed prior to March of 2004 will not be accepted.

ADDRESSES: To obtain a copy of the CIS 2004 Application Kit please call the U.S. Department of Justice Response Center at 1 (800) 421–6770 or visit the COPS Web site at *http://www.cops.usdoj.gov.* or *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Please contact the U.S. Department of Justice Response Center at 1 (800) 421–6770 or your COPS Grant Program Specialist. Additional information on the COPS in Schools program and the COPS Office in general is also available on the COPS Web site at: *http://www.cops.usdoj.gov.*

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers to increase or enhance community policing in this nation. Many communities are discovering that trained, sworn law enforcement officers assigned to schools play an integral part in the development and/or enhancement of a comprehensive school safety plan. The presence of these officers provides schools with a direct link to local law enforcement agencies. School Resource Officers (SROs) may serve in a variety of roles including, but not limited to, that of a law enforcement officer/safety specialist, law-related educator, and problem solver/community liaison. These officers may teach programs such as crime prevention, substance abuse prevention, and gang resistance as well as monitor and assist troubled students through mentoring programs. The School Resource Officer(s) may also identify physical changes in the environment that may reduce crime in and around the schools, as well as assist in developing school policies which address criminal activity and school safety.

COPS in Schools funding must be used to hire new, additional School Resource Officers, over and above the overall number of sworn officers that your agency would fund with state or local funds in the absence of the grant (including other School Resource Officers). Your agency may not reduce its overall state, locally-funded or Bureau of Indian Affairs funded level of sworn officers (including other School Resource Officers or other sworn officers assigned to the schools) as a result of applying for or receiving COPS in Schools grant funding. In addition, your agency may not reduce the number of SRO's or other sworn officers assigned to schools as a result of applying for or receiving COPS in Schools grant funding. For example, agencies currently employing one locally-funded School Resource Officer (or any other officer assigned to the school) that are awarded a School Resource Officer under the COPS in Schools program should thereafter employ two School Resource Officers (one locally-funded and one COPS-funded). COPS in Schools funding may be used to rehire sworn officers previously employed by your agency who have been laid off for financial reasons unrelated to the availability of the COPS in Schools grant, but your agency must obtain prior written approval from the COPS Office.

At the time of application, all applicants must agree to plan for the retention of each COPS-funded COPS in Schools position awarded at the conclusion of Federal funding for at least one full local budget cycle with local, State or other non-COPS funding. The application must also include a Memorandum of Understanding (MOU), signed by the law enforcement executive and the appropriate school official(s), to document the roles and responsibilities to be undertaken by the law enforcement agency and the educational school partner(s) through this collaborative effort. The application must also include a Narrative Addendum to document that the School Resource Officer(s) will be assigned to work in and around primary or secondary schools and provide supporting documentation in the following areas: problem identification and justification, community policing strategies to be used by the officers, quality and level of commitment to the effort, and the link to community policing.

All agencies receiving awards through the COPS in Schools program are required to send the officer(s) deployed into the School Resource Officer position(s) as a result of this grant, and one individual designated as the School Representative under the grant program, to attend one COPS in Schools Training. The COPS Office will reimburse grantees for training, per diem, travel, and lodging costs for attendance of required participants up to a maximum of $1,200 per person attending. Should your agency receive a COPS in Schools grant, your agency will receive additional training information following notification of the grant award. The COPS in Schools training requirement must be completed prior to the end of your 36 months of grant funding for officer positions.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: March 19, 2004.

Carl Peed,

Director, Office of Community Oriented Policing Services.

Government-Wide Grants.gov Project for Electronic Submission of Applications

To comply with the President's Management Agenda, the Department is participating as a partner in the new government-wide Grants.gov Apply site in FY 2004. The COPS in Schools grant program 16.710 is one of the programs included in the project. If you are an applicant under the COPS in Schools grant program, you may submit your application to us in either electronic or paper format.

The project involves the use of the Grants.gov Apply site. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us. We request your participation in Grants.gov.

When you enter the Grants.gov site, you will find information about submitting an application electronically through the site as well as the hours of

operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

- To use Grants.gov, applicants must have a DUNS number and register in the Central Contractor Registry (CCR). You should allow a minimum of 5 days to complete the CCR registration.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance, Budget Information—Non-Construction Programs), and all necessary assurances and certifications.
- Your application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- We may request that you give us original signatures on forms at a later date.
- If you experience technical difficulties on the closing date and are unable to meet the May 17, 2004 (Washington, DC time) deadline, print out your application and follow the application transmittal instructions included in the application package.

You may access the electronic grant application for the COPS in Schools Grant Program at: *http://www.grants.gov.*

Please note that you must locate the downloadable application package for this program by the CFDA Number or FedGrants Funding Opportunity Number, which can be found at *http://www.fedgrants.gov.*

[FR Doc. 04–7423 Filed 4–1–04; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services FY 2004 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of funding availability.

SUMMARY: The Department of Justice Office of Community Oriented Policing Services (COPS) announces the availability of funds under the Tribal Resources Grant Program, a program designed to meet the most serious needs of law enforcement in Indian communities through a comprehensive grant program that will offer a variety of funding options including: Basic and/or specialized training for sworn law enforcement officers; training in community policing, grant management and computer training; uniforms and basic issue equipment; department-wide technology; and police vehicles. This program, which complements the COPS Office's efforts to fund and support innovative community policing, will enhance law enforcement infrastructures and community policing efforts in tribal communities which have limited resources and are affected by high rates of crime and violence. Applications should reflect the department's most serious law enforcement needs and must link these needs to the implementation or enhancement of community policing.

All Federally Recognized Tribes with established police departments are eligible to apply. Federally Recognized Tribes may also apply as a consortium with a written partnership agreement that names a lead agency and describes how requested resources will serve the consortium's population. In addition, tribes that are currently served by Bureau of Indian Affairs (BIA) law enforcement may request funding under this grant program to supplement their existing police services. Tribes whose law enforcement services are exclusively provided by local policing agencies through a contract agreement are not eligible under the COPS TRGP program, but may be eligible to apply to the COPS in Schools program for police officer positions only.

DATES: Applications will be available in early April. Federally Recognized Tribes or villages that wish to apply may request an application from the COPS Office. The deadline for the submission of applications is May 28, 2004. Applications must be post marked by May 28, 2004, to be considered eligible.

ADDRESSES: To obtain an application or for more information, call the U.S. Department of Justice Response Center at 1–800–421–6770. A copy of the application kit will also be available in April on the COPS Office Web site at: *http://www.cops.usdoj.gov.*

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, 1–800–421–6770 and ask to speak with your Tribal Grant Program Specialist.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. The Tribal Resources Grant Program was developed to meet the most serious needs of law enforcement in tribal communities through a comprehensive grant program that will offer a variety of funding options.

This program will enhance law enforcement infrastructures and community policing efforts in these tribal communities, many of which have limited resources and are affected by high rates of crime and violence.

The Tribal Resources Grant Program is part of a larger federal initiative which over the last six years has resulted in the Departments of Interior and Justice working in collaboration to improve law enforcement in tribal communities. Funding has been appropriated to several DOJ agencies including the FBI, the Bureau of Justice Assistance (BJA), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the COPS Office. COPS is coordinating with these agencies as well as with the Office of Law Enforcement Services of the Bureau of Indian Affairs to ensure that limited resources are not spent on duplicative efforts.

A total of $25 million in funding will be available under the Tribal Resources Grant Program. The grant will cover a maximum federal share of 75% of total project costs. A local match requirement of at least 25% of the total project costs is included in this program. A waiver of the local match requirement may be requested but will be granted only on the basis of documented demonstrated fiscal hardship. Requests for waivers must be submitted with the application.

Tribes whose law enforcement services are exclusively provided by local policing agencies through contract arrangements are not eligible under this COPS program. However, tribes that do not meet the eligibility requirements for this program may be eligible to apply to the COPS in Schools program for police officer positions only.

Receiving an award under the Tribal Resources Grant Program will not preclude grantees from future consideration under other COPS grant program for which they are eligible.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: March 19, 2004.

Carl R. Peed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 04–7424 Filed 4–1–04; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Methamphetamine Initiative

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability of the finding of no significant impact and the environmental assessment.

SUMMARY: The Environmental Assessment, which is available to the public, concludes that the methamphetamine investigation and clandestine laboratory closure activities of the Methamphetamine Initiative will not have significant impact on the quality of the human environment given adherence to all applicable laws and regulations.

ADDRESSES: For copies of the Environment Assessment, please contact: COPS Grants Administration Division, 1100 Vermont Avenue NW., Washington, DC 20530; Phone: (202) 616–3031 or 1–800–421–6770.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, 1–800–421–6770 and ask to speak with your Grant Program Specialist.

SUPPLEMENTARY INFORMATION: In Fiscal Year 2003, the COPS Office prepared an Environmental Assessment for its methamphetamine law enforcement programs, with specific application for the Methamphetamine Initiative. This Environmental Assessment was prepared as required by the Council on Environmental Quality's regulations (40 CFR Parts 1500 through 1508), implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et al.*) The Methamphetamine Initiative addressed a broad array of law enforcement initiatives pertaining to the investigation of methamphetamine trafficking in many heavily impacted areas of the country. For the purposes of this program, funded items may include training of law enforcement officers in methamphetamine-related issues; collection and maintenance of intelligence and information relative to methamphetamine trafficking and traffickers; investigation, arrest and prosecution of producers, traffickers and users of methamphetamine; interdiction and removal of laboratories, finished products, and precursor chemicals and other elements necessary to produce methamphetamine; transportation and storage of finished products, and precursor chemicals, and other elements necessary to produce methamphetamine; and preventive efforts to reduce the spread and use of methamphetamine. Individual projects will reflect a concentration on program areas consistent with Congressional appropriations.

Among the many challenges faced by law enforcement agencies in the Methamphetamine Initiative will be discovery, interdiction, and dismantling of clandestine drug laboratories. These lab sites, as well as other methamphetamine crime venues must be comprehensively dealt with in compliance with a variety of health, safety and environmental laws and regulations. The COPS Office requires that recipients, when encountering illegal drug laboratories, use grant funds to effect the proper removal and disposal of hazardous materials located at those laboratories and directly associated sites in accordance with all applicable laws and regulations.

Overview

Environmental Assessment

The COPS Office will award grants to State and local criminal justice agencies for the FY 2004 COPS Methamphetamine Initiative. The Environmental Assessment concludes that the funding of this program will not have a significant impact on the quality of the human environment given adherence to all applicable laws and regulations. Therefore, an Environmental Impact Statement will not be prepared for the funding of this program.

Dated: March 18, 2004.

Carl R. Peed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 04–7425 Filed 4–1–04; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OVW) Docket No. 1398]

Meeting of the National Advisory Committee on Violence Against Women

AGENCY: Office on Violence Against Women, Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter "the Committee").

DATES: The meeting will take place on April 15, 2004, from 9 a.m. to 5 p.m., and on April 16, 2004, from 9 a.m. to 2 p.m.

ADDRESS: The meeting will take place at the St. Gregory Hotel, 2033 M Street, NW., Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: Jana Sinclair White, The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington, DC 20531. Telephone: (202) 353–4343. E-mail: *Whitej@ojp.usdoj.gov.* Fax: (202) 307–3911. You may view the Committee's Web site at: *http://www.ojp.usdoj.gov/vawo/nac/welcome.html.*

SUPPLEMENTARY INFORMATION: The Committee is chartered by the Attorney General, and co-chaired by the Attorney General and the Secretary of Health and Human Services (the Secretary), to provide the Attorney General and the Secretary with practical and general policy advice concerning implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws, and will assist in the efforts of the Department of Justice and the Department of Health and Human Services to combat violence against women, especially domestic violence, sexual assault, and stalking.

In addition, because violence is increasingly recognized as a public health problem of staggering human cost, the Committee will bring national attention to the problem of violence against women and increase public awareness of the need for prevention and enhanced victim services.

This meeting will primarily focus on the Committee's work; there will, however, be an opportunity for public comment on the Committee's role in providing general policy guidance on implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related legislation.

Meeting Format

This meeting will be held according to the following schedule:

1. *Date:* Thursday, April 15, 2004.

Time: 9 a.m–5 p.m.; including breaks and a working lunch.

2. *Date:* Friday, April 16, 2004.

Time: 9 a.m.–2 p.m., including breaks and a working lunch.

The meeting on April 15, 2004 will begin with consideration of the draft report prepared by the drafting subcommittee of the Advisory Committee. Time will be reserved for comments from the public, beginning at 11:30 a.m. and ending at 12 noon. See the section below on Reserving Time for

Public Comment, for information on how to reserve time on the agenda.

The meeting scheduled for April 16, 2004, will also begin with consideration of the draft report prepared by the drafting subcommittee of the Advisory Committee.

Attending the Meeting

The meeting will be open to the public. Registrations for public attendance will be accepted on a space-available basis. Members of the public who wish to attend must register at least six (6) days in advance of the meeting by contacting Jana Sinclair White at the e-mail address or fax number listed above. Access to the meeting will not be allowed without registration, and all attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Individuals who will need special accommodations for a disability in order to attend the meetings should notify Jana Sinclair White at the above e-mail address or by fax, no later than April 9, 2004. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Submitting Written Comments

Interested parties are invited to submit written comments to the Committee, by April 9, 2004, by e-mail to *whitej@ojp.usdoj.gov;* or by fax on (202) 307–3911.

Reserving Time for Public Comment

If you are interested in participating during the public comment period of the meeting, on the implementation of the Violence Against Women Act of 1994, and the Violence Against Women Act of 2000, you are requested to reserve time on the agenda by contacting the Office on Violence Against Women, U.S. Department of Justice, by e-mail or fax. Please include your name, the organization you represent, if appropriate, and a brief description of the issue you would like to present. Participants will be allowed approximately 3 to 5 minutes to present their comments, depending on the number of individuals who reserve time on the agenda. Participants are also encouraged to submit two written copies of their comments at the meeting.

Given the expected number of individuals interested in providing comments at the meetings, reservations for presenting comments should be made as soon as possible. Persons who are unable to obtain reservations to speak during the meetings are encouraged to submit written comments, which will be accepted at the meeting site or may be e-mailed to the Committee at the e-mail address listed under the section on Submitting Written Comments.

Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

Diane M. Stuart,

Director, Office on Violence Against Women.

[FR Doc. 04–7565 Filed 4–1–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: Bureau of Prisons, U.S. Department of Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for development of a medium-security Federal correctional institution by the U.S. Department of Justice, Federal Bureau of Prisons. The area under consideration for correctional facility development includes southern West Virginia.

Background

The Federal Bureau of Prisons (BOP) is responsible for carrying out judgments of the Federal courts whenever a period of confinement is ordered. The mission of the BOP is to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

As of March 29, 2004, approximately 148,655 inmates are housed within the 105 Federal correctional facilities that have levels of security ranging from minimum to maximum. At the present time, the Federal inmate population exceeds the combined rated capacities of the 105 Federal correctional facilities.

The continuing inmate population is due in part to Federal court sentencing guidelines which are resulting in longer terms of confinement for serious crimes. The increase in the number of immigration offenders and the effort to combat organized crime and drug trafficking are also contributing to the increase. Measures being undertaken to manage the growth of the Federal inmate population include construction of new institutions, acquisition and adaptation of facilities originally intended for other purposes, expansion and improvement of existing correctional facilities, and expanded use of contract beds. Adding capacity through these various means allows the BOP to work towards the long-term goal of managing our inmate population growth.

In the face of the continuing increase in the Federal prison population, one way the BOP has extended its capacity is through construction of new facilities. As part of this effort, the BOP has a facilities planning program featuring the identification and evaluation of sites for new facilities. The BOP routinely identifies prospective sites that may be appropriate for development of new Federal correctional facilities. Locations of new Federal correctional facilities are determined by the need for such facilities in various parts of the country and the resources available to meet that need.

The BOP routinely screens and evaluates private and public properties located throughout the nation for possible use and development. Over the past decade, the BOP has examined prospective sites for new correctional facilities development in Kentucky, Virginia, Pennsylvania, West Virginia, North Carolina, South Carolina, California, Florida, Arizona, Indiana, Mississippi, Arkansas, and Louisiana among other locations around the country and has undertaken environmental impact studies in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended.

Proposed Action

The BOP is facing increased bedspace shortages throughout the Federal prison system. Over the past decade, a significant influx of inmates has entered the Federal prison system with a large portion of this influx originating from the Mid-Atlantic region.

In response, the BOP has committed significant resources to identifying and developing sites for new correctional facilities throughout this region including construction of facilities in Martin County and McCreary County, Kentucky; Petersburg and Lee County, Virginia; Butner, North Carolina; and Preston County and Gilmer County, West Virginia. Even with the development of these new and expanded facilities, projections show the Federal inmate population

continuing to increase, placing additional demands for bedspace within the Mid-Atlantic region.

In response, the BOP has undertaken investigations throughout Virginia, Kentucky, North Carolina, and West Virginia in an effort to identify prospective sites capable of accommodating Federal correctional facilities and communities willing to host such facilities. Through this process, officials representing communities located in southern West Virginia, identified potential locations for development of a medium-security Federal correctional institution and offered several sites for BOP consideration. Sites located in McDowell County, Mingo County, Boone County, and Nicholas County in West Virginia have been offered and all were subjected to initial studies by the BOP. These potential sites were subjected to initial studies by the BOP and those considered suitable for correctional facility development will be evaluated further by the BOP in a DEIS that will analyze the potential impacts of facility construction and operation.

The BOP is proposing to build and operate in the Mid-Atlantic region a medium-security Federal correctional institution with an adjoining satellite work camp. The medium-security institution would house approximately 1,200 inmates.

The Process

In the process of evaluating the potential environmental impacts associated with Federal correctional facility development and operation, many factors and features will be analyzed including, but not limited to: topography, geology, soils, hydrology, biological resources, cultural resources, hazardous materials, aesthetics, fiscal considerations, population/employment/housing characteristics, community services and facilities, land uses, utility services, transportation systems, meteorological conditions, air quality, and noise.

Alternatives

In developing the DEIS, the No Action alternative, other actions considered and eliminated, and alternatives sites for the proposed medium-security Federal correctional institution will be examined.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A Public Scoping Meeting will be held at 7 p.m., Tuesday, April 27, 2004, at Mount View High School, 950 Mount View Road, Welch, West Virginia. The meeting location, date, and time will be well-publicized and have been arranged to allow for the public as well as interested agencies and organizations to attend and formally express their views on the scope and significant issues to be studied as part of the DEIS process. The Scoping Meeting is being held to provide for timely public comments and understanding of Federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended, and the National Historic Preservation Act of 1966, as amended.

Availability of DEIS

Public notice will be given concerning the availability of the DEIS for public review and comment.

Contact

Questions concerning the proposed action and the DEIS may be directed to: Pamela J. Chandler, Acting Chief, Site Selection and Environmental Review Branch, U.S. Department of Justice—Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534 Telephone: 202–514–6470/Facsimile: 202–616–6024/*siteselection@bop.gov.*

Dated: March 29, 2004.

Pamela J. Chandler,

Acting Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons.

[FR Doc. 04–7401 Filed 4–1–04; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division;

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of

submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those notes above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at not cost on the Government Printing Office site at *http//www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State.

Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 25th day of March 2004.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–7183 Filed 4–1–04; 8:45 am]

BILLING CODE 4510–27–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2 p.m., Thursday, April 22, 2004.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing open to the Public at 2 p.m.

PURPOSE: Annual Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Friday, April 16, 2004. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate, an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Friday, April 16, 2004. Such statements must be typewritten, double-spaced and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

FOR FURTHER INFORMATION CONTACT: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: March 31, 2004.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 04–7552 Filed 3–31–04; 9:39 am]

BILLING CODE 3210–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s): (1) *Collection title:* Public Service Pension Questionnaires.

(2) *Form(s) submitted:* G–208, G–212.

(3) *OMB Number:* 3220–0136.

(4) *Expiration date of current OMB clearance:* 06/30/2004.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,170.

(8) *Total annual responses:* 1,170.

(9) *Total annual reporting hours:* 293.

(10) *Collection description:* A spouse or survivor annuity under the Railroad Retirement Act may be subjected to a reduction for a public service pension. The questionnaires obtain information needed to determine if the reduction applies and the amount of such reduction.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or e-mail *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* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–7426 Filed 4–1–04; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s): (1) *Collection title:* Railroad Retirement Act Continuing Entitlement.

(2) *Form(s) submitted:* AA–5, G–478, RB–5.

(3) *OMB Number:* 3220–0052.

(4) *Expiration date of current OMB clearance:* 6/30/2004.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, business or other for-profit.

(7) *Estimated annual number of respondents:* 20,300.

(8) *Total annual responses:* 20,300.

(9) *Total annual reporting hours:* 16,350.

(10) *Collection description:* Section 2 of the Railroad Retirement Act (RRA) provides for payment of annuities to retired or disabled employees, their spouses and eligible survivors. The collection provides the Railroad Retirement Board with information needed to administer and monitor their continued entitlement to benefits under the RRA after an initial award is made.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency 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* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–7427 Filed 4–1–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 154; SEC File No. 270–438 and OMB Control No. 3235–0495.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

The Federal securities laws generally prohibit an issuer, underwriter, or dealer from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security. Rule 154 [17 CFR 230.154] under the Securities Act of 1933 [15 U.S.C. 77a] (the "Securities Act") permits, under certain circumstances, delivery of a single prospectus to investors who purchase securities from the same issuer and share the same address ("householding") to satisfy the applicable prospectus delivery requirements.[1] The purpose of rule 154 is to reduce the amount of duplicative prospectuses delivered to investors sharing the same address.

Under rule 154, a prospectus is considered delivered to all investors at a shared address, for purposes of the Federal securities laws, if the person relying on the rule delivers the prospectus to the shared address and the investors consent to the delivery of a single prospectus. The rule applies to prospectuses and prospectus supplements. Currently, the rule permits householding of all prospectuses by an issuer, underwriter, or dealer relying on the rule if, in addition to the other conditions set forth in the rule, the issuer, underwriter, or dealer has obtained from each investor written or implied consent to householding.[2] The rule requires issuers, underwriters, or dealers that wish to household prospectuses with implied consent to send a notice to each investor stating that the investors in the household will receive one prospectus in the future unless the investors provide contrary instructions. In addition, at least once a year, issuers, underwriters, or dealers, relying on rule 154 for the householding of prospectuses relating to open-end mutual funds, must explain to investors who have provided written or implied consent how they can revoke their consent. Preparing and sending the initial notice and the annual explanation of the right to revoke are collections of information.

The rule allows issuers, underwriters, or dealers to household prospectuses and prospectus supplements if certain conditions are met. Among the conditions with which a person relying on the rule must comply are providing notice to each investor that only one prospectus will be sent to the household and, in the case of issuers that are open-end mutual funds, providing to each investor who consents to householding an annual explanation of the right to revoke consent to the delivery of a single prospectus to multiple investors sharing an address. The purpose of the notice and annual explanation requirements of the rule is to ensure that investors who wish to receive individual copies of shareholder reports are able to do so.

Although rule 154 is not limited to investment companies, the Commission believes that it is used mainly by open-end mutual funds and by broker-dealers that deliver mutual fund prospectuses. The Commission is unable to estimate the number of issuers other than mutual funds that rely on the rule.

The Commission estimates that, as of November 2003, there are approximately 3,114 open-end mutual funds, approximately 200 of which engage in direct marketing and therefore deliver their own prospectuses. The Commission estimates that each direct-marketed mutual fund will spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 4,000 hours. The Commission estimates that each direct-marketed fund will also spend 1 hour complying with the explanation of the right to revoke requirement of the rule, for a total of 200 hours. The Commission estimates that there are approximately 300 broker-dealers that carry customer accounts and, therefore, may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-dealer will spend, on average, approximately 20 hours complying with the notice requirement of the rule, for a total of 6,000 hours. Each broker-dealer will also spend 1 hour complying with the annual explanation of the right to revoke requirement, for a total of 300 hours. Therefore, the total number of respondents for rule 154 is 500 (200 mutual funds plus 300 broker-dealers), and the estimated total hour burden is 10,500 hours (4,200 hours for mutual funds plus 6,300 hours for broker-dealers).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. Responses to the collections of information will not be kept confidential. The rule does not require these records be retained for any specific period of time. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days after this notice.

Dated: March 15, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7495 Filed 4–1–04; 8:45 am]

BILLING CODE 8010–01–P

[1] The Securities Act requires the delivery of prospectuses to investors who buy securities from an issuer or from underwriters or dealers who participate in a registered distribution of securities. *See* Securities Act sections 2(a)(10), 4(1), 4(3), 5(b) [15 U.S.C. 77b(a)(10), 77d(1), 77d(3), 77e(b); *see also* rule 174 under the Securities Act [17 CFR 230.174] (regarding the prospectus delivery obligation of dealers); rule 15c2–8 under the Securities and Exchange Act of 1934 [17 CFR 240.15c2–8] (prospectus delivery obligations of brokers and dealers).

[2] Rule 154 permits the householding of prospectuses that are delivered electronically to investors only if delivery is made to a shared electronic address and the investors give written consent to householding. Implied consent is not permitted in such a situation. *See* rule 154(b)(4).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26406; 812–12827]

The Vanguard Group, Inc., et al.; Notice of Application

March 29, 2004.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION:

Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions. The order would supersede a prior order.[1] The order would also amend two prior orders.[2]

APPLICANTS: The Vanguard Group, Inc. ("Vanguard"), Vanguard Admiral Funds, Vanguard Balanced Index Fund, Vanguard Bond Index Funds, Vanguard California Tax-Free Funds, Vanguard Convertible Securities Fund, Vanguard Explorer Fund, Vanguard Fenway Funds, Vanguard Fixed Income Securities Funds, Vanguard Florida Tax-Free Fund, Vanguard Horizon Funds, Vanguard Index Funds, Vanguard Institutional Index Fund, Vanguard International Equity Index Funds, Vanguard Malvern Funds, Vanguard Massachusetts Tax-Exempt Funds, Vanguard Money Market Reserves, Vanguard Morgan Growth Fund, Vanguard Municipal Bond Funds, Vanguard New Jersey Tax-Free Funds, Vanguard New York Tax-Free Funds, Vanguard Ohio Tax-Free Funds, Vanguard Pennsylvania Tax-Free Funds, Vanguard Chester Funds, Vanguard Quantitative Funds, Vanguard Specialized Funds, Vanguard STAR Fund, Vanguard Tax-Managed Funds, Vanguard Treasury Fund, Vanguard Trustees' Equity Fund, Vanguard Variable Insurance Fund, Vanguard Wellesley Income Fund, Vanguard Wellington Fund, Vanguard Whitehall Funds, Vanguard Windsor Funds, and Vanguard World Funds (each such fund, and any future registered investment companies or series thereof that are part of the same "group of investment companies" as defined in section 12(d)(1)(G) of the Act and that are organized, managed, or advised by Vanguard or a person controlling, controlled by, or under common control with Vanguard, each a "Vanguard Fund" and, collectively, the "Vanguard Funds").

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) certain registered open-end management investment companies to invest uninvested cash and cash collateral in one or more affiliated money market funds and/or short-term bond funds, and (b) the registered investment companies and certain affiliated entities to engage in purchase and sale transactions involving portfolio securities.

FILING DATES: The application was filed on May 17, 2002 and was amended on August 4, 2003, and March 22, 2004. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 22, 2004, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o R. Gregory Barton, The Vanguard Group, Inc., P.O. Box 2600, Mail Stop V26, Valley Forge, PA 19482.

FOR FURTHER INFORMATION CONTACT: Todd F. Kuehl, Branch Chief, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Vanguard Group, Inc., a Pennsylvania corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 and as a transfer agent under the Securities Exchange Act of 1934. Vanguard is wholly and jointly owned by certain Vanguard Funds (the "Member Funds"). Vanguard and the Member Funds operate under an "internalized" management structure pursuant to exemptive orders issued by the Commission and in accordance with a common service agreement between Vanguard and the Member Funds (the "Service Agreement"). Under this structure, Vanguard provides the Member Funds with corporate management, administrative, transfer agency, distribution, and investment advisory services on an at-cost basis. Vanguard Institutional Index Fund and Vanguard STAR Fund are not Member Funds. These two funds (together with any existing or future Vanguard Funds that are not Member Funds, the "Non-Member Funds") are not parties to the Service Agreement and do not make capital contributions to Vanguard. The Non-Member Funds receive all required services pursuant to separate management and shareholder services agreements with Vanguard. Each Vanguard Fund is a registered open-end management investment company organized as a Delaware statutory trust.[3]

2. Vanguard serves as the sole investment adviser of certain Vanguard Funds, while other Vanguard Funds are advised by Vanguard and one or more third party investment advisers. Vanguard or a person controlling, controlled by, or under common control with Vanguard, also serves, or may in the future serve, as investment adviser or as trustee exercising investment discretion for certain existing and future collective trust funds and managed accounts (the "Other Vanguard Accounts"). The managed accounts are not pooled investment vehicles, and the Other Vanguard Accounts are not investment companies as defined in the Act. The Vanguard Funds and the Other Vanguard Accounts are collectively referred to herein as the "Participating Accounts."

3. Each Participating Account holds uninvested cash derived from a variety

[1] *Vanguard Municipal Bond Fund, Inc., et al.*, Investment Company Act Release Nos. 17655 (Aug. 7, 1990) (notice) and 17726 (Sep. 5, 1990) (order).

[2] *Vanguard STAR Fund, et al.*, Investment Company Act Release Nos. 21372 (Sep. 22, 1995) (notice) and 21426 (Oct. 18, 1995) (order) (the "Amended STAR Order") and *The Vanguard Group, Inc., et al.*, Investment Company Act Release Nos. 21470 (Nov. 3, 1995) (notice) and 21555 (Nov. 29, 1995) (order) (the "Fund of Index Funds Order").

[3] All Vanguard Funds that currently intend to rely on the requested order are named as Applicants. Any other existing or future Vanguard Fund will rely on the requested order only in accordance with the terms and conditions of the Application.

of sources ("Uninvested Cash"), such as dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment or temporary defensive purposes, scheduled maturity of investments, proceeds from the liquidation of portfolio securities, and money received from investors. Participating Accounts may also receive cash collateral from borrowers ("Cash Collateral" and, together with Uninvested Cash, "Available Cash") in connection with a securities lending program (the "Securities Lending Program")

4. The Cash Management Trust will be organized as a Delaware statutory trust and will register as an open-end management investment company under the Act. The Cash Management Trust will be advised by Vanguard, and will be a series company with several different portfolios (each, a "CMT Fund"). The CMT Funds will not be Member Funds and will not make capital contributions to Vanguard. Vanguard will provide corporate management, administrative, transfer agency, distribution, and investment advisory services to the CMT Funds on an at-cost basis pursuant to separate management and shareholder services agreements. The CMT Funds will have their own investment objectives, strategies, and policies, and will be separately managed by Vanguard generally to provide current income, preserve principal, and maintain liquidity through investments in repurchase agreements, money market instruments, and other fixed-income securities. Certain CMT Funds are expected to operate as money market funds in compliance with rule 2a–7 under the Act. Those CMT Funds which do not operate as money market funds in compliance with rule 2a–7 under the Act will operate as short-term bond funds and maintain a dollar-weighted average maturity of three years or less.

5. Applicants request an order to permit: (i) any Participating Account to use its Available Cash to purchase shares issued by a CMT Fund and to redeem such shares; (ii) any CMT Fund to sell shares to and redeem shares from any Participating Account; and (iii) the Participating Accounts and the CMT Funds to engage in certain interfund purchase and sale transactions in portfolio securities ("Interfund Transactions"). The order would also amend the Amended STAR Order and the Fund of Index Funds Order by permitting Vanguard funds of funds operating in reliance on these orders to purchase and redeem shares of any underlying Vanguard Fund that, in turn, invests its Available Cash in the Cash Management Trust.

Applicants' Legal Analysis

I. Investment of Available Cash by the Participating Accounts in the CMT Funds

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits any registered investment company (the "acquiring company") from purchasing shares of another investment company (the "acquired company") if immediately after the purchase the acquiring company would own: (i) More than 3% of the outstanding voting stock of the acquired company; (ii) securities issued by the acquired company having an aggregate value greater than 5% of the value of the acquiring company's total assets; or (iii) securities issued by the acquired company and all other investment companies having an aggregate value greater than 10% of the value of the acquiring company's total assets.

Section 12(d)(1)(B) of the Act, in relevant part, prohibits an open-end registered investment company from selling its securities to another investment company if immediately after the sale: (i) More than 3% of the outstanding voting stock of the acquired company is owned by the acquiring company; or (ii) more than 10% of the outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies.

2. Section 12(d)(1)(J) provides that the Commission may provide exemptive relief from the provisions of Section 12(d)(1) if and to the extent that the relief requested is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Vanguard Funds to use their Available Cash to acquire shares of the CMT Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases a Vanguard Fund's aggregate investment of Uninvested Cash in shares of the CMT Funds will not exceed 25% of the Vanguard Fund's total assets at any time. Applicants also request relief to permit the CMT Funds to sell their securities to the Vanguard Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each CMT Fund will be managed specifically to maintain a highly liquid portfolio, CMT Funds will not be susceptible to undue influence due to the threat of large-scale redemptions. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because the shares of the CMT Funds sold to and redeemed from Vanguard Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers ("NASD") Conduct Rules) or, if such shares are subject to any such fees in the future, Vanguard will waive its advisory fee for each Vanguard Fund in an amount that offsets the amount of such fees incurred by the Vanguard Fund. If a CMT Fund offers more than one class of securities, each Vanguard Fund will invest only in the class with the lowest expense ratio (taking into account the expected impact of the Vanguard Fund's investment) at the time of the investment. In addition, condition 5 below (in the case of Member Funds) and condition 6 below (in the case of Non-Member Funds) provide that the boards of trustees ("Boards") of the Vanguard Funds, including trustees who are not "interested persons" of the Vanguard Funds, as defined in section 2(a)(19) of the Act ("Independent Trustees"), will review and consider on an annual basis whether costs or fees for the Vanguard Funds should be reduced to account for reduced services to the Vanguard Funds as a result of Uninvested Cash being invested in the CMT Funds.

B. Section 17(a) of the Act

1. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of or a principal underwriter for a registered investment company, or an affiliated person of such a person or principal underwriter, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include (i) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (ii) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person, (iii) any person directly or indirectly controlling, controlled by, or under common control with the other person, and (iv) any investment adviser to the investment company. Because

Vanguard may be viewed as controlling the Participating Accounts and the Cash Management Trust, they may be deemed to be under common control and therefore, affiliated persons of each other. In addition, if a Participating Account purchases more than 5% of the voting securities of the Cash Management Trust, the Cash Management Trust and the Participating Account may be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of Cash Management Trust to the Vanguard Funds, and the redemption of the shares by the Vanguard Funds.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants submit that their request for relief to permit the purchase and redemption of shares of the CMT Funds by the Vanguard Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that the consideration paid and received on the sale and redemption of shares of the Cash Management Trust will be based on the net asset value of such shares. Applicants state that the Vanguard Funds will retain their ability to invest Available Cash directly in short-term investments as authorized by their respective investment objectives, strategies and policies. Applicants represent that each CMT Fund reserves the right to discontinue selling shares to any of the Vanguard Funds if such sales would adversely affect the CMT Fund's portfolio management and operations.

C. Section 17(d) of the Act and Rule 17d–1 Under the Act

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has approved the joint arrangement. Applicants state that by establishing and operating the Cash Management Trust as a vehicle for the collective investment of Available Cash, Vanguard, the Participating Accounts and the Cash Management Trust could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

2. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the investment company's participation in the joint transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet the standards for an order under rule 17d–1.

II. Interfund Transactions

1. Applicants state that they currently rely on rule 17a–7 under the Act to conduct Interfund Transactions. Rule 17a–7 under the Act provides an exemption from section 17(a) for a purchase or sale of certain securities between a registered investment company and a person that is an affiliated person of such company (or an affiliated person of such person) solely by reason of having a common investment adviser, common officers and/or common directors or trustees. Applicants state that the Other Vanguard Accounts and CMT Funds or Vanguard Funds may not be able to rely on rule 17a–7 when purchasing or selling portfolio securities to each other because some of the Other Vanguard Accounts may own 5% or more of the outstanding voting securities of a CMT Fund and, therefore, an affiliation would not exist solely by reason of having a common investment adviser, common officers and/or common directors or trustees.

2. Applicants request relief under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the participating Other Vanguard Account and the participating CMT Fund or Vanguard Fund will comply with rule 17a–7 under the Act in all respects, other than the requirement that the participants be affiliated solely by reason of having a common investment adviser, common directors and/or common officers. Applicants state that by complying with the conditions of rule 17a–7, the Interfund Transactions do not raise any conflicts of interest or opportunities for abuse. Thus, the Applicants submit that the Interfund Transactions are reasonable and fair, do not involve overreaching, and will be consistent with the purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The shares of the CMT Funds sold to and redeemed from Vanguard Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules) or, if such shares are subject to any such fees in the future, Vanguard will waive its advisory fee for each Vanguard Fund in an amount that offsets the amount of such fees incurred by the Vanguard Fund.

2. The Cash Management Trust, each CMT Fund, and each Vanguard Fund that may rely on the order will be part of the same group of investment companies (as defined in section 12(d)(1)(G) under the Act) and will be organized, managed, or advised by Vanguard or a person controlling, controlled by, or under common control with Vanguard. The Other Vanguard Accounts that may rely on the order will be advised by Vanguard or a person controlling, controlled by, or under common control with Vanguard.

3. Investment by a Vanguard Fund in shares of the CMT Funds will be in accordance with the Vanguard Fund's investment restrictions and will be consistent with the Vanguard Fund's investment policies as set forth in its prospectus and statement of additional information. A Vanguard Fund that complies with rule 2a–7 under the Act will not invest its Available Cash in any CMT Fund that does not comply with the requirements of rule 2a–7.

4. A CMT Fund will not acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

5. Before the next meeting of the Boards of the Member Funds is held for the purpose of annually reviewing and approving the proposed allocation of the costs of the operation of Vanguard among the Member Funds, and, if applicable, for purposes of approving an investment advisory agreement with third party investment adviser(s) pursuant to section 15 of the Act, Vanguard and, if applicable, the third party investment adviser(s), will provide the Boards with specific information regarding the approximate

cost to Vanguard and/or the third party investment adviser(s) of, or the approximate portion of the total fee paid to Vanguard and/or the third party investment adviser by each Member Fund that is attributable to, managing the portion of the Member Fund's Uninvested Cash that can be expected to be invested in the CMT Funds. In connection with their annual review and approval of the proposed allocation of the costs of the operation of Vanguard among the Member Funds, and/or investment advisory agreements with the third party investment adviser(s), the Boards, including a majority of the Independent Trustees, shall consider to what extent, if any, such allocated costs and/or advisory fees should be reduced to account for reduced services provided to the Member Funds by Vanguard or a third party investment adviser as a result of Uninvested Cash being invested in the CMT Funds. The minute books of the Member Funds will record fully the Board's consideration in approving the allocated costs and/or advisory agreement(s), including the considerations related to fees referred to above.

6. Before the next meeting of the Boards of the Non-Member Funds is held for the purpose of considering and approving the continuation for one year of the management agreement between the Non-Member Fund and Vanguard, and, if applicable, for purposes of approving an investment advisory agreement with third party investment adviser(s) pursuant to section 15 of the Act, Vanguard and, if applicable, the third party investment adviser(s), will provide the Boards with specific information regarding the approximate cost to Vanguard and/or the third party investment adviser(s) of, or the approximate portion of the total fee paid to Vanguard and/or the third party investment adviser by each Non-Member Fund that is attributable to, managing the portion of the Non-Member Fund's Uninvested Cash that can be expected to be invested in the CMT Funds. In connection with its consideration and approval of the continuation for one year of the management agreement between the Non-Member Fund and Vanguard, and, if applicable, the investment advisory agreement with the third party investment adviser(s), the Boards, including a majority of the Independent Trustees, shall consider to what extent, if any, such allocated costs and/or advisory fees should be reduced to account for reduced services provided to the Non-Member Funds by Vanguard or a third party investment adviser as a result of Uninvested Cash being invested in the CMT Funds. The minute books of the Non-Member Funds will record fully the Board's consideration in approving the allocated costs and/or advisory agreement(s), including the considerations related to fees referred to above.

7. Before a Vanguard Fund that participates in the Securities Lending Program is permitted to invest Cash Collateral in the Cash Management Trust, a majority of the Board (including a majority of Independent Trustees) will approve such investment. No less frequently than annually, the Board also will evaluate, with respect to each Vanguard Fund, any securities lending arrangement and its results and determine that any investment of Cash Collateral in the CMT Funds is in the best interests of the Vanguard Fund.

8. Each of the Vanguard Funds may invest in, and hold shares of, a CMT Fund only to the extent that the Vanguard Fund's aggregate investment of Uninvested Cash in the CMT Fund at the time the investment is made does not exceed 25% of the total assets of the Vanguard Fund.

9. When engaging in Interfund Transactions, the participating Other Vanguard Account and the participating CMT Fund or Vanguard Fund will comply with rule 17a-7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of one another solely by reason of having a common investment adviser (or investment advisers that are affiliated persons of each other), common officers, and/or common directors, solely because the Other Vanguard Accounts and the CMT Funds might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

Applicants agree that condition 2 of the Amended STAR Order shall be replaced with the following condition:

No acquired Vanguard Fund shall acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent such acquired Vanguard Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting such acquired Vanguard Fund to acquire securities of one or more registered open-end investment companies in the same group of investment companies as the acquired Vanguard Fund that are money market funds or short-term bond funds for short-term cash management purposes.

Applicants agree that condition 2 of the Fund of Index Funds Order shall be replaced with the following condition:

No acquired underlying Index Portfolio shall acquire securities of any other investment company or any company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent such acquired underlying Index Portfolio acquires securities of another investment company pursuant to exemptive relief from the Commission permitting such acquired underlying Index Portfolio to acquire securities of one or more registered open-end investment companies in the same group of investment companies as the acquired underlying Index Portfolio that are money market funds or short-term bond funds for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7496 Filed 4–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49488; File No. SR–AMEX–2004–18]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to the Proposed Rule Change Relating to an Extension of the Marketing Fee Voting Procedures Pilot Program

March 26, 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 March 11, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the marketing fee voting procedures pilot program. The proposed rule change is described in Items I and II below, which the Amex has prepared. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change. The Commission is also approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange LLC (the "Amex" or the "Exchange") proposes to extend, for an additional six (6) months, the Exchange's marketing fee voting procedures pilot program (the "Pilot Program").

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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

In June 2003, the Amex reinstated an equity option marketing fee on the transactions of specialists and registered options traders ("ROTs") involving customer orders from firms that accept payment for directing their orders to the Exchange.[3] On September 30, 2003, the Exchange adopted new voting procedures, operative on a six-month pilot basis, in connection with its reinstatement of the marketing fee program.[4] The Pilot Program's voting procedures are set forth in Commentary .11 to Amex Rule 958. These procedures establish the voting eligibility requirements for ROTs and the manner in which ROTs may determine to discontinue their participation in the marketing fee program.

Subsequently, in December 2003, the Exchange proposed to expand the number of eligible registered options traders entitled to vote in connection with the marketing fee program. In January 2004, the Commission approved the amended ROT voter eligibility requirements as part of the Pilot Program.[5] Based on the Exchange's limited experience with the revised voting procedures, the Exchange proposes that the Commission extend the Pilot Program for an additional six (6) months until September 30, 2004. During this time, the Exchange represents that it would have gained additional experience operating the Pilot Program and would be in a better position to request permanent approval.

2. Statutory Basis

The Amex believes that the rule change is consistent with section 6 of the Act,[6] particularly section 6(b)(5) of the Act.[7] The Exchange believes that the proposed rule change is intended to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. 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–Amex–2004–18, and 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 may be sent in hard copy 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 File No. SR–Amex–2004–18 and should be submitted by April 23, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[8] The Commission believes that the proposed extension of the Pilot Program would continue to allow ROTs to have a voice regarding whether to discontinue the marketing fee program in those option classes in which they act as market makers.

The Amex has requested accelerated approval of its proposal to extend the Pilot Program until September 30, 2004. According to the Amex, the proposal raises no novel issues and would merely extend the current Pilot Program for an additional six months until September 30, 2004. Based upon the Amex's

[3] *See* Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR–Amex–2003–50).

[4] *See* Securities Exchange Act Release No. 48577 (September 30, 2003), 68 FR 57943 (October 7, 2003) (SR–Amex–2003–80).

[5] *See* Securities Exchange Act Release No. 49115 (January 22, 2004), 69 FR 4332 (January 29, 2004) (SR–Amex–2003–114). The Exchange's proposal was intended to increase participation in the voting process for those ROTs that significantly concentrate their trading activity to particular option classes adjacent to each other that may have more than one (1) individual specialist. The criteria set forth in Commentary .11 to Amex Rule 958 provides that: (1) The option classes must be located in adjacent trading locations on the trading floor; and (2) the ROT must be continuously signed onto Auto-Ex and/or Quick Trade in those particular options classes. In order to vote, a ROT will still be required to meet the 80% contract volume and transaction requirement; however, the 80% requirement will be calculated based on the total trading activity of the ROT in multiple option classes.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(5). Section 6(b)(5) of the Act requires that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers."

representations, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[9] to approve the proposed rule change to extend the Pilot Program, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that the extension of the Pilot Program will permit the Exchange to gain additional experience with its operation. Further, the Commission notes that no changes are being made to the Pilot Program other than its extension until September 30, 2004. Accordingly, the Commission is approving, on an accelerated basis, the proposed extension of the Pilot Program until September 30, 2004.[10]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the six-month extension of the Pilot Program until September 30, 2004, as set forth in SR–Amex–2004–18, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–7499 Filed 4–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49489; File No. SR–DTC–2004–01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Termination of TaxReclaim Service

March 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 8, 2004, The Depository Trust Company ("DTC") 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 DTC. 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

The proposed rule change would permit DTC to terminate its TaxReclaim service.

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

The proposed rule change consists of the termination of DTC's TaxReclaim service. TaxReclaim assists DTC participants in preparing foreign tax reclaim forms required for reclaiming taxes withheld by foreign jurisdictions with respect to distributions in foreign securities. Using DTC's Participant Terminal System, DTC participants input data relating to the beneficial owner, foreign security, and payment details as required by the country of issuance. TaxReclaim processes the information and transmits back to the participant the completed tax reclaim form, reclaim calculation, and instructions for filing the reclaim form.

TaxReclaim was introduced in 1999. Usage in recent years has decreased significantly due in part to the expansion of DTC's TaxRelief product. TaxRelief facilitates participants' ability to obtain tax relief at the source, reducing the instances of over-withholding by the taxing authorities of the foreign jurisdiction. The expansion of TaxRelief has reduced the need for participants to use TaxReclaim to file reclaim forms. In calendar year 2003, usage of TaxReclaim declined to 209 transactions processed by seven participants.

DTC notified the users of TaxReclaim in January 2004 that the service would be terminated in 2004. All users have found alternate tax reclaim service providers, and there are currently no users of the TaxReclaim service.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act[3] and the rules and regulations thereunder applicable to DTC and is consistent with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible. The proposed rule change promotes the efficient allocation of DTC's resources and services among DTC's participants by terminating operation of a service that was not being utilized by a sufficient number of DTC participants to support its costs.

(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

DTC has not solicited nor received written comments on the proposed rule change. DTC will inform the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change relating to the deleted fine has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] thereunder because the proposed rule 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 such 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.

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[9] 15 U.S.C. 78s(b)(2).

[10] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

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–2004–01. 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 either 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 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org.* All submissions should refer to File No. SR–DTC–2004–01 and should be submitted by April 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–7498 Filed 4–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49495; File No. SR–PCX–2004–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Trading Hours for Options on Exchange-Traded Funds

March 29, 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 March 10, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The PCX filed the proposal pursuant to section 19(b)(3)(A) under the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend Commentary .02 to PCX Rule 4.2, . "Trading Sessions," to provide that options on exchange-traded funds ("ETFs") will trade until 1:15 p.m. (Pacific Time) each business day. The text of the rule appears below. Additions are *italicized.*

Trading Sessions

Rule 4.2—No change.

Commentary:

.01—No change.

.02 The hours for trading options on Nasdaq-100 Index Tracking Stock *and options on Exchange Traded Funds* will commence at 6:30 a.m. and end at 1:15 p.m. each business day, except the last trading day of each calendar month, when trading in options on Nasdaq-100 Index tracking Stock will end at 1:05 p.m.

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 PCX 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 PCX 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 PCX's rules permit members to effect transactions on the options floor of the PCX until 1:02 p.m. (Pacific Time) for equity options and until 1:15 p.m. (Pacific Time) for index options each business day.[6] The PCX's rules also provide that the hours for trading options on the Nasdaq-100 Index Tracking Stock ("QQQs") commence at 6:30 a.m. (Pacific Time) and end at 1:15 p.m. (Pacific Time) each business day except the last trading day of each calendar month, when trading in options on the QQQs ends at 1:05 p.m. (Pacific Time).

The purpose of the proposal is to establish the hours of trading in options on ETFs from 6:30 a.m. (Pacific Time) to 1:15 p.m. (Pacific Time) except the last trading day of each calendar month, when trading in options on the QQQs will end at 1:05 p.m. (Pacific Time). According to the PCX, with the exception of the last trading day of each calendar month, the proposal applies the same trading hours to options on index products, options on the QQQs, and options on all other ETFs. The PCX believes that although ETFs are not themselves index option products,[7] they nonetheless are designed to closely track the price and yield performance of the index products and should be evaluated the same way for the purpose of establishing trading hours for ETFs.

2. Statutory Basis

The PCX believes that the proposed amendments will assist in allowing the PCX to offer investors the same trading session for options on ETFs that it affords to trading options on index products. The PCX believes that the proposal is consistent with section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The PCX has asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* PCX Rule 4.2, Commentary .01.

[7] For example, the QQQs represent ownership in the Nasdaq-100 Trust, a long-term unit investment trust established to accumulate and hold a portfolio of the equity securities that comprise the Nasdaq-100 Index. The Nasdaq-100 Index includes 100 of the largest non-financial companies listed on the Nasdaq National Market. The Nasdaq-100 reflects Nasdaq's largest growth companies across major industry groups with all index components having a market capitalization of at least $500 million and an average daily trading volume of at least 100,000 shares.

[8] 15 U.S.C. 78f(b)(5).

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

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii), the PCX provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay specified in Rule 19b–4(f)(6) to allow the PCX to implement the proposed rule change as quickly as possible. In this regard, the PCX believes that the proposal is non-controversial because the Exchange seeks to maintain the uniformity of the trading session for all index options, options on the QQQs, and options on all ETFs. As a result, the PCX believes that the proposed rule change does not raise new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The PCX believes that its request is consistent with the protection of investors and the public interest and that good cause exists, including the PCX's need to maintain competition and efficiency.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because other options exchanges currently permit options on ETFs to trade until 4:15 p.m. (Eastern Time).[11] Accordingly, the PCX's proposal will make the PCX's rules consistent with the rules of other options exchanges. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and the Commission designates the proposal to be operative upon filing with the Commission.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it 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–PCX–2004–16. The 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 PCX. All submissions should refer to File No. SR–PCX–2004–16 and should be submitted by April 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–7497 Filed 4–1–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] Telephone conversation between Mai Shiver, Acting Director/Senior Counsel, Regulatory Policy, PCX, and Yvonne Fraticelli, Special Counsel, Division of Market Regulation, on March 26, 2004.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 03/73–0220]

Meridian Venture Partners II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Acts, Conflicts of Interest

Notice is hereby given that Meridian Venture Partners II, L.P., 201 King of Prussia Road, Suite 240, Radnor, PA 19087, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2003)). Meridian Venture Partners II, L.P. proposes to provide equity/debt security financing to Rufus, Inc. (f/k/a Woof & Company, f/k/a D.C. Retail, Inc.), 55 Carter Drive, Edison, NJ 08817. The financing is contemplated for working capital and expansion of the business.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Meridian Venture Partners and MVP Distribution Partners, Associates of Meridian Venture Partners II, L.P., currently owns greater than 10 percent of Rufus, Inc. and therefore Rufus, Inc., is considered an Associate of Meridian Venture Partners II, L.P. as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration,

409 Third Street, SW., Washington, DC 20416.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. E4–738 Filed 4–1– 04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Federal Assistance Grant to Fund Women's Business Center Projects to Provide Financial Counseling and Other Technical Assistance to Women

AGENCY: Small Business Administration.

ACTION: Program Announcement No. OWBO–2004–021.

SUMMARY: The U.S. Small Business Administration (SBA) plans to issue program announcement No. OWBO–2004–021 to invite applications from eligible nonprofit organizations to conduct Women's Business Center (WBC) projects. The successful applicant will receive a grant to provide counseling, training and other technical assistance to women in nascent and existing businesses. The authorizing legislation is the Small Business Act, Section 2(h) and 29, 15 U.S.C. 631(h) and 656.

A Women's Business Center is a 5–year community-based project that is funded by the SBA through a grant that requires matching funds. The project is a planned scope of activities that provide business services targeted to women. The project must operate as a distinct unit of the recipient's organization having its own budget for facilities, equipment and resources to carry out project activities. The WBC services must include long-term training and counseling to benefit small business concerns owned and controlled by women.

SBA Headquarters must receive applications/proposals by 4 p.m., Eastern Daylight Time, on the closing date of May 6, 2004. SBA will select successful applicants using a competitive technical evaluation process.

Service and assistance areas must include financial, management, marketing, eCommerce, government procurement and training on the business uses of the Internet. Applicants must plan to include women who are socially and economically disadvantaged in the target group. The applicant may propose specialized services that will assist women in Empowerment Zones, agribusiness, rural or urban areas, etc. The applicant may propose to serve women who are veterans and women with home-based businesses, women with disabilities, etc. SBA will request award recipients to provide content and support activities to the SBA Online Women's Business Center, at *http://www.onlinewbc.gov.*

The applicants' technical proposal must contain information about its current status and past performance. Also, the applicant must provide a 5–year plan for service delivery, fund-raising, training and technical assistance activities. The grant will be issued annually through a 5–year term without re-competition. The non-Federal match requirement is one non-Federal dollar for each two Federal dollars in years 1 and 2; and one non-Federal dollar for each Federal dollar in years 3, 4, and 5. Up to one-half of the non-Federal match funds may be in the form of in-kind contributions (*i.e.*, 50% of match must be in cash).

DATES: The opening date of the application period April 1, 2004 and the closing date is May 6, 2004.

FOR FURTHER INFORMATION CONTACT: Interested parties may access Program Announcement No. OWBO–2004–021 and application materials on the application opening date of April 1, 2004 at *http://www.onlinewbc.gov/grants.html.* If necessary, contact Sally Murrell, WBC Program Manager at (202) 205–6673.

Sally Murrell,

Director, WBC Program, SBA/Office of Women's Business Ownership.

[FR Doc. E4–740 Filed 4–1–04; 8:45 AM]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4679]

Bureau of Political-Military Affairs; Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to section 127.7(c) of the International Traffic in Arms Regulations ("ITAR") (22 CFR 120 to 130) on persons convicted of violating or conspiring to violate section 38 of the Arms Export Control Act ("AECA") (22 U.S.C. 2778).

EFFECTIVE DATE: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, (202) 663–2700.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778, prohibits licenses and other approvals for the export of defense articles or defense services to be issued to a persons, or any party to the export, who has been convicted of violating certain statutes, including the AECA.

In implementing this section of the AECA, the Assistant Secretary for Political-Military Affairs is authorized by section 127.7 of the ITAR to prohibit any person who has been convicted of violating or conspiring to violate the AECA from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required. This prohibition is referred to as "statutory debarment".

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States court, and as such the administrative debarment proceedings outlined in part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be three years from the date of conviction. At the end of the debarment period, licensing privileges may be reinstated only at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by section 38(g)(4) of the ITAR. It should be noted, however, that unless licensing privileges are reinstated, the person/entity will remain debarred.

Department of State policy permits debarred persons to apply to the Director of Defense Trade Controls Compliance for an exception from the period of debarment beginning one year after the date of the debarment, in accordance with section 38(g)(4) of the AECA and section 127.11(b) of the ITAR. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied. If the exception is granted, the debarment will be suspended.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see *e.g.*,

section 120.1(c) and (d), 126.7, and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any persons who has been convicted of violating or of conspiring to violate the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for Arms Control and International Security for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision, in accordance with 22 CFR section 127.7(d) and 128.13(a).

Pursuant to section 38 of the AECA and section 127.7 of the ITAR, the following persons have been statutorily debarred by the Assistant Secretary of State for Political-Military Affairs for a period of three years following the date of their AECA conviction:

(1) Mart Haller Incorporated, September 10, 2003, U.S. District Court, District of Connecticut (New Haven), Case #:3:03Cr170(EBB).

(2) Alan Haller, September 10, 2003, U.S. District Court, District of Connecticut (New Haven), Case #:3:03Cr169(EBB).

(3) Tariq Ahmed a/k/a "Tariq Amin", "Tariq Ahmad Amin", September 30, 2003, U.S. District Court, District of Connecticut (New Haven), Case #:3:02CR247(DJS).

(4) Yasmin Ahmed a/k/a "Yasmin Tariq", "Fatimah Mohammad", September 4, 2003, U.S. District Court, District of Connecticut (New Haven), Case #:3:02CR247(DJS).

(5) Jami Siraj Choudhury, November 10, 2003, U.S. District Court, Eastern District of Wisconsin, Case #:02–Cr–261.

As noted above, at the end of the three-year period, the above named persons/entities will remain debarred unless licensing privileges are reinstated.

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Court, District of Connecticut (New Haven) and the U.S. District Court, Eastern District of Wisconsin citing the court case number where provided.

Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Directorate of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interest, whether an exception would further law enforcement concerns that are not inconsistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are not inconsistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: March 20, 2004.

Lincoln P. Bloomfield, Jr.,

Assistant Secretary of State, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 04–7494 Filed 4–1–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Renewal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with section 102–3.65, title 41 of the Code of Federal Regulations, notice is hereby given that the Aviation Rulemaking Advisory Committee has been renewed for a 2-year period beginning April 7, 2004. The primary purpose of the Committee is to provide the aviation public with a means to have its interests in aviation safety rulemaking considered in developing regulatory actions, thus enabling the agency to produce better documents. It has also been determined that renewal of the Committee would be in the public interest with regard to the performance of duties imposed on the FAA by law. The Committee will operate in accordance with the rules of the Federal Advisory Committee Act and the Department of Transportation, FAA Committee Management Order (1110.30C).

You may receive further information about this Advisory Committee from Ms. Gerri Robinson, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, telephone: 202–267–9678.

Issued in Washington, DC, on March 26, 2004.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 04–7488 Filed 4–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Delegation of Authority

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of delegation of authority.

SUMMARY: The FAA is giving notice of a specific delegation of authority from the FAA Administrator to the Associate Chief Counsel/Director, Office of Dispute Resolution for Acquisition (hereinafter the "ODRA Director"). to supplement and expand the authority previously delegated on July 29, 1998 and supersede the delegation issued to the Associate Chief Counsel/Director of the ODRA on March 27, 2000, in order to permit the ODRA Director to issue final FAA Agency orders on behalf of the Administrator in certain bid protests and contract disputes filed with the FAA Office of Dispute Resolution for Acquisition. The delegation was set forth in a memorandum signed by the Administrator dated March 10, 2004. The FAA is publishing the text of the delegation, so that it is available to interested parties.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Staff Attorney and Dispute Resolution Officer for the Office of Dispute Resolution for Acquisition (AGC–70), Federal Aviation Administration, 800 Independence Street, SW., Room 323, Washington, DC 20591; telephone (202) 267–3290; facsimile (202) 267–3720.

SUPPLEMENTARY INFORMATION: Under the Department of Transportation and Related Agencies Appropriations Act of 1996, Pub. L. No. 104–50, 109 Stat. 436 (1995) ("Appropriations Act"), Congress directed the FAA to develop an acquisition system that addresses the mission and unique needs of the Agency and at a minimum, provides for more

timely and cost-effective acquisition of equipment and materials. In the Appropriations Act, Congress expressly directed the FAA to create the new acquisition system without reference to existing procurement statutes and regulations. The result was the development of the FAA's Acquisition Management System (AMS) and the establishment of the Office of Dispute Resolution for Acquisition (ODRA). Subsequently, Congress enacted the Vision 100—Century of Aviation Reauthorization Act, Pub. L. No. 108–176, 117 Stat. 2490 (2003), which specifies the ODRA as the exclusive forum for the resolution and adjudication of bid protests and contract disputes arising from AMS acquisitions and contracts. Under these statutes, the ODRA is mandated to resolve bid protests and contract disputes in a timely and efficient manner, using consensual alternative dispute resolution techniques to the maximum extent practicable. A final procedural rule that took effect on June 28, 1999 for ODRA bid protests and contract disputes was published in the **Federal Register** on June 18, 1999 (64 FR 34926). Technical corrections to the rule were published in the **Federal Register** on August 31, 1999 (64 FR 47361). The full text of the March 10, 2004 delegation from the Administrator to the ODRA Director provides the ODRA Director with additional authority to act on behalf of the Administrator with respect to ODRA bid protests and contract disputes as follows:

In order to render more efficient the FAA acquisition dispute resolution process, pursuant to 49 U.S.C. § 106(f)(2), 49 U.S.C. 40101, *et seq.*, and 46101, *et seq.*, and 14 CFR part 17, I hereby delegate to the Associate Chief Counsel/Director, Office of Dispute Resolution for Acquisition ("ODRA") authority to execute and issue on behalf of the Administrator, orders and final decisions for the FAA in all matters within the ODRA's jurisdiction, provided that such matters involve either: (1) A bid protest concerning an acquisition having a value or potential value of not more than five million dollars ($5,000,000.00); or (2) a contract dispute involving a total amount to be adjudicated, exclusive of interest, legal fees or costs, of not more than five million dollars ($5,000,000.00). The Associate Chief Counsel/ODRA Director further is authorized to execute and issue orders and final decisions on behalf of the Administrator for any applications made pursuant to the Equal Access to Justice Act for matters within the ODRA's jurisdiction.

The foregoing authority may not be re-delegated.

This delegation supplements and expands the authority previously delegated on July 29, 1998 and supersedes the delegation issued to the Associate Chief Counsel/Director of the ODRA on March 27, 2000. This delegation does not preclude the Associate Chief Counsel/Director of the ODRA from requesting, in any matter before the ODRA, that the order setting forth the final decision of the FAA be executed by the Administrator.

Issued in Washington, DC, on March 10, 2004.

Andrew B. Steinberg,

Chief Counsel.

[FR Doc. 04–7490 Filed 4–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Delegation of Authority

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice delegation of authority.

SUMMARY: The FAA is giving notice of a specific delegation of authority from the FAA Administrator to the Associate Chief Counsel/Director, Office of Dispute Resolution for Acquisition (hereinafter the "ODRA Director"), in all contests involving Agency actions associated with the FAA's adaptation of Office of Management and Budget ("OMB") Circular A–76. The delegation was set forth in a memorandum signed by the Administrator dated March 10, 2004. The FAA is publishing the text of the delegation, so that it is available to interested parties.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Staff Attorney and Dispute Resolution Officer for the Office of Dispute Resolution for Acquisition (AGC–70), Federal Aviation Administration, 800 Independence Street, SW., Room 323, Washington, DC 20591; telephone (202) 267–3290; facsimile (202) 267–3720.

SUPPLEMENTARY INFORMATION: Under the Department of Transportation and Related Agencies Appropriations Act of 1996, Pub. L. No. 104–50, 109 Stat. 436 (1995) ("Appropriations Act"), Congress directed the FAA to develop an acquisition system that addresses the mission and unique needs of the Agency and at a minimum, provides for more timely and cost-effective acquisition of equipment and materials. In the Appropriations Act, Congress expressly directed the FAA to create the new acquisition system without reference to existing procurement statutes and regulations. The result was the development of the FAA's Acquisition Management System (AMS) and the establishment of the Office of Dispute Resolution for Acquisition (ODRA). Under the AMS, the FAA follows the policies of the OMB Circular A–76, (Revised) Performance of Commercial Activities to the extent that such policies are consistent with FAA's statutory mandate. In accordance with OMB Circular A–76, the subject delegation implements the FAA's policy that directly interested parties may contest certain actions taken in connection with FAA competition, pursuant to contest procedures administered by the ODRA. Rules governing contests are published in the ODRA Web site at *http://www.faa.gov/agc/odra/index.htm.*

The full text of the March 10, 2004 delegation from the Administrator to the ODRA Director provides as follows:

Under 49 U.S.C. 106(f)(2), 49 U.S.C. 46101, *et seq.*, Pub. L. No. 104–50, Pub. L. No. 108–176, and Pub. L. No. 108–199, I delegate to the Associate Chief Counsel/Director, Office of Dispute Resolution for Acquisition ("ODRA") authority in all contests involving Agency actions associated with the FAA's adaptation of Office of Management and Budget ("OMB") Circular A–76, as follows:

a. To administer individual contests and to appoint ODRA Dispute Resolution Officers and Special Masters to administer all or portions of such contests;

b. To conduct contest proceedings and to prepare findings and recommendations for the Administrator or the Administrator's delegee, who will issue final decisions in such contests.

c. To deny motions for dismissal or summary relief which have been submitted to the ODRA by parties to contests;

d. To grant or deny motions for partial dismissal or partial summary relief submitted to the ODRA by parties to contests, or to order such partial dismissals on its own initiative;

e. To dismiss contests, based on voluntary withdrawals by the parties which have instituted such proceedings;

f. To dismiss contests, where the parties to such proceedings have achieved a settlement;

g. To issue procedural rules and interlocutory orders aimed at proper and efficient case management, including, without limitation, scheduling orders, subpoenas, sanctions orders for failure of discovery, and the like;

h. To issue protective orders aimed at prohibiting the public dissemination of certain information and materials provided to the ODRA and opposing parties during the course of contest proceedings, including, but not limited to, documents or other materials reflecting trade secrets, confidential financial information and other proprietary or competition-sensitive data, as well as confidential Agency source selection information the disclosure of which might jeopardize future Agency procurement activities;

i. To utilize consensual alternative dispute resolution (ADR) methods in accordance with established Department of Transportation and FAA policies;

j. To engage with Agency program offices and contractors in voluntary mutually agreeable ADR efforts aimed at resolving issues relating to potential contests at the earliest possible stage, even before a contest is formally filed with the ODRA;

k. To take all other reasonable steps deemed necessary and proper for the management of the FAA dispute resolution system for the resolution of contests, in accordance with the Acquisition Management System and applicable law and policy.

The Associate Chief Counsel/Director of the ODRA may redelegate the authority set forth above, in whole or in part, to an ODRA Dispute Resolution Officer or to a Special Master.

Issued in Washington, DC, on March 10, 2004.

Andrew B. Steinberg,

Chief Counsel.

[FR Doc. 04–7491 Filed 4–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34482]

Old Augusta Railroad, LLC—Acquisition and Operation Exemption—Assets of Old Augusta Railroad Company

Old Augusta Railroad, LLC (OARLLC), a newly created Class III railroad, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate a short line railroad currently operated by the Old Augusta Railroad Company (OARC). OARLLC indicates that, on February 26, 2004, Koch Cellulose (Koch), the parent corporation of OARLLC, entered into an agreement with Georgia Pacific Corporation (Georgia Pacific) and various subsidiaries of Georgia Pacific to acquire Georgia Pacific's non-integrated market and fluff pulp operations. In connection with this transaction, Koch will also acquire Georgia Pacific's Leaf River Pulp Mill in New Augusta, MS, and substantially all of the assets of OARC, including OARC's 2.5-mile short line railroad that it currently operates between the Leaf River Pulp Mill and the Canadian National Railway Company interchange. Before the closing of the transaction, Koch will assign to OARLLC its right to acquire the assets of OARC, and, upon the closing of the transaction, OARLLC will acquire and operate OARC's short line railroad.

OARLLC certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and will not result in the creation of a Class II or Class I rail carrier.

OARLLC states that it expects to consummate the transaction in the first week of May 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. 34482, 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 Raffaele G. Fazio, Senior Counsel, Koch Industries, Inc., P.O. Box 2256, Wichita, KS 67201.

Board decisions and notices are available on the Board's Web site at *http://www.stb.dot.gov*.

Decided: March 23, 2004.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–7070 Filed 4–1–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4952

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4952, Investment Interest Expense Deduction.

DATES: Written comments should be received on or before June 1, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Investment Interest Expense Deduction.

OMB Number: 1545–0191.

Form Number: Form 4952.

Abstract: Interest expense paid by an individual, estate, or trust on a loan allocable to property held for investment may not be fully deductible in the current year. Form 4952 is used to compute the amount of investment interest expense deductible for the current year and the amount, if any, to carry forward to future years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 800,000.

Estimated Time Per Respondent: 3 hours, 23 minutes.

Estimated Total Annual Burden Hours: 2,700,000.

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: March 29, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–7518 Filed 4–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5306–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5306–A, Application for Approval of Prototype Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan).

DATES: Written comments should be received on or before June 1, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Approval of Prototype Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan).

OMB Number: 1545–0199.

Form Number: 5306–A.

Abstract: This form is used by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a simplified employee pension plan or a Savings Incentive Match Plan to be used by more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 18 hours, 53 minutes.

Estimated Total Annual Burden Hours: 94,400.

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: March 29, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–7519 Filed 4–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–77–86]

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing temporary regulation, LR–77–86 (TD 8124), Certain Elections Under the Tax Reform Act of 1986 (§ 5h.5).

DATES: Written comments should be received on or before June 1, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the 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: Certain Elections Under the Tax Reform Act of 1986.

OMB Number: 1545–0982.

Regulation Project Numbers: LR–77–86.

Abstract: Section 5h.5(a) of this regulation sets forth general rules for the

time and manner of making various elections under the Tax Reform Act of 1986. The regulation enables taxpayers to take advantage of various benefits provided by the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 114,710.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 28,678.

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: March 29, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–7520 Filed 4–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 211 and 211(SP)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 211, Application for Reward for Original Information, and Form 211(SP) Solicitud de Recompensa por Informacion Original.

DATES: Written comments should be received on or before June 1, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 211, Application for Reward for Original Information, and Form 211(SP) Solicitud de Recompensa por Informacion Original.

OMB Number: 1545–0409.

Form Number: Forms 211 and 211(SP).

Abstract: Forms 211 and 211(SP) are the official application forms used by persons requesting rewards for submitting information concerning alleged violations of the tax laws by other persons. Such rewards are authorized by Internal Revenue Code section 7623. The data is used to determine and pay rewards to those persons who voluntarily submit information.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 11,200.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,800.

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: March 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–7521 Filed 4–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–251703–96]

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–251703–96 (TD 8813), Residence of Trusts and Estates—7701 (§ 301.7701–7).

DATES: Written comments should be received on or before June 1, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations 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: Residence of Trusts and Estates—7701.

OMB Number: 1545–1600.

Regulation Project Number: REG–251703–96.

Abstract: This regulation provides the procedures and requirements for making the election to remain a domestic trust in accordance with section 1161 of the Taxpayer Relief Act of 1997. The information submitted by taxpayers will be used by the IRS to determine if a trust is a domestic trust or a foreign trust.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of the currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 222.

Estimated Time Per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 114.

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: March 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–7522 Filed 4–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 601.601]

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, regulation section 601.601, Rules and Regulations.

DATES: Written comments should be received on or before June 1, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation sections 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: Rules and Regulations.

OMB Number: 1545–0800.

Regulation Project Number: Regulation section 601.601.

Abstract: Persons wishing to speak at a public hearing on a proposed rule must submit written comments and an outline within prescribed time limits, for use in preparing agendas and allocating time. Persons interested in the issuance, amendment, or repeal of a rule may submit a petition for this. IRS considers the petitions in it deliberations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 900.

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: March 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–7523 Filed 4–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Nominations to the Electronic Tax Administration Advisory Committee

AGENCY: Internal Revenue Service (IRS).

ACTION: Notice.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC), was established to provide continued input into the development and implementation of the Internal Revenue Service (IRS) strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. This document seeks nominations of individuals to be considered for selection as Committee members.

The Director, Electronic Tax Administration (ETA) will assure that the size and organizational representation of the ETAAC obtains balanced membership and includes representatives from various groups including: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small businesses, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments. We are soliciting nominations from professional and public interest groups, IRS officials, the Department of Treasury, and Congress. Members serve a three-year term on the ETAAC to allow a change in membership. The change of members on the Committee ensures that different perspectives are represented. All travel expenses within government guidelines will be reimbursed.

DATES: Written nominations must be received on or before May 3, 2004.

ADDRESSES: Nominations should be sent to Kim Logan, OS:CIO:I:ET:S:RM, C4–158, 5000 Ellin Road, Lanham, Maryland 20706. Application forms can be obtained from Kim Logan, who can be reached on (202) 283–1947 or at *kim.a.logan@irs.gov*.

FOR FURTHER INFORMATION CONTACT: Kim Logan, (202) 283–1947.

SUPPLEMENTARY INFORMATION: The ETAAC will provide continued input into the development and implementation of the IRS strategy for electronic tax administration. The ETAAC members will convey the public's observations about current or proposed policies, programs, and procedures, and suggest improvements. The ETAAC will also provide an annual report to Congress on IRS progress in meeting the Restructuring and Reform Act of 1998 goals for electronic filing of tax returns. This activity is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7802 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration.

Nominations should describe and document the proposed member's qualifications for membership to the Committee. Equal opportunity practices will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: March 24, 2004.

Jo Ann N. Bass,

Acting Director, Electronic Tax Administration.

[FR Doc. 04–7515 Filed 4–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Software Developers Conference

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Software Developers Conference Notification.

SUMMARY: The Software Developers Conference will be held on June 3–4, 2004. The conference will be held in the Ritz-Carlton Pentagon City Hotel in Arlington, VA. Listed is a summary of the agenda along with the planned discussion topics.

Summarized Agenda for June 3–4, 2004

8 a.m.—Conference Begins
12 noon—Break for Lunch
1 p.m.—Conference Resumes
4:30 p.m.—Conference Adjourns

The planned discussion topics are:

(1) Modernized e-File (MeF)
(2) Electronic Return Originator (ERO) Application
(3) e-Services
(4) IRS Servicewide e-Strategy
(5) 2–D Barcoding

Note: Last minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a Software Developers Conference on Thursday and Friday, June 3 and 4, 2004. This conference will be held in a room that accommodates approximately 200 people, including IRS officials.

ADDRESSES: The meeting will be held in the Ritz-Carlton Pentagon City Hotel, 1250 South Hayes Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Registration for the Software Developers Conference may be accessed at *http://www.eventhotline.com/irs*. Participants should register on-line for the conference by June 2, 2004.

If you need additional information you may contact Kim Logan at (202) 283–1947 or send an e-mail to *kim.a.logan@irs.gov*.

SUPPLEMENTARY INFORMATION: The IRS Software Developers Conference provides information and dialogue on issues of interest to IRS e-file software developers.

Dated: March 23, 2004.

Jo Ann N. Bass,

Acting Director, Electronic Tax Administration.

[FR Doc. 04–7517 Filed 4–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) will be discussing issues on IRS Customer Service.

DATES: The meeting will be held Monday, May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1 (888) 912–1227, or (206) 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, May 3, 2004, from 8 a.m. Pacific time to 9 a.m. Pacific time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1 (888) 912–1227 or (206) 220–6096, or write to Anne Gruber, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174.

The agenda will include the following: Various IRS issues.

Dated: March 29, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–7516 Filed 4–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council will hold a meeting on Tuesday, April 13, 2004, at the Sofitel Lafayette Square, 806 15th Street, NW., Washington, DC 20005, from 8:30 a.m. until 3 p.m. The meeting is open to the public. The purpose of the Council is to provide external advice and review for VA's research mission.

The meeting will begin with opening remarks by the Acting Chief Research and Development Officer. The Council will receive informational briefings on the status of the VA research program.

Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Karen Scott, Designated Federal Officer, at (202) 254–0200. Oral comments from the public will not be accepted at the meeting. Written statements or comments should be transmitted electronically to *Karen.scott@hq.med.va.gov* or mailed to Ms. Scott at Department of Veterans Affairs, Office of Research and Development (12C), 810 Vermont Ave., NW., Washington, DC 20420. Items mailed via United States Postal Service require 7–10 days for delivery due to delays resulting from security measures.

Dated: March 24, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–7397 Filed 4–1–04; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 69, No. 64
Friday, April 2, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–165579–02]

RIN 1545–BB80

Corporate Reorganizations; Transfers of Assets or Stock Following a Reorganization

Correction

In proposed rule document 04–4483 beginning on page 9771 in the issue of Tuesday, March 2, 2004 make the following corrections:

§1.368–1 [Corrected]

1. On page 9773, in the third column, in §1.368–1, in paragraph (d)(4)(i)(B), in the second line, "or" should read "aquired, or".

2. On the same page, in the same column, in the same section, in the same paragraph, in the sixth line, "this" should read "these".

3. On the same page, in the same column, in the same section, in paragraph (d)(5)(i), in *Example 7.*, in the ninth line, "continued" should read "continue".

§1.368–2 [Corrected]

4. On page 9774, in the first column, in §1.368–2, in paragraph (k)(1), in the ninth line, "in" should read "of".

5. On the same page, in the second column, in the same section, in paragraph (k)(3), under *Example 4.*, in paragraph (ii), in the sixth line, "from S-3" should read "from S-2 to S-3".

[FR Doc. C4–4483 Filed 4–1–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
April 2, 2004

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Underground Coal Mine Ventilation—Safety Standards for the Use of a Belt Entry as an Intake Air Course To Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA76

Underground Coal Mine Ventilation—Safety Standards for the Use of a Belt Entry as an Intake Air Course To Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The final rule will allow the use of intake air passing through belt air courses (belt air) to ventilate working sections and areas where mechanized mining equipment is being installed or removed in underground coal mines. The use of belt air, under the conditions set forth in the final rule, will maintain the level of safety, and therefore not reduce protections, currently afforded miners in underground mines while implementing advances in mining technology. The final rule amends existing safety standards for ventilation of underground coal mines. This final rule also amends other standards.

DATES: This standard is effective June 1, 2004, with the exception of §§ 75.351(e)(3) and 75.351(r) which are effective August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9442; facsimile: (202) 693–9441; E-mail: *nichols.marvin@dol.gov.*

You may obtain copies of the final rule in alternative formats by calling his number or downloading the document from our Web site. The alternative formats available are either a large-print version of this document or an electronic file that can be sent to you either on a computer disk or an attachment to an e-mail. The document also is available on the Internet at *http://www.msha.gov/REGSINFO.HTM.*

SUPPLEMENTARY INFORMATION:

Outline of Preamble

This outline will help interested parties find information in this preamble more quickly.

I. Background

The final rule revises §§ 75.350, 75.351, and 75.352 of our existing safety standards for underground coal mines. The rule also amends §§ 75.301, 75.371, 75.372, and 75.380 of our existing safety standards for underground coal mines. These changes provide protection for miners when air is coursed through the belt entry to ventilate working sections and areas where mechanized mining equipment is being installed or removed in underground coal mines (setup or removal areas). Effective ventilation and the quick identification of potential hazards are needed to provide a safe environment for miners. New technology has proven safe and effective in quickly and reliably detecting the products of combustion and providing early warning to miners. The use of belt air under this final rule will increase protection compared to mines that use only point-type heat sensors by quickly detecting products of combustion in the belt entry at an early stage of fire development and by rapidly providing warning. With this final rule in place, mine operators will no longer be required to submit petitions for modification of existing standards in order to use belt air. These changes are in accordance with requirements in section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811.

The Federal Coal Mine Health and Safety Act of 1969 (the Coal Act), and the Mine Act that superseded it, provided that entries used as intake and return air courses be separated from belt haulage entries, and that air coursed through belt entries be prohibited from ventilating active working places. However, existing mines (pre-Coal Act mines) using belt air were permitted to continue to use belt air, with approval of the MSHA district manager (30 CFR 75.350 and formerly 30 CFR 75.326). This approach of isolating the belt entry was directed at hazards associated with the potential for undetected fires and increased dust levels in conveyor belt entries. The approach was implemented through mandatory safety standard, 30 CFR 75.326. Technology has evolved since the passage of the Coal Act in 1969. Advances in computer-operated atmospheric monitoring systems (AMS) have led to acceptance of AMSs as an effective tool to monitor conditions in mine entries and detect the products of combustion at an early stage of fire development. This final rule establishes the requirements for integrating AMSs into a comprehensive and safe approach to use belt air for ventilation of working sections or setup or removal areas that maintains or increases protection for miners.

MSHA first published a proposed rule to revise the safety standards for ventilation of underground coal mines (including original 30 CFR 75.326) in the **Federal Register** January 27, 1988 (53 FR 2382). As part of that proposed rule, MSHA proposed to allow air coursed through the belt entry to ventilate working places when mine operators have installed carbon monoxide (CO) sensors in the belt entry.

In response to public comments submitted to the Agency on the January 27, 1988 proposed rule, we held six public hearings in June 1988, with the rulemaking record closing in September 1988. Based on public comments received during this period, MSHA's Assistant Secretary called for a thorough review in March 1989 of safety factors associated with the use of air in the belt entry in the working places. MSHA completed this review and announced in an August 25, 1989 Notice in the **Federal Register** (54 FR 35356), the availability of the Belt Entry Ventilation Review (BEVR) Report. The report concluded that "* * * directing belt entry air to the face can be at least as safe as other ventilation methods provided carbon monoxide monitors or smoke detectors are installed in the belt entry."

After the BEVR report was issued, we reopened the ventilation rulemaking record and held a seventh public hearing in April 1990, to receive public comment on issues raised in the report. The reopened ventilation rulemaking record for the 1988 proposed rule closed in May 1990.

Comments received during and after the seventh public hearing expressed divergent views on the recommendations of the BEVR Committee. Commenters representing industry and academia concluded generally that the use of air in the belt entry provides positive ventilation and reduces the possibility of a methane (CH_4) build-up in the belt entry. Commenters from labor, on the other hand, maintained that the use of air in the belt entry reduces safety due to increased exposure to products of combustion and greater dust levels.

Due to these divergent views, when the ventilation rule for underground coal mines was finalized in 1992, it did not include provisions that would have allowed mine operators to use belt air to provide intake air to working places. MSHA's existing standards do not allow this practice except as approved on a mine-specific basis through the petition for modification process (30 U.S.C. 811 (c)) or when approved by the MSHA district manager for mines opened on or before March 30, 1970 (pre-Coal Act mines). The final ventilation rule retained the requirements of then-existing 30 CFR 75.326 requiring, in part, that entries used as intake and return air courses be separated from belt haulage entries and prohibiting air coursed through belt entries from ventilating active working places.

MSHA decided that the use of belt air to ventilate working places should continue as an independent rulemaking effort. As part of this effort, the Secretary of Labor appointed an Advisory Committee in January 1992 and charged it to make recommendations concerning the conditions under which air in the belt entry could be safely used in the face areas of underground coal mines. This committee was designated as the Department of Labor's Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Areas of Underground Coal Mines and Related Provisions (Advisory Committee). The Advisory Committee held six public meetings over a six-month period. After reviewing an extensive amount of material, the Advisory Committee concluded in a final report that air in the belt entry could be safely used to ventilate working places in underground coal mines, provided certain conditions are met.

The Advisory Committee made twelve recommendations to support this conclusion. The Advisory Committee submitted its report to the Secretary of Labor in November 1992. We published a December 2, 1992 Notice (57 FR 57078) in the **Federal Register** announcing the availability of the Advisory Committee's final report and stated that we would review its recommendations.

When the Agency published its final revised ventilation rule in March 1996, several commenters urged MSHA to

proceed at that time on the issue of belt air. However, belt air was not addressed in that rulemaking. The issue was placed on MSHA's rulemaking agenda for the development of a separate proposed rule (61 FR 9765).

On January 27, 2003, MSHA published a notice of proposed rulemaking (68 FR 3936) to modify existing ventilation standards to allow the use of belt air, once certain controls were implemented in mines with three or more entries. There were five hearings on this proposed rule: in Grand Junction, Colorado; Charleston, West Virginia; Washington, Pennsylvania; Birmingham, Alabama; and Lexington, Kentucky. The post-hearing comment period closed June 30, 2003.

II. Discussion of Final Rule

A. General Discussion—30 CFR, Part 75, Subpart D—Ventilation

Existing § 75.350 (Air courses and belt haulage entries) requires that entries used as intake and return air courses be separated from belt haulage entries and prohibits air coursed through belt entries from ventilating working places. At the time the Coal Act was passed, there was concern with the increased use of conveyor belts and the potential for propagation of fires along these belts. Room and pillar mining was the predominant form of coal mining and computer-operated monitoring systems, such as the AMS, did not exist. Modern technology now allows for the use of belt air to ventilate working sections and setup or removal areas due to the development of sensitive atmospheric monitoring systems that utilize CO sensors that can readily detect small increases in the products of combustion. As AMSs have become more sophisticated, they have employed computer technology to transmit environmental measurements from remote locations to attended mine locations. These systems provide signals, store and catalogue data, and provide reports.

The final rule continues to allow the existing method of ventilation where belt air is coursed directly to a return air course or to the surface and not onto either the working sections or setup or removal areas. However, it also permits, with additional requirements to ensure miner safety, the use of belt air to ventilate the working sections and setup or removal areas.

Prior to this final rule, a mine operator would file a petition for modification to seek approval to use belt air to ventilate working places in the mine operator's underground coal mine. MSHA grants approval when the petitioned for change provides an alternate method that guarantees no less than the same measure of protection afforded by the existing standard, or when the application of the existing standard will result in a diminution of protection (30 U.S.C. 811(c)). To date, we have granted approximately 90 such petitions. However, a few of these have been revoked because the mine chose not to implement the petition or the mine was closed. Nine petitions are being processed as of the date of this notice.

Under existing § 75.350—Air courses and belt haulage entries, mines opened on or before March 30, 1970, may use belt air to ventilate working places when it is determined that this air is needed to provide adequate ventilation. Currently, pre-Coal Act mines opened before 1970 are ventilated in this manner. In each of these cases, we require the mine operator, through the mine ventilation plan, to continue to provide at least the same level of protection afforded to miners in petitions that we have granted. Under this final rule, the pre-Coal Act mines are not exempted and, therefore, must meet the new standards. This action will effectively increase protections in these mines.

MSHA's proposed belt air rule (68 FR 3936, January 27, 2003) contains further discussion of: MSHA's experience with AMSs, including belt air petitions; a discussion of reportable and nonreportable belt fires; and a section discussing Summary and Considerations of the Advisory Committee Report, Recent Belt Air Petitions, and the BEVR Report. The proposed rule can be located at *http://www.msha.gov/REGSPROP.HTM*. MSHA refers the reader to this discussion for additional information.

1. General Comments

Many comments were received during the public hearings on the belt air proposed rule which were not directly related to specific proposed provisions. While comments were directed at enhancing the health and safety of miners, they were either beyond the scope of the proposed rule or are addressed by existing standards.

a. Respirable dust. Concerns with respirable dust levels for shuttle car and ram car operators working just inby the section loading point were expressed by a number of commenters. This issue is beyond the scope of this rulemaking. The mine operator is still required to meet air quality requirements, including respirable dust (30 CFR part 70, subpart B—Dust Standards). Operators may need to implement additional dust controls in outby areas to use belt air and maintain compliance with existing standards.

b. Replace point-type heat sensors with AMS technology in all underground coal mines, not just those using belt air to ventilate working sections. It was suggested by a number of commenters that AMS technology be required in the place of point-type heat sensors (PTHS) for fire detection in belt lines in all underground coal mines. The Agency encourages the implementation of AMS technology for fire detection because the Agency believes it to be superior to PTHS systems. However applying AMS technology to all underground coal mines is beyond the scope of this rulemaking on belt air and is, therefore, not addressed in this final rule.

c. Battery backup of AMS. A number of comments were received regarding a petition requirement for a 4-hour battery backup for the AMS. The typical language from the petitions is as follows: "The low-level carbon monoxide system shall be capable of giving warning of a fire for a minimum of 4 hours after the source of power to the belt is removed, except when the power is removed during a fan stoppage or the belt haulageway is examined as provided in 30 CFR 75.1104–4(e)(1) and (2)." This is not a requirement, as interpreted by the commenters, for a battery backup for the AMS. There are no existing granted petitions known to include such a requirement for a battery backup for the AMS.

This language does not require the installation of an uninterrupted power supply (UPS) for the AMS. If power is removed from the belt, the AMS will function properly if powered from a different electrical circuit than the belt. If, however, the power source to the surface computer is interrupted, the AMS will not function. Without a UPS to power the system, the mine operator would be required to begin patrolling the belt entries, as required by § 75.352(e)(3).

The battery backup requirement is not included in the National Fire Code No. 72A (1967). Although it is not specifically required by this rule, mine operators can consider installation of a UPS to assure system operation in the event of a power interruption.

In addition, if the AMS is used as a communication system under § 75.351(r) of this final rule, then under § 75.1600(c)(2) the system must be provided with means to permit continued communication in event the mine electric power fails or is cut off. The most likely method of compliance is installation of a UPS for the AMS.

d. Require use of both carbon monoxide and smoke sensors. Some commenters suggested that the standard should require the use of both "carbon monoxide and smoke" detection as included in the Advisory Committee recommendations, rather than the language in the proposed rule allowing "carbon monoxide or smoke" detectors. MSHA did not require both for several reasons. First, researchers at the U.S. Bureau of Mines (RI 9586 and RI 9311) have stated that some smoke sensors are subject to adverse effects of dust and humidity. MSHA is not aware of a commercially-available smoke sensor not subject to dust-related interference that meets the requirements of § 75.1103–2 for use in underground coal mines. Second, CO sensors have proven to be protective for smoldering and flaming coal-type fires. NIOSH research (RI 9622) indicated a detection level of 5 ppm CO was equivalent to the detection level of smoke sensors. This comparison has led the Agency to conclude that the maximum alert level of 5 ppm carbon monoxide will provide at least the same protection to miners as a smoke sensor. For these reasons we have retained the proposed rule language, but we would encourage future research as well as implementation of new technology once it becomes available.

e. District manager discretion. Many commenters were concerned with the level of discretion that the proposed rule would give to district managers. District managers currently are responsible for the biannual reviews of the mine ventilation plans, quarterly safety and health inspections, and other inspection and investigation activities under the Mine Act. This final rule adds ventilation plan requirements that will be reviewed as part of the plan approval process. This final rule provides flexibility for mine operators to tailor ventilation plans to mine-specific conditions, and gives the district manager discretion to approve or disapprove these plans, based on those mine conditions. Such conditions could include: establishment of ambient CO levels; lower CO alert and alarm levels; implementation of other technology, such as DDS in areas of the mine where diesel-powered equipment is used; or hydrogen-insensitive sensors used to monitor battery charging stations. MSHA believes this discretion is necessary to assure that protective, mine-specific ventilation plans are developed and implemented.

f. Use of 1989 BEVR Report and 1992 Advisory Committee Report. Many of the same commenters also strongly opposed MSHA's reference to the 1989 BEVR Report in the preamble of the proposed rule. They repeatedly noted NIOSH's opposition to the conclusions of that report as a basis for their objections. MSHA included the BEVR Report in the preamble of the proposed rule for the sake of a thorough review of existing documentation on the use of belt air. We relied upon the Advisory Committee Report and our extensive experience with granted petitions to write the proposed rule. It is important to note that NIOSH, in comments to the proposed rule, states that the use of belt air may have a positive effect on reducing dust levels in the face area. In addition, NIOSH states "The development of improved atmospheric monitoring systems with fewer failures and false alarms has addressed previous reliability concerns."

These same commenters also testified that they never fully endorsed the recommendations of the Advisory Committee Report and perceive Agency inclusion or exclusion of various recommendations as being arbitrary and more dependent upon what "fits [MSHA's] current rulemaking and enforcement scheme." As discussed in the proposed rule, most recommendations of the Advisory Committee were included in the proposed rule and are retained in the provisions of the final rule. In cases where a recommendation was not included, extensive discussion was provided in the proposed rule. In addition, analyses in previous sections of this preamble indicate the differences found between the belt-air related requirements of granted petitions and provisions of this final rule, and the ventilation plan of a pre-Coal Act mine and provisions of this final rule do not reduce protections afforded to miners.

In addition, commenters have stated that "the Agency gives no consideration to the protections miners and their representatives have been able to attain at the mine sites through the 101(c) petition process." They continue that "the recommendations of the Advisory Committee coupled with language currently used in these petitions should have been the basis for MSHA's writing of this proposed rule." MSHA used all relevant information available to draft the proposed safety standard. MSHA has painstakingly evaluated all evidence in the record. Numerous changes have been included in the final rule that were not included in the proposed rule based on this analysis of, and response to, public comments. These changes will be discussed in detail in the section-by-section discussion. However, the final rule now provides for a maximum allowable air velocity in the belt entry, notification and withdrawal of personnel on working sections to a safe location if two consecutive sensors signal in the alert mode, installation of lifelines in return entries when used as alternate escapeways, and a 50% limit on intake air provided by the belt air course. Many of these changes will increase miner safety and in no case will the changes reduce the current level of protections afforded miners.

g. Slippage switches. Finally, while neither the proposed rule nor any granted petition included a requirement to monitor slippage switches, the Advisory Committee recommended the integration of slippage switches that detect belt slippage into the early-warning fire detection system. If this was not feasible, the Advisory Committee recommended that the switches be visually examined each production shift. MSHA did not propose a provision on slippage switches but did solicit comments on this issue in the proposed rule. Only a few commenters submitted information on this issue. They stated that monitoring slippage switches would be inexpensive and should be required by this final rule. Such monitoring would indicate if the belt drive would be shut down in case of slippage. Another commenter was not certain whether it was contemplated that a belt slippage would trigger an alert or alarm. MSHA believes that the monitoring of slippage switches provides little relevant information, since the belt is shut down if slippage is detected. Therefore, no such requirement is added to the final rule.

2. Comments Comparing the Differences Between the Final Rule's Provisions and Requirements Found in Either Granted Petitions or in a Pre-Coal Act Mine's Approved Ventilation Plan

The following discussion reviews comments that were received during this rulemaking that address the level of protection afforded by the final rule in comparison to levels of protection provided by granted petition requirements or ventilation plan requirements of a pre-Coal Act mine. The areas discussed are:

a. Protections under the final rule are at least equal to those contained in granted belt air petitions for modification (granted petitions) and, therefore, provide the same level or an increased level of protection currently afforded miners;

b. The role of atmospheric monitoring systems in granted belt air petitions and in the final belt air rule;

c. Granted belt air petition requirements not included as provisions in the final belt air rule; and

d. The effect of the final belt air rule on pre-Coal Act mines that use belt air to ventilate working sections.

a. Protections under the final rule are at least equal to those contained in granted belt air petitions for modification (granted petitions) and, therefore, provide the same or an increased level of protection currently afforded miners.

The Agency received a variety of opinions on the need for this rule and its legal basis. Some commenters supported the proposed rule, but suggested existing requirements in granted petitions be grandfathered. The commenters argued that these older requirements, such as the 2,000-foot spacing of sensors, still provide an adequate degree of safety required to use belt air. Their position is that if companies have operated successfully under the existing provisions of a granted petition, there is no need to change these requirements to conform to the new standards. We cannot dispute that some mines have effectively discovered fires using the parameters in older granted petitions. However, research and our experience gained through the petition for modification process (petition process) have shown the final belt air provisions discussed in this preamble are more protective than those requirements in older granted petitions.

In addition, these commenters suggested there will be a significant increased burden on the operators without a significant benefit to be gained by implementing the final rule. It is clear that many older granted petitions do not include significant improvements mandated in the newer petitions granted since 1996. Some older granted petition requirements have been modified by operators who recognized safer operating parameters could be implemented. These mines are operating at a level of safety exceeding the requirements of their respective granted petitions. For example, the petition granted to one mine required alert and alarm levels at 10 and 15 parts per million (ppm), respectively. The mine operator has since reduced the levels to 7 and 12 ppm, respectively, thus increasing the early-warning fire capability of the AMS. In addition, another mine operator reduced sensor spacing from 2,000 feet to 1,000 feet to reduce the distance that the products of combustion would need to travel before being detected by an AMS sensor. This increased the early-warning fire detection capability of the AMS.

Other commenters endorsed the concept of promulgating a rule, indicating that the rule was needed because of the high number of petitions filed. This final rule eliminates the need to apply for a petition and the corresponding delay in implementing the use of belt air due to the time required to process the petition.

Different commenters demanded that the Agency withdraw the proposed rule and continue to allow the use of belt air only through the petition process due to many mine-specific health and safety concerns. One post-hearing commenter stated that the use of belt air at the Jim Walter Resources No. 5 mine (JWR No. 5 mine) was a contributing factor in the explosion that killed 13 miners in September 2001. The commenter asserts that if belt air was not used, at least one or two additional entries would have needed to be developed in order to provide adequate intake air to the section.

MSHA evaluated the comments and determined that it is highly unlikely that additional entries on the longwall development would have prevented the explosions. According to the MSHA investigation report (United States Department of Labor, Mine Safety and Health Administration, Coal Mine Safety and Health. Report of Investigation—Fatal Underground Coal Mine Explosions, September 23, 2001—No. 5 Mine, Jim Walter Resources, Inc., Brookwood, Tuscaloosa County, Alabama—ID No. 01–01322.), the initial build-up of methane in the section was due to damaged ventilation controls between the intake and return entries. This damage was caused by a roof fall. This allowed intake air to short-circuit from the intake track entry into the return between the entries two crosscuts outby the last open crosscut, as noted in the accident investigation report. It was not due to blockage of the intake airway as suggested by the commenter. It is likely that any additional intake entries would have been on the opposite side of the large coal pillar, and the short-circuiting would have still occurred following the roof fall and damage to the stopping. The first explosion damaged additional ventilation controls which further affected ventilation and created the conditions for the larger second explosion.

The commenter further suggests that the AMS did not work to protect miners in the JRW No. 5 mine. MSHA disagrees. The AMS is designed to detect low-level CO concentrations in the event of a fire along the belt air course. It was not designed to withstand the forces of an explosion, and on September 23, 2001, the AMS was damaged by the initial explosion. According to MSHA's accident report, the AMS correctly identified the damage and reported the failure of the system to communicate with its components. The AMS records indicated that alert and alarm signals from other sensors exposed to CO from the explosion were received at the surface location. The system was determined to be operating properly and as designed at the time of the accident.

In addition, the commenter asserts that the use of belt air contributed to a build-up of float coal dust in the belt and return air courses that contributed to the severity of the fatal explosion. The findings in the accident report show that rock dusting was not performed properly to maintain the incombustible content in the mine. This was due to a lack of rock dust application, and not to the use of belt air. Even in the situation where the belt air is coursed in the outby direction, the return and intake entries would still need to be dusted. Both return air courses could be continually dusted while production continued 24 hours a day. As cited in the accident report, "If the 4 Section had been adequately rockdusted, coal dust would not have contributed to the second explosion and the severity of the accident. The number of fatalities would have been reduced."

One commenter asserted that the proposed rule violates section 101(a)(9) of the Mine Act because it allegedly reduces the protections afforded miners under mine-specific modifications to the application of the existing standard. MSHA disagrees. The final rule does not violate section 101(a)(9) of the 1977 Mine Act because that provision does not call for a comparison of a new standard with mine-specific modifications of the application of an existing standard. Section 101(a)(9) states: "No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard." The plain language of section 101(a)(9) calls only for a comparison of a new standard with an existing standard. The plain language of section 101(a)(9) is corroborated by the statutory placement of section 101(a)(9). Section 101(a)(9) is part of the subsection which pertains to mandatory health and safety standards—*i.e.*, section 101(a)—and is one of a series of procedural and substantive requirements which apply to such standards. The placement of section 101(a)(9) indicates that it was intended to require a "no less protection" comparison with existing mandatory standards promulgated under section 101(a), and was not intended to require such a comparison with mine-specific modifications of the application of

existing standards granted under section 101(c).

Accordingly, section 101(a)(9) requires that, in promulgating a new rule permitting the use of belt air, the Secretary weigh the net effect on safety under the new rule against the net effect on safety under the existing standard limiting the use of belt air. In promulgating this final rule, MSHA has done just that. MSHA has compared the protections provided by this final rule with the protections afforded by the existing standard and has concluded that, for the reasons set forth below, the final rule does not reduce the protection afforded by the existing standard.

Some commenters argued that this final rule did not address mine-specific concerns which were better addressed in petitions for modification. It should be noted that petition language is proposed by mine operators as an (alternative method of achieving the level of safety provided by 30 CFR 75.350). Under the "alternative method" of achieving compliance contemplated by Section 811(c), however, the mine operator need only establish that an alternative method achieves the result of the standard and guarantees a net "equivalence" in mine safety, taking all effects on mine safety into account.

Although mine-specific modifications of the application of a mandatory safety standard, together with any requirements imposed in those modifications, have "the same effect as a mandatory safety standard" at the particular mine (30 CFR 44.4(c)), such modifications have never been held to constitute a mandatory safety standard of general application. A mandatory safety standard is generally applicable to all covered mines, whereas a mine-specific modification applies to only the one mine for which it was tailored.

In addition, MSHA has determined that other safety and health provisions that may have been included in the granted petition after negotiations between the mine operator and miners' representatives are not germane to the safe use of belt air. Therefore, it is not appropriate, as well as not legally required, to include them in this final rule. For example, two petitions require an intake travelway on a longwall tailgate. An existing standard, § 75.384, already requires travelways. Also, stopping construction is limited in some petitions to solid-block construction. Stopping construction is already addressed by an existing standard, § 75.333.

The Secretary acknowledges that some mine-specific modifications of the application of the existing standard contained conditions that, from a safety standpoint, went beyond what was required to achieve net equivalence with the existing standard. While the Secretary encourages the regulated community to institute safety measures that exceed what is required by her mandatory standards, the Secretary has determined that such measures are not required to achieve safety levels deemed adequate under the existing standard and the new rule.

Some commenters contend that one-size-does-not-fit-all when it comes to using belt air in a variety of different mines. MSHA agrees. For example, the final rule allows flexibility for determining how the ambient, alert and alarm levels are established. This gives the district manager discretion in approving different levels in the ventilation plans for different mines, tailoring plans to mining conditions in each individual mine.

In general, existing § 75.370—Mine ventilation plan; submission and approval, requires that mine operators develop and follow a mine-specific ventilation plan that has been approved by the district manager. Section 75.371—Mine ventilation plan; contents, sets out the information that must be included in the ventilation plan. Additionally, the district manager is given discretion under § 75.371 to require additional provisions in submitted plans, if they are necessary to protect workers from methane and respirable dust.

b. The role of atmospheric monitoring systems (AMSs) in granted petitions and in the final belt air rule.

The cornerstone for allowing the use of belt air as intake air ventilating working sections and setup or removal areas in either a granted petition or this final rule is the proper installation, operation, maintenance, and examination of an AMS. An AMS provides for early-warning fire detection along the belt air course using sensors that detect low levels of CO or smoke. Signals from these sensors are transmitted to a designated surface location at the mine so that an AMS operator can notify appropriate personnel so that they can take required actions, depending on the type of signal received. These actions could range from an investigation of a malfunctioning sensor to evacuation of affected miners to a safe location in the mine due to an alarming sensor. Existing § 75.351—Atmospheric monitoring system (AMS), establishes performance requirements for these systems used to comply with existing §§ 75.323(d)(1)(ii)—Return air split alternative, 75.340(a)(1)(ii) and 75.340(a)(2)(ii)—Underground electrical installations, or 75.362(f)—On-shift examination. As explained in the section-by-section analysis of this final rule, existing § 75.351 is revised to require the installation and operation of an AMS if the mine operator chooses to use belt air to ventilate working sections and areas where mechanized mining equipment is being installed or removed in underground coal mines. This requirement increases the level of safety provided miners in that an AMS, when used to comply with the automatic fire sensor requirements referenced in § 75.1103–4(a)(2), can detect the products of combustion much faster than the more-common point-type heat sensors which require a significant level of heat to activate. Some commenters stated that belt air has been successfully used over many years and that only minor issues have developed concerning the AMS. An example was given that false alarms, or alarms that signal non-fire events, have been a problem in the past; but they have been "addressed." The National Institute for Occupational Safety and Health (NIOSH) commented that "The development of improved atmospheric monitoring systems with fewer failures and false alarms has addressed previous reliability concerns." One commenter stated that the AMS has helped to limit the number of belt fires at his mine. The use of modern AMSs helps to minimize alarms due to non-fire related CO production (nuisance alarms) and therefore, increases confidence that the signals reflect potentially hazardous conditions.

Under § 75.351(m) of this final rule, when a demonstrated need exists, such as the use of diesel-powered equipment, that can cause nuisance alert and alarm signals, time delays of up to 3 minutes (180 seconds) may be incorporated into the AMS. These time delays reduce the number of non-fire related CO sensor signals, therefore making the system more reliable by reducing nuisance alert and alarm signals.

In addition, this final rule also reduces alert and alarm levels to 5 and 10 ppm above ambient CO levels, respectively, from higher levels specified in some existing granted petitions, thus increasing protection to miners. These are the maximum alert and alarm levels allowed by this final rule. Lower alert and alarm levels can be required by the district manager if conditions in the mine warrant such a reduction. One such condition would be air quantities sufficient to dilute CO produced by a fire which could delay the early detection of the fire.

All alert and alarm values for particular CO sensors take into account

the ambient CO level (average concentration in ppm in the air course containing CO sensors) for that area of the mine where the sensors are located. Maximum alert and alarm values will be 5 and 10 ppm above ambient CO levels. For example, with an ambient CO level of 2 ppm, the alert and alarm levels will be 7 and 12 ppm, respectively. For an ambient CO level of 4 ppm, the alert and alarm levels will be 9 and 14 ppm, respectively. Both of these sets of values provide equivalent protection because the alert and alarm signals are provided when the CO concentration in the belt air course rises 5 and 10 ppm above the ambient for that area of the mine, respectively.

Also, the final rule reduces sensor spacing required by some of the older granted petitions from 2,000 feet to 1,000 feet. These additional safety requirements increase the level of fire safety in mines that choose to use belt air to ventilate working sections and setup or removal areas. We believe that there will be a reduction in the number of reportable belt fires and their severity due to the reduced sensor spacing and lowered alert and alarm levels. These provisions will provide increased early warning of the presence of the products of combustion.

Some commenters stated that more regulation is needed to make sure that the AMS is maintained and that miners are trained. They recommended that MSHA review the most stringent granted petition and adopt its training requirements into law. We believe the final rule's maintenance and training provisions are appropriate. This final rule requires the AMS to automatically signal the AMS operator of electrical malfunction of the system. If malfunction signals are received at the surface location, the AMS operator must notify appropriate personnel who have the responsibility to take immediate action to investigate the signals and correct any problems. Furthermore, the final rule requires that personnel must be trained to maintain the system and that the system must be maintained in proper operating condition. Training provisions in this final belt air standard are consistent with existing training requirements in granted petitions. As will be discussed later, it is the Agency's position that current training requirements in part 48 are sufficient to train miners and that the emergency drill requirements in existing standards are sufficient to give miners practical experience in the mine during non-emergency situations.

c. Granted belt air petition requirements not included as provisions in the final belt air rule.

In the preamble of the proposed rule, we summarized our analysis of the latest granted petition requirements from 2000 and 2001. Some commenters to the proposed rule questioned why we limited our analysis to petitions granted during 2000 and 2001. They identified specific petitions granted prior to 2000 and referenced some of these requirements. Some commenters suggested we should not have limited the analysis to that period, and that we should review all of the granted petitions. In response to these comments, we have reviewed nearly all of the petitions granted since 1978 in order to determine if there are any provisions not included in the final rule that are directly related to the safe use of belt air and are not already addressed by existing standards.

We identified these requirements and considered whether they should be included in the final rule. Some of the early petition requirements identified are strengthened by the final rule, and some, while not specifically covered by this rule, are addressed in the mine ventilation plan approval process or by existing standards. Three phases of belt air granted petition requirements exist: those before the 1989 BEVR Report, those granted after publication of the BEVR report but before the 1996 revision of part 75 subpart D—Ventilation, and those granted after 1996. Requirements increased during each time period and became more consistent after 1996.

We have reviewed differences between the final rule's provisions and the requirements in granted petitions and a generic petition that was submitted as a post-hearing comment. While we have adopted a majority of requirements contained in the 79 granted petitions reviewed, there are requirements in some of these granted petitions that we did not include in the final rule. We discuss these requirements below. It should be noted that the generic petition language is comparable to requirements in granted petitions.

(1) Granted petition requirement: Sensors shall be installed "* * * as near to the roof as feasible (efforts toward monitoring within 12 inches of the roof) * * *" or, sensors shall be installed "* * * in the upper third of the entry * * *"

Research on fire detection has shown the placement of sensors is critical to effective early fire detection. Buoyancy of heated air is recognized as a significant force in spreading products of combustion. For this reason, most granted petitions contain language requiring sensors to be installed in the upper third of the entry. Comments were received from both industry and labor indicating the "upper third" requirement from existing petition language was adequate. We have included language in the final rule requiring the installation of sensors in the upper third of the entry rather than language from the proposed rule (as close to the roof as feasible). For example, in a seam height of 6 feet, sensors must be installed within 24 inches of the roof, while as in a seam height of 48 inches, the sensor must be installed within 16 inches of the roof. This would not preclude operators from installing CO sensors as close to the roof as practicable, so long as the installation of the sensors was done in a manner to appropriately monitor air flow within that entry. Accordingly, in either situation, the location of the sensor would not reduce protections found in existing granted petition requirements. The final provision language reflects our response to public comments and our experience with granted petition requirements.

(2) Granted petition requirement: Tables are used to determine alert and alarm levels in many granted petitions.

The tables identifying alert and alarm levels for mines with various air flow velocities and belt entry dimensions were developed from the nomographs published in the Bureau of Mines document, RI 9380—Fire Detection for Conveyor Belt Entries. These tables were included in a large number of granted petitions. This fire detection research set alert and alarm levels based upon air velocity, cross-sectional area, and CO generation rates from smoldering and burning fuel sources. This research was presented as nomographs used to set CO sensor settings for different sensor spacings using air velocity and entry area parameters. Tables were derived in an attempt to simplify the application of research data because the nomographs were difficult to use. For example, the maximum velocity allowed by the tables for alert and alarm levels of 5 and 10 ppm CO is 700 feet per minute (fpm). A reduction to 4 and 8 ppm alert and alarm levels would allow velocities as high as 1,680 fpm according to the tables. Because of overlap in the tables, conflicting determinations for alert and alarm settings can occur. Though the tables provided a method for reducing alert and alarm settings based on increased air flow quantities and cross-sectional areas, they have not always proven to be accurate because of variations in entry configuration and air velocity in an air course. MSHA believes that the mine ventilation plan

offers the best tool to handle special circumstances, such as when alert and alarm levels lower than 5 and 10 ppm, respectively, are needed due to increased air volume. Reduced alert and alarm levels will offset the effects of dilution caused by a higher air volume, thus maintaining the effectiveness of the AMS. These tables have not been specifically included in the final rule, but the information provided by the Bureau of Mines research will be considered by MSHA district managers when approving mine ventilation plans, including the alert and alarm levels established for compliance with the final rule.

Some older granted petitions required alert and alarm levels to be set at 10 and 15 ppm CO above the ambient levels, respectively. These operations will be required by the final rule to increase protection by reducing these levels to 5 and 10 ppm above ambient or lower, respectively. Some granted petitions required the use of RI 9380 to set alert and alarm levels. The Agency believes there may be cases where the alert and alarm levels may need to be further reduced below 5 and 10 ppm, respectively, and the district manager should have available all research information to assist in determining the most appropriate settings.

(3) Granted petition requirement: The method used to determine ambient level.

Many granted petitions include specific language on the method for determining the ambient CO levels. Other granted petitions allow a specified method to be used, or an alternate method approved by MSHA. Many mines have already established appropriate ambient levels and methods that are included in approved mine ventilation plans, as required since 1992 by existing § 75.371(hh). For example, if a mine operator submits in the ventilation plan an ambient concentration of zero ppm, there will be no need to document the determination. If an operator requests an ambient concentration of eight ppm, MSHA would require documentation to approve such an ambient including the method used and CO levels measured. A single method for determining the ambient is not included in the final rule to give mine operators and district managers flexibility in establishing appropriate ambient levels that account for mine-specific situations. Any additional requirement on this issue is likely to be duplicative of former § 75.351.

(4) Granted petition requirement: Consideration of multiple entries is specifically addressed.

The effect of common entries on air flow is a complex issue. We have evaluated one entry in common (not separated by stoppings) with the belt entry and have discovered there is continual communication (air flow) between the two entries. MSHA has discouraged excessive numbers of common entries in the mine ventilation plan approval process, especially in mines using an AMS for fire detection. Air velocities can be difficult to maintain at or above 50 fpm in many of these mines. According to the results of recent NIOSH research (Edwards *et al.*, 1999), CO sensors have proven effective at lower air velocities, when sensor spacing is reduced. Our experience is that the mine ventilation plan approval process assures the safe use of belt air by requiring AMS sensor locations that reflect the actual ventilation pattern in the mine. The Agency conducts ventilation surveys in many mines to determine the adequacy of a variety of mine ventilation plan specifications. The district manager has the authority to require either lower alert and alarm settings, additional CO sensor installations, or a combination of the two depending on the results of the MSHA survey.

(5) Granted petition requirement: Requirement for implementation of diesel-discriminating sensors.

Neither the proposed rule nor the final rule require the use of diesel-discriminating sensors (DDSs). However, some commenters suggested that the Agency require the use of such sensors. Currently, only three non-two-entry granted petitions require diesel-discriminating sensors. One of these mines is closed, one mine never implemented the granted belt air petition, and one is active. This active mine benefits from the use of DDS because diesel-powered equipment emissions contaminate the belt entry, thus increasing the occurrence of non-fire alert and alarm signals if standard CO sensors were used. DDS technology reduces the incidence of these non-fire alert and alarm signals. Not all mines that use diesel-powered equipment would benefit from installing these sensors because the exhaust emissions in some mines are isolated from the belt entry due to the mining system employed. For this reason, the final belt air rule gives the mine operator the option of using such a sensor in reducing nuisance alert and alarm signals. Using DDS to detect non-fire alert and alarm signals is not required because some mining systems either do not use diesel-powered equipment or do not use such equipment near the belt entry. Mine operators are encouraged to explore all methods for reducing the occurrence of alert and alarm signals due to diesel-powered engine exhaust emissions and other mine gases. As stated above, DDSs are effective in detecting fires while reducing the frequency of nuisance alert and alarm signals. Other methods and new technology may be equally or more effective, so limiting the technology to DDS in the final rule would inhibit the future application of technology providing increased protection. In addition, by requiring the mine operator to meet the requirements of § 75.352—Actions in response to AMS malfunction, alert, or alarm signals, this final rule maintains protections currently afforded miners covered by these three granted petitions.

Research is continuing on fire detection technology in both the public and private sectors. In 2003, MSHA evaluated a sensor designed to measure CO in areas where hydrogen could be present, such as in the vicinity of battery charging stations. The sensor was found to be insensitive to hydrogen while providing accurate measurements of CO in gas mixtures. Any methods for reducing nuisance and false alert and alarm signals, including the implementation of the DDS technology and hydrogen-insensitive technology, must be approved in the mine ventilation plan.

(6) Granted petition requirement: Requirement for notification of miners of alert signals.

The proposed rule did not require automatic notification of personnel on working sections and setup or removal areas in the event of a single alerting sensor, but did require such notification in the event of an alarming sensor. Similarly, the final rule does not require notification of personnel on working sections and on setup or removal areas following an alert signal from a single sensor. However, the final rule requires an investigation of the cause of the alert signal and the appropriate personnel are expected to investigate the cause of the alert signal. In response to comments received on the proposed rule and current petition requirements, an additional requirement to the provision (§ 75.352(c)) has been added to the final rule. During the alert mode, notification and removal of miners to a safe location is required only if two or more consecutive sensors reach and maintain alert status. This situation suggests a possible developing fire, thus removal of miners to a safe location is required and investigation of the signaling sensors is required to determine the cause. Automatic section signals are required by recently granted petitions

for alarm signals, which is consistent with both the proposed and final rule. Many older granted petitions required the sensor located near the section tailpiece to automatically activate the section alarm unit upon alert or alarm levels of CO being detected. These same mines utilized alert and alarm levels of 10 and 15 ppm, respectively. At 10 ppm CO, miners would be withdrawn to an area either outby the alerting sensor or to the section loading point. In either event, miners withdrawn to these locations may still be in danger, depending on where the fire is located. This final rule exceeds the requirements in these older granted petitions because miners are removed to a safe location pending investigation of a potential fire. In addition, an investigation would have been initiated by the AMS operator upon receiving an alert signal at 5 ppm CO. This further increases protections afforded miners beyond those set forth by the petition requirements.

The newer petitions simply require notification of the affected working sections and investigation of the cause of the actuation. No additional actions are required for the affected sections. Because of this, MSHA sees no benefit of notification of miners in the affected sections unless these miners are necessary to investigate the alert signal. The primary reason for not requiring notification on an affected working section of a single alert signal is that it will reduce the incidence of the "cry wolf" syndrome, in which alert and alarm signals are discounted by miners as related to non-fire sources, such as diesel-powered equipment or welding fumes, and not to a real fire event. The final rule maintains the existing level of protection.

(7) Granted petition requirement: Requirement for automatic activation of section alarm for sensors on panel; sensors 4,000 feet outby during initial development.

The final rule exceeds these granted petition requirements in that any outby or upwind sensor indicating CO alarm levels requires activation of the working section alarm for all affected areas. For example, if the most outby sensor on the belt was to detect an alarm level of CO, and air passing this sensor could travel to all working sections and setup or removal areas, then all alarms in the mine must activate to notify miners.

(8) Granted petition requirement: Mine phones are required to be located at intervals not to exceed 2,000 to 2,500 feet when mine personnel patrol and monitor the belt on system malfunctions.

The final rule requires maximum phone spacing of 2,000 feet when mine personnel monitor by patrolling if AMS components are inoperative for any reason. Many older granted petitions do not include phone-spacing requirements. Others require specific spacing of 2,000 feet as the granted condition. Many existing granted petitions have duplicative requirements that are already required in existing § 75.1600—Communications, including requirements for the repair and location of the phone system.

(9) Granted petition requirement: Hand monitoring for products of combustion only permitted for a short period of time.

The final rule, as in the proposed rule, does not limit the length of time allowed to hand monitor the belt entry in cases of sensor or system failure. Hand monitoring is considered to provide equivalent protection because similar sensor technology is used during hand monitoring and alert and alarm levels are reported immediately to the AMS operator. No specific comments were received regarding the duration of hand monitoring. However, we believe it is in the best interest of the operator and miners to repair the AMS as quickly as possible. Hand monitoring is considered a safe alternate method that provides the same level of protection as the AMS. However, it is labor intensive and therefore, far more costly than the AMS in monitoring the belt entry, so we believe that mine operators will limit the duration of hand monitoring.

(10) Granted petition requirements: Pressure differentials maintained from escapeway to the belt air course when practicable; limit the pressure drop to lowest attainable level to escapeway from the belt when not feasible; and limiting total airflow to 50 percent of the total section intake.

Recently granted petitions include some combination of these requirements. The pressure differential requirement was thoroughly discussed in the Advisory Committee report and the proposed rule preamble. The Agency agrees that it would be prudent to minimize leakage from the belt air course to the primary escapeway to the greatest extent possible. Absolute control on the pressure drop is nearly impossible. However, the Agency has included in the final rule the provision that unless otherwise approved by the district manager, the belt entry can contribute no more than 50% of intake air that ventilates working sections and setup or removal areas. This requirement is included in many granted petitions but was not included in the proposed rule because at the time MSHA believed it was best addressed on a mine-by-mine basis through the ventilation plan process. However, the requirement is included in this final rule due to commenters' concern that operators could provide a majority of the working section intake air from the belt air course, which would more likely create a pressure drop from the belt air course to the primary escapeway. This new provision is consistent with the intent of the proposed rule. The pressure differential from the belt air course to the primary escapeway will be minimized to the extent feasible. This will help to assure that the primary escapeway will be kept free of the products of combustion by balancing the pressures between the air courses, thereby minimizing leakage to the extent possible. Proper stopping construction and maintenance along with ventilation system design considerations can properly protect the integrity of the primary escapeway. Further clarification of this new provision is provided under the section-by-section discussion of § 75.350(b)(6).

(11) Granted petition requirement: "Stopping" construction specified.

In some granted petitions, stopping construction techniques and materials used for stoppings were specified, and some required approval of such in the mine ventilation plan. One granted petition required stoppings to be built of "* * * six-inch wide block and coated ⅛ inch thick on both sides with an approved sealant for dry-stacking applications. Equivalent ventilation controls may be used provided they meet American Society for Testing and Materials (ASTM) testing standards on durability (ASTM E72–80) and flammability (E162–87)." The provisions of current § 75.333, revised in 1992, include these same ASTM testing standards.

Some commenters to the proposed rule stated that the construction and maintenance of stoppings are not sufficient for proper control of air leakage. However, existing § 75.333(e)(1)(i) sets minimum construction requirements for stoppings. The requirements include an ASTM test that can be used to determine the strength of a stopping. Additionally, § 75.333(h) sets the maintenance requirements for stoppings. If stoppings are constructed and maintained as prescribed, leakage is minimized.

A few commenters asserted that some stoppings do not protect miners during a mine fire. They stated that stoppings do not provide adequate protections to prevent a "burn through" during a fire.

One commenter stated, based on his experience with the January 2003, Mine 84 mine fire in Pennsylvania, that the panel-type metal stoppings would not

have held up during the fire. However, from the miners' testimony associated with MSHA's investigation of the Mine 84 fire, the steel-panel stoppings would have provided ample protection for miners during escape. Existing § 75.333(e)(1)(ii) requires that stoppings be constructed of noncombustible material. Existing § 75.301 provides a definition of "noncombustible material" when it applies to a ventilation control. The definition states that the control must continue to serve its intended function for one hour when subjected to a fire test incorporating an ASTM E119–88 time/temperature heat input, or equivalent. The Agency believes that the 1-hour period provides time for escape during a fire and that the ASTM E119–88 heat input is an appropriate test for noncombustible material.

One commenter stated that some miners were not trained in the proper procedures to build stoppings. The commenter offered examples of construction inadequacies when building concrete block stoppings. Another commenter stated that he observed stoppings in his mine that were constructed incorrectly. The Agency acknowledges that miners who build stoppings must be trained in the proper method to construct stoppings. Stoppings must be built to meet the requirements of existing standards. Failure to properly build stoppings can result in air loss and compromise the separation of air courses. Existing standards under § 75.333—Ventilation controls, address these concerns about stoppings.

One commenter asserted that the investigation of the JWR No. 5 Mine explosion found that metal stoppings were ineffective. The commenter stated that the metal stoppings were not hitched into the coal rib as prescribed by the manufacturer. Existing standards require that the stoppings be installed to serve the purpose to which they are intended, § 75.333(h). Further, the commenter states that this type of ventilation control can fail easily during an explosion. Metal stoppings must meet the same construction requirements as other stoppings, including concrete block stoppings. Another commenter stated that metal stoppings are not adequate to withstand an explosion. Stoppings, including those constructed of concrete blocks or metal, are not designed or required to withstand explosion forces.

(12) Granted petition requirement: Section alarms can be seen and heard.

As previously discussed, the proposed rule indicated section alarms must be "capable of being seen and heard" by miners working on working sections and setup or removal areas. This is consistent with the majority of granted petitions whose language required "visual and audible signals that can be seen and heard on the working section." To clarify the intent of the signaling device requirement, the final rule states that both visual and audible signals must be provided to working sections and to setup or removal areas and that these signals "must be seen or heard" by miners. This modification recognizes the fact, as supported by comments, that not every miner on a working section or in setup or removal areas is able to both see and hear the alarms. Both types of signals must be provided to working sections; however, MSHA acknowledges that in practice not all miners will be able to see and hear both signals. For example, if an alarm occurs in a mine with a granted petition that requires miners to both see and hear alarms, the miners working at the section loading point would be able to both see and hear both signals, but other miners working at the face may not be able to either see or hear the signals. Our intent is that the signals must be seen or heard by miners who will be able to notify other miners in affected areas who may not be able to see or hear the signals. This maintains the existing level of protection for miners working in mines with granted belt air petitions which require both signals to be seen and heard because it is recognized that all miners cannot see and hear both signals at all times.

(13) Granted petition requirements: "Wall-of-water" fire suppression system required at all belt drives; actuation of deluge system causes section alarms activation.

Existing § 75.1101—Deluge-type water spray systems, requires that deluge-type water sprays or foam generators be installed at main and secondary belt-conveyor drives. These deluge-type water spray systems must automatically be actuated by a rise in temperature, or other no less effective means of controlling fire. These systems must be approved by the Secretary. Therefore, MSHA did not require in the proposed rule any particular deluge fire suppression system (wet or dry) for protecting belt drives in mines using belt air. The mine operator should select a fire suppression system appropriate for the specific operation. In some cases, a dry-powder fire suppression system may be more appropriate due to mine conditions that would result in freezing of water lines. Since a "wall-of-water" fire suppression system is not appropriate for all mines, it is not required by this final belt air rule.

The proposed rule did not require that the fire suppression system be monitored with the AMS. Only three granted petitions contain this requirement. One of these mines is closed, one mine has not implemented the granted petition, and one mine is active. Actuation of any fire suppression system (wet or dry) causing section alarm activations is not necessary since the early-warning fire detection system will likely detect a fire before the fire suppression system is activated. In the accident investigation report for the VP 8 mine fire, it was concluded that the fire started at the belt drive. The dry-powder fire suppression system activated at that drive 32 minutes after detection by the AMS. The Agency has no data that support monitoring the deluge system with the AMS provides an added safety benefit.

Though not proposed, we have included in the final rule a new requirement that all fire suppression systems (wet or dry) must be compatible with air velocities within the belt air course, § 75.350(a)(3), based on comments and Agency investigation into the VP 8 mine fire. There is additional explanation in the section-by-section discussion on § 75.350(a)(3).

(14) Granted petition requirement: Smoke sensor technology study conducted.

The final rule allows for implementation of smoke sensor technology and recognizes that smoke sensor detection levels can be equivalent to CO sensor detection levels at 5 ppm. The Agency believes mine operators would be prudent to evaluate the effectiveness of these sensors as a possible improvement to the AMS and fire detection capabilities. This is the reason the final rule has been written to allow their use.

(15) Granted petition requirement: Velocity Caps.

Eleven of the 79 granted petitions reviewed included velocity caps (limitations on velocity of air in the belt entry). These caps ranged from 250 to 725 fpm. In the case of a few early granted petitions, early research studies did not evaluate the effects of air velocities in excess of 300 fpm. Therefore, a velocity cap of 300 fpm was placed on air velocity. Later petitions did not typically include this 300 fpm cap due to additional research which indicated that higher velocities could be safely used. Later petitions that did include a velocity cap typically limited the air velocity to 500 fpm. We have included in the final rule a limit of 500 fpm unless higher velocities are specifically approved in the mine ventilation plan. This cap was

determined from data obtained in large-scale fire testing conducted by the U.S. Bureau of Mines that showed, in part, that smoldering coal fires would not be detected in a timely manner to provide early warning by CO sensors signaling at 5 ppm in velocities exceeding 500 fpm.

(16) Granted petition requirement: Phone; phone lines in intake (primary) escapeway.

The proposed rule required two means of communication, with one being the AMS and the second the two-way voice communication system required under existing § 75.1600. Like the proposed rule, separation of the trunk lines for these systems is required in the final rule. However, we have changed the language in response to comments received on the separation of the AMS and the communication system, because the sensor in the primary escapeway and those used to monitor point feeds are part of the AMS. Installation of the phone line and these sensors in the escapeway would have been a violation of the proposed standard. The final provision was revised to allow for installation of the two-way voice communication system in the same entry (non-belt entry) where the intake sensors required by §§ 75.350(b)(4) (primary escapeway) or 75.350(d)(1) (point feeding) are installed.

Some commenters suggested there is no need to require separation of AMS and voice-communication cables. However, as the MSHA investigation of the Fairfax mine fire determined, communication was lost because the phone line was installed in the belt entry and damaged due to the fire. In the Blue Diamond mine fire, as well as other documented mine fires, the AMS trunk line in the belt entry was damaged, causing communication failures early in the fire's development.

Many commenters suggested the requirement should be grandfathered, to allow operators to provide separation of these cables starting on the final rule's effective date. A concern of some of the commenters is the cost of moving one of the cables. Some mines reportedly use a single multi-conductor cable for both the AMS and phone system. The Agency disagrees with the commenters on this issue, due to the reasons stated above. However, we are allowing a longer implementation period to allow mine operators time to separate AMS and voice communication cables as required by the final rule.

(17) Granted petition requirement: Maintenance of belt entries.

The granted petition requirement states, "The operator shall develop and implement a special belt entry maintenance program to control combustibles and fire sources in the belt conveyor entries." The following specific items are listed in the granted petition as part of the program and include: inspection of fire suppression systems, maintenance of belt components, maintenance of electrical installations, and inspection of belt components. MSHA already has existing standards that cover these granted petition requirements on routine belt cleaning, belt maintenance and rock dusting under §§ 75.360—Preshift examination at fixed intervals, 75.362—On-shift examination; and part 75 subpart E—Combustible Materials and Rockdusting.

(18) Granted petition requirement: Flame-resistant conveyor belting.

Another granted petition requirement includes the use of conveyor belt material that has passed MSHA's new flame-resistant test once the material becomes commercially available. Although, this granted petition requirement was included in 59 granted petitions, the requirement was never implemented in practice. The reason is that the referenced conveyor-belt flammability test was part of a flame-resistant conveyor belt proposed rule that MSHA subsequently withdrew in 2002 for the reasons set forth in the withdrawal notice. (67 FR 46431). The granted petition requirement cannot be implemented since the requisite flame-resistant conveyor belt test has not been promulgated.

Even without a rule on flame-resistant conveyor belt material, monitoring the belt entry for the products of combustion has become more prevalent. The most notable improvement in belt monitoring is the mining industry's increased use of AMSs in belt entries. Monitoring systems, in general, give advance warning of a developing fire in a belt entry allowing for earlier response, thereby limiting injuries to miners and fire damage. An AMS also provides advanced warning of increasing CO concentrations, thereby alerting mine operators to potentially hazardous situations.

(19) Granted petition requirement: Location to measure velocity in the belt conveyor entry.

This petition requirement relates to the use of tables to set alert and alarm levels based on the area of the entry and air velocity. The granted petition requirement reads, "Measurements to obtain the average air velocity in a conveyor belt entry shall be taken at three or more locations which are representative of the cross sectional areas found throughout the entry and not at locations where the entry is abnormally high (*e.g.* belt drives) or low (*e.g.* under overcasts)." This final rule, as in the proposed rule, does not use tables to establish alert and alarm levels; therefore, this petition requirement is moot.

(20) Granted petition requirement: Miner training.

The granted petition language requires that miners be trained in initial and refresher training regarding compliance with conditions specified in the petitions. This includes proper evacuation procedures. Sixty-two granted petitions contain this requirement. However, these requirements are covered either under existing 30 CFR part 48 training provisions or under evacuation training provisions included in the recently finalized § 75.1502—Mine emergency evacuation and firefighting program of instruction.

(21) Granted petition requirement: Prior MSHA inspection of AMS before use in belt air mine

The granted petition requirement requires that, prior to implementing the use of belt air, MSHA inspect the AMS to see if it is fully operational and in compliance with the terms and conditions of the granted petition. This requirement is included in 59 granted petitions. The proposed rule did not include this specific requirement and neither does the final rule.

The ultimate responsibility for assuring proper installation and operation of the AMS rests with the mine operator. MSHA already enforces standards to assure the mine operator maintains the system as required. As required by §§ 75.350(b)(1) and 75.351 of this final rule, the AMS must be installed, operated, examined, and maintained if belt air is used to ventilate working sections and setup or removal areas. Some commenters to the proposed rule asserted that this inspection prior to the use of belt air should be in addition to the quarterly safety and health inspections of underground coal mines. Many belt air petitions required that the AMS fire detection system be inspected prior to belt air being used to ventilate working places as part of the conditions of the granted petition. However, when this rule becomes final, an operator will be able to start developing a mine with belt air being coursed onto the working sections and setup or removal areas, provided the final standards are followed. MSHA's regular inspections will be conducted during the initial development of the mine and the AMS will be inspected as part of these inspections.

The Agency believes that an additional startup inspection prior to coursing belt air onto a working section would be duplicative of the inspections already conducted for mines that already have granted belt air petitions (approximately 45 active mines) and for pre-Coal Act mines (approximately 2 mines) that use belt air. The AMSs in these mines have already been inspected and are currently inspected quarterly. In addition, for mines that convert to belt air following publication of this final rule that have existing CO monitoring systems used to comply with existing § 75.1103–4, MSHA currently inspects these systems quarterly (approximately 15 mines). The primary differences in the provisions between § 75.1103–4 and this final rule could be in the alert and alarm levels and sensor spacing. For mines that seek to use belt air and do not have an existing CO monitoring system used to comply with § 75.1103–4 (approximately 6 mines), MSHA believes that a start-up inspection offers no additional safety benefit because of the numerous inspections that MSHA already conducts on an annual basis to these mines. For these mines, the MSHA presence will be significant, especially during mine development when the AMS would be installed prior to belt air use. In addition, these inspections would include a review of the AMS system in use at the mine site through review of the mine's ventilation plan and emergency evacuation plan. Therefore, a requirement for prior inspection of all of these AMSs in not necessary and would not further safety. In addition, MSHA will continue to inspect these systems to ensure that they are installed, operated, examined, and maintained according to the requirements of this final rule.

Additionally, commenters urged MSHA to inspect the AMS to make sure it is working appropriately and to inspect the system more frequently than each regular inspection. Again, MSHA personnel inspect the AMS as part of the regular inspections of the mine pursuant to section 103(a) of the Mine Act (30 U.S.C. 813(a)). The Agency believes that additional inspections are not necessary and would be duplicative of existing Agency actions. This action will not diminish protections afforded miners because prior to the use of belt air, the mine operator must assure that the AMS is installed, operated, examined, and maintained according to the requirements in §§ 75.350(b) and 75.351 of this final rule.

d. The effect of the final rule on pre-Coal Act mines that use belt air to ventilate working sections.

In the case of mines opened on or prior to March 30, 1970, the effective date of the Coal Act of 1969 (pre-Coal Act mines), the use of belt air is allowed through the mine ventilation plan approved by the MSHA district manager. As noted earlier, under the final rule, these pre-Coal Act mines using belt air to ventilate working places and/or setup or removal areas with working sections developed using three or more entries are not exempted from the rule and must meet the new standards, thus maintaining protections afforded to miners. This final rule also applies to pre-Coal Act mines that use belt air as a result of a granted petition. Some commenters stated that the proposed rule may lessen the protection provided at pre-Coal Act mines, such as the Gary 50 mine (now known as Pinnacle Mine) in southern West Virginia. We reviewed the mine ventilation plan requirements for the Gary 50 mine to identify the differences between the Gary 50 mine ventilation plan requirements and this final rule's provisions. We discuss the differences below.

(1) Mine ventilation plan: Use of time-delays, visual alert signal, audible alarm signal required at the surface location.

The approved ventilation plan for the Gary 50 mine allows short time delays of 30 to 90 seconds before all affected persons need to be notified following an alarm signal to limit situations that may cause nuisance or false alarms. AMS sensors that utilize time delays allow alert or alarm levels of CO to exist for a specified period of time prior to the computer acknowledging at the surface location that an actual alert or alarm signal was being received. If welding is being conducted within the belt entry by a sensor causing momentary increases in CO, a time delay would decrease the number of times the computer would signal an alert or alarm, and subsequently decrease the occurrence of non-fire related alert and alarm signals. However, such delays are not always necessary. The final rule allows the use of time delays only where there is a demonstrated need and the delays are specified and approved in the mine ventilation plan. The Gary 50 ventilation plan does not require that a demonstrated need for the time delay exists. In addition, the final rule allows for a time delay that does not exceed 3 minutes (§ 75.351(m)) only when a demonstrated need exists. Under this final rule, the Gary 50 mine would need to demonstrate a need for this time delay. If a mine operator demonstrates a need for a time delay, the time delay will reduce the number of nuisance and false alert and alarms the mine experiences. This will increase confidence in the AMS and will therefore help to assure appropriate responses during fire-related alert and alarm conditions.

The final rule requirement that both visual and audible alert and alarm signals be transmitted to the surface location where the AMS operator is located is more protective than the Gary 50 mine ventilation plan. This final rule requires both visual and audible signals for both alert and alarm levels be seen or heard at all times at the surface location. The Gary 50 plan requires only that a visual alert signal and an audible alarm signal be provided at the surface location. Only the CO sensor at the section loading point is required to automatically give a notification to the section for alert signals in the mine ventilation plan. The final rule requires immediate automatic notification of alarms in all affected areas, while the plan requires notification within a 90-second time delay.

(2) Mine ventilation plan: Alert and alarm levels of 4 and 8 ppm CO; respectively.

The district manager has required these reduced alert and alarm levels in the approved mine ventilation plan, and can continue to require them after the effective date of the final rule. The plan and final rule are compatible in this regard. Under final § 75.351(i)(2) the district manager may require reduced alert and alarm levels.

(3) Mine ventilation plan: Miners withdrawn on alert to a safe location where communications are available.

The plan approval requires that the AMS operator notify miners of an alert signal and that the miners withdraw to a safe location in the primary escapeway. The final rule requires withdrawal to a safe location identified in the emergency evacuation and firefighting program of instruction when two or more consecutive sensors are in alert mode or when any sensor is in the alarm mode. In the event of an alarm both the plan and this final rule require withdrawal to a safe location, unless the alarm is known not to be a hazard to the miners. Following withdrawal both the plan and the final rule require that an investigation be conducted to determine whether the alert or alarms are fire-related. They differ only in that the plan requires that miners be withdrawn when the AMS indicates one sensor is in alert mode. The final rule requires that miners be withdrawn when the AMS indicates two consecutive sensors are in alert mode, thereby reducing the "cry-wolf" syndrome. The "cry-wolf" syndrome occurs when alert and alarm signals are discounted by miners as

related to non-fire sources, such as diesel-powered equipment or welding fumes, and not to a real fire event. It will reduce nuisance alert and alarm events, thus increasing the effectiveness of the AMS as a early-warning fire detection system. The final rule addresses the need to assure that temporary non-fire-related events do not cause withdrawal that could result in unnecessary panic among miners and that miners are assured that an order for withdrawal means there is an actual fire-related event. Therefore, the plan and final rule provide equivalent safety.

(4) Mine ventilation plan: Section alarm signals on deluge system activations.

The Gary 50 mine ventilation plan requires that the mine operator monitor deluge system activations with the AMS or alarms on activation of these systems. The Agency believes that actuation of the deluge system causing section alarms activations is not necessary since the early-warning fire detection system will likely detect a fire before the deluge system is activated, thereby making the monitoring of deluge system activations unnecessary. This issue was discussed in MSHA's report on the VP 8 mine fire, which started at a belt drive. The fire at the belt drive was detected by the CO system 32 minutes before the fire suppression system activated due to heat from the fire. Mine operators may choose to monitor deluge system activations to provide data to evaluate the effectiveness of deluge systems. This does not reduce protections for the reasons stated previously.

(5) Mine ventilation plan: AMS Malfunction—Phones located at belt drives; midpoint of development section.

The Gary 50 mine ventilation plan allows phones to be spaced up to 5,000 feet apart in cases where longwall panels could be 10,000 feet in length. The final rule requires that communication be available in the belt entry at intervals not to exceed 2,000 feet in case of AMS malfunction. The final rule meets the plan requirement, and exceeds it in most cases.

(6) Mine ventilation plan: Requires administrative controls for welding, cutting, or other known sources of CO.

The final rule does not require operators to implement administrative controls to reduce false or nuisance alert and alarm signals. These controls could include notification of the AMS operator prior to welding and cutting activities near sensors.

The mine operator is expected to adjust mining activities to comply with all the provisions of this final rule. This includes the implementation of time delays, if approved. All alert signals are received by the AMS operator and must be investigated by appropriate personnel to determine what caused the alert and to correct the situation. The Gary 50 ventilation plan also requires the AMS operator to initiate an investigation by appropriate personnel of alert signals to verify whether or not the situation poses a hazard to miners. The Agency believes that pre-notification of non-fire related CO such as produced by welding activities may be of benefit to the AMS operator, but may provide little additional protection to miners, since all alerts must be investigated and are not automatically communicated to affected areas. The rule does not prohibit notice to the AMS operator about cutting and welding activities. Mine operators who required that this information be supplied to the AMS operator may continue to do so.

(7) Mine ventilation plan: Point feeding prohibited from primary escapeway to belt; Stopping maintenance.

Point feeding, the process of providing additional intake air to the belt air course from another intake air course through a regulator, is permitted by the final rule with safeguards. These include a minimum air velocity through the regulator, monitoring the regulator for CO, and specific approval in the mine ventilation plan. Point feeding from the primary escapeway is safe when monitored with other controls in place, as specified in the final rule.

Point feeding is permitted in the Gary 50 mine ventilation plan from intake entries other than the primary escapeway, but monitoring of the airstreams is not required. In this area the final rule provides greater protection than the requirements of the approved plan.

(8) Mine ventilation plan: Stoppings.

The Gary 50 mine ventilation plan requirements include a provision to inspect and reseal stoppings. Existing § 75.333(h)—Ventilation controls, requires all ventilation controls to be properly maintained, so the plan merely repeats an existing standard that covers all underground coal mines.

(9) Mine ventilation plan: Travelway provided and maintained on tailgate of longwall sections; Intake air split.

This Gary 50 mine ventilation plan requirement also allows the established travelway to be ventilated with return air if needed. Existing § 75.384 already requires a travelway to be maintained on the tailgate side of the panel when both escapeways are located on the headgate side. This travelway can be ventilated with either intake or return air.

While some commenters claimed that the proposed rule may not provide the same level of protection as the requirements contained in the mine ventilation plan for mines in existence on the effective date of the 1969 Coal Act, we disagree. In the discussion above, we examined nine requirements in the mine ventilation plan for a pre-Coal Act mine, the Gary 50 mine. We conclude that the final rule increases the protection for miners for 2 of those requirements, produces the same level of protection for 7 of those requirements, and in no case reduces the level of protection afforded miners.

B. Section-by-Section Discussion

The following portion of the preamble discusses each provision of the final rule. The text of the final rule is included at the end of the document.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

Section 75.301 Definitions

This final rule will add six new definitions to the list of definitions contained in the existing standard. As with other definitions in this section, the new definitions only apply to the standards contained in part 75, subpart D—Ventilation.

Like the proposed rule, the final rule defines the *AMS operator* as the person(s) designated by the mine operator and located on the surface of the mine to monitor the AMS signals and to notify appropriate personnel in response to a malfunction, alert, or alarm signal.

The AMS operator could be the person designated under § 75.1501—Emergency Evacuations, to be in charge during a mine emergency evacuation, however the final rule does not require the AMS operator to be this person. Likewise the AMS operator could be considered "appropriate personnel" designated by the mine operator to respond to AMS signals under § 75.351. MSHA did not receive comments on the specific language of this definition and therefore it remains as proposed.

Like the proposed rule, the final rule defines *appropriate personnel* as the person or persons designated by the operator to perform specific tasks in response to AMS signals under § 75.351. No comments on the specific language of this definition were received. However, the final language has been modified to reflect the new language in §§ 75.1501 and 75.1502, as a result of the September 9, 2003 publication of the final Emergency Evacuations rule (68 FR 53049).

We have added a clarification in this definition of *appropriate personnel* "[a]ppropriate personnel includes the responsible person(s) required by § 75.1501 when an emergency evacuation is necessary." This change is consistent with the responsibilities set forth in §§ 75.1501(a) and (b) of the Emergency Evacuations final rule. These sections require that "For each shift that miners work underground, there shall be in attendance a responsible person, designated by the mine operator to take charge during mine emergencies involving a fire, explosion or gas or water inundations. The responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction * * * The responsible person shall initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire or explosion or gas or water inundation."

The responsible person is one of the many individuals that meets the definition of appropriate personnel. Appropriate personnel have numerous and varied tasks depending on the type of signals received from the AMS, including checking a malfunctioning sensor, patrolling the belt air course in the event of AMS failure, and responding to mine emergencies. As a result, different situations will require different individuals having the designation as "appropriate personnel." In the event of mine emergencies involving a fire, explosion or gas or water inundations, the duties of one person meeting the definition of appropriate personnel could be the same person as a "responsible person" under § 75.1501.

Like the proposed rule, the final rule defines an *atmospheric monitoring system (AMS)* as a network consisting of hardware and software capable of: measuring atmospheric parameters, such as carbon monoxide and methane concentrations, and smoke optical density; transmitting the measurements to a designated surface location; providing alert and alarm signals to designated locations; processing and cataloging atmospheric data; and providing reports that can be used in the maintenance and calibration of the system by the mine operator. Each of these capabilities is important and an AMS used to comply with the requirements of this standard must provide the functions contained in the rule. In addition, as in the proposed rule, the final rule makes provision for new technology. Early-warning fire detection systems using newer technology that provides equal or greater protection, as determined by the Secretary, will be considered an atmospheric monitoring system for the purposes of this subpart. Unlike provisions in a granted petition, this provision allows the mine operator to use technology as it becomes commercially available and is of a type and installed in a manner approved by the Secretary that increases safety without the need to amend the existing granted petition.

A commenter requested clarification concerning whether a mine using an AMS would also be required to use point-type heat sensor (PTHS). A system that meets the requirements of § 75.350 meets the requirements of § 75.1103–4; therefore an additional system using PTHS to comply with § 75.1103–4 is not needed. In addition, the commenter requested clarification as to the use of the battery backup (standby power source) during fan maintenance and mine emergencies. The AMS is required under § 75.1103–4(e) to give warning of fire for a minimum of 4 hours after the source of power to the belt is removed, unless the belt haulageway is examined for hot rollers and fire as provided in §§ 75.1103–4(e)(1) or 75.1103–4(e)(2). MSHA has included a reference to these sections in § 75.350(b)(1). MSHA did not receive any comments on the specific language of this definition and, therefore, it remains as proposed.

Like the proposed rule, the final rule includes a definition for the *belt air course*. The belt air course is defined as the entry in which a belt is located and any adjacent entry(ies) not separated from the belt entry by permanent ventilation controls, including any entries in series with the belt entry, terminating at a return regulator, a section loading point, or the surface. No comments on the specific language of this proposed definition were received. Therefore, the final language remains unchanged from that of the proposed rule.

The final rule defines *carbon monoxide ambient level* as the average concentration in parts per million (ppm) of CO detected in an air course containing CO sensors. The CO ambient level is an average that is representative of the composition of the mine atmosphere over a designated period of mining activity during non-fire conditions. The proposed rule language is almost identical to the final rule language with the exception that "in parts per million (ppm)" was included in the definition to state the units of measurement of CO. In addition, the final rule language states that the average "concentration" of CO is representative of the composition of the mine atmosphere "over a period of mining activity during a non-fire condition" as opposed to "during a non-fire condition."

An effective early-warning fire detection system must be based upon reasonable operating parameters, which include the evaluation of ambient CO levels. One commenter suggested that the CO ambient level be determined by monitoring the air for a specified period of time, such as two to four weeks, within the entry or entries to be protected. This monitoring would occur prior to the commissioning of the installed CO system to help achieve an accurate average ambient level for CO. MSHA agrees that there needs to be a method to determine the ambient level. However, there are several ways to establish this level. The ambient level and ambient determination method are already required by existing § 75.371(hh) to be included in the mine's ventilation plan. Due to different mining systems, it is the mine operator's responsibility to determine which method is best for the mine and to determine the ambient level subject to approval of the district manager. This provides flexibility in establishing the ambient CO level.

The definition of CO ambient level includes the term "average concentration." Ambient CO levels can vary from mine to mine and even within an individual mine. For example, one area of a mine may contain higher concentrations of CO at all times due to a variety of reasons (*e.g.*, naturally-occurring CO in the area or increased use of diesel-powered equipment in the area). Accordingly, the ambient level in these areas of the mine will be higher. The ambient level and the method used to determine it must approved in the mine ventilation plan. Unless the ambient level is specified as zero ppm, documentation must be provided to the district manager that the specified ambient level requested reflects the true conditions of the mine atmosphere. For many mines, the average concentration will be the same throughout the air course and will be at or near zero ppm. If a mine operator chooses to set the mine's ambient level at zero ppm, or less than the actual ambient level, this action will provide increased sensitivity for fire detection.

There may be more than one ambient level per mine because the mine

operator may establish separate ambient levels for different areas of the mine. We recognize that in some mines, CO occurs naturally as a characteristic of the coal seam and that higher average concentrations will exist. Also, diesel-powered equipment produces CO when operating and thus may raise the average concentration of CO within the air course. Operation of diesel-powered equipment near a CO sensor might cause "spike" concentrations of CO to occur. In-mine tests have shown that these spikes account for a small part of the sample concentrations. Thus, if the CO ambient level is determined using a reasonable duration of time that is representative of mining conditions, the average will represent the concentration in ppm approximating that most often found in the air course.

In order for an AMS with CO sensors to be effective as an early-warning fire detection system, the ambient level must represent conditions over a broad range of mining activities. We recognize that the CO level may vary from shift to shift depending on the type or amount of work being done. While some petitions established the method for determining the ambient level(s) for a mine, we believe approval of the ambient level and the method used to establish it are most appropriately addressed in the mine ventilation plan due to varying mining conditions and activities. Therefore, MSHA will continue to require that the CO ambient level and the method for determining the ambient level be specified and approved in the mine ventilation plan, § 75.371(hh), as already required by former § 75.351. A commenter asked for clarification in the rule language itself that would state that there could be more than one CO ambient level in the mine thus giving mine operators the flexibility to establish more than one ambient. MSHA acknowledges that a mine may have multiple ambient levels such as when diesel-powered equipment is used in certain areas of the mine. Such equipment, when in use, increases CO levels in that area of the mine, thereby increasing non-fire alert and alarms unless the ambient CO level is modified. The following language has been added to the definition of CO ambient, "Separate ambient levels may be established for different areas of the mine" to clarify this issue. The language in the final definition remains modified as stated above, from the language in the proposed rule.

It needs to be noted that the actual alert and alarm values for particular sensors will depend upon the ambient level for the area where these sensors are located. The ambient level represents the sum in ppm of both the naturally-occurring and man-made sources of CO, such as diesel-powered mining equipment in a particular area of a mine. Both the proposed and final rule take into account the ambient levels when alert and alarm levels are established. For an ambient level of 2 ppm, the alert and alarm levels will be 7 and 12 ppm, respectively. For an ambient level of 4 ppm, the alert and alarm levels will be 9 and 14 ppm, respectively. Both of these sets of values provide equivalent protection because the alert and alarm signals are provided when the CO concentration in the belt air course rises 5 and 10 ppm above the ambient, respectively.

No comments were received on the proposed definition for *point feeding* and it is unchanged in the final rule. As defined by the final rule, point feeding is the process of providing additional intake air to the belt air course from another intake air course through a regulator. Point-feeding allows the mine operator to increase airflow within the belt entry from other intake entries. This additional air is needed in many mines to dilute methane, coal dust, and diesel-powered engine exhaust. In addition, point feeding from one intake air course to another reduces the pressure differentials between these entries, which limits uncontrolled leakage from one air course to another air course. Sometimes providing additional air to the belt air course to increase air velocity in the belt entry is necessary to maintain the needed air velocity to assure compatibility with fire-detection sensor spacing. Although we acknowledge that point-feeding may be necessary, we think that the number of point-feed regulators should be kept to a minimum to maintain the integrity of the primary escapeway. This is important because if a fire develops in the belt air course, the primary escapeway is protected from smoke contamination due to a minimum number of point-feed regulators which can be closed remotely.

Because the point-feed regulator is a permanent ventilation control, the point-feed regulator must be constructed according to the requirements of existing § 75.333(e)(1) (Ventilation controls) which states the method and material requirements for the construction of permanent stoppings and regulators.

Section 75.350 Belt Air Course Ventilation

This final rule revises § 75.350 that prohibits air coursed through belt entries from ventilating working places, except as approved on a mine-specific basis through the petition for modification process (30 U.S.C. 811(c)) or when approved by the MSHA district manager for mines opened prior to March 30, 1970 (pre-Coal Act mines). As noted under the Background section of this preamble, MSHA has a long history of evaluating the safe use of belt air through the petition for modification process.

In promulgating this final rule, MSHA has evaluated the requirements in approximately 80 granted petitions to determine which requirements can be safely applied to all underground coal mines with three or more entries that seek to use belt air. This issue was discussed earlier in this preamble in the subsection entitled "A. General Discussion—30 CFR, part 75, Subpart D—Ventilation" found under the section entitled "II. Discussion of Final Rule."

As used in the existing standard, the term "belt entries" refers to the belt air course. Under the final rule, the belt air course can be used to ventilate working sections, if the mine operator meets specified requirements. The term "working sections," and not "working places," was used in the proposed rule and is used in the final rule to include the area inby the section loading point. Existing § 75.380(g) requires separation of the primary escapeway from the belt entry beginning at the working section to the escape facilities or the surface. Thus, if the mine operator wishes to course belt air inby the end of the separation of the primary escapeway from the belt, the safety requirements of this final rule apply.

The final rule also permits belt air to be used to ventilate mechanized mining equipment setup or removal areas if the mine operator meets the same specified safety requirements. If intake air passes through a belt entry where the belt is not operable, and is coursed onto a setup or removal area, the specified requirements do not apply. However, if any of the air that passes through the belt air course has passed over a belt that is being operated and will ventilate either working sections or equipment setup or removal areas, the specified requirements of this final rule apply. This maintains the protections set forth in this final rule.

Existing § 75.350 requires that the air velocity in the belt entries be limited to the amount necessary to provide an adequate supply of oxygen in these entries and to assure that the air contains less than 1.0 percent methane. Existing §§ 75.321 and 75.323 require that oxygen and methane be kept within specified limits, respectively. Therefore, this final rule is consistent with

§§ 75.321 and 75.323. It would not increase miner protection to repeat these requirements in the new § 75.350. Miners receive the same level of protection.

Separation of the belt air course from the primary escapeway is required by existing § 75.380(g). Under the existing § 75.350, the belt air course must be separated with permanent ventilation controls from return air courses and from other intake air courses.

Section 75.350(a) of this final rule prohibits the use of the belt air course as a return air course. It also requires that belt air cannot be used to ventilate the working sections or setup or removal areas except as specified in § 75.350(b). Section 75.350(a)(1) requires separation of the belt air course from return air courses and other intake air courses with permanent stoppings. When the mine operator meets the requirements specified in § 75.350(b), separation of the belt air course from intake air courses, other than primary escapeways (covered under existing § 75.380(g)), is not required.

The proposed rule did not set velocity caps, or maximum air velocities, within the belt air course. Some commenters agreed with the proposed rule, affirming that there should not be a limit imposed on the air velocity or quantity. Others maintained excessive velocities created a float coal dust hazard as well as increasing respirable dust levels within the air course, and that a cap on velocities should be set.

The Agency is persuaded that there is a need for a velocity cap and that the cap will increase miners' protection. Section 75.350(a) is being revised by adding a new § 75.350(a)(2) to the final rule based on a review of the rulemaking record. Once this final rule becomes effective, the air velocity in the belt entry must be limited to 500 fpm, unless higher velocities are approved by the district manager through the ventilation plan process.

Velocity caps were required in a small percentage of granted petitions over the last 25 years. In the Agency's review of nearly all granted petitions, a total of 11 mines were limited to velocities ranging from 250 to 725 fpm. The original belt air velocity cap of 300 fpm was required in a few granted petitions in the late 1980s based on the equivalency testing conducted by MSHA. The 300-fpm limit was the maximum velocity created in the test facility, and because the effects of higher velocities on belt fires were not known, the velocity cap was established. Results of large-scale testing by the U.S. Bureau of Mines at higher velocities (as high as 1,200 fpm) indicated the 300-fpm velocity cap was not warranted, and so it was typically not required in subsequent granted petitions. However, some recently granted petitions included velocity caps ranging from 250 to 500 fpm to address mine-specific conditions.

We have included the 500 fpm velocity cap requirement in § 75.350(a)(2). This requirement applies to all mines. We reviewed numerous research publications, granted petitions, ANSI standards, a NIOSH research report, and mine fire investigation reports. The velocity limit was ultimately determined by MSHA's analysis of RI 9380 and existing granted petition requirements for sensor alert and alarm levels.

The results of U.S. Bureau of Mines research report RI 9380 were based on large scale fire testing which used velocities in a wind tunnel up to 1,200 fpm. The report stated that when the belt entry air velocity exceeds about 2.54 meters/second (500 fpm), the smoldering stage would not be detected by either 5 ppm CO sensors or 0.044/meter smoke optical density smoke detectors. For this reason, to provide an early-warning fire detection system, the maximum velocity in the belt entry must not exceed 500 fpm, when alert and alarm levels are 5 and 10 ppm, respectively, and sensor spacing is set at 1,000 feet. Higher velocities would be allowed only with approval of the district manager. We expect that approval of velocities in excess of 500 fpm would require reduced CO alert and alarm levels. Alternatively, other detection technology with increased sensitivity could be used to replace the CO sensors in these areas.

In addition, ANSI/ISA–92.02.01, Part I—1998, prescribes a test procedure to determine the effects of air velocity on the performance of CO monitors. The maximum velocity tested in this procedure is approximately 1,000 fpm. Therefore, the performance of the monitors is not verified above this limit when tested to that standard. While the district manager may approve velocities in excess of 500 fpm, in mines using belt air the Agency recommends that air velocity not exceed 1,000 fpm unless the fire detection system is known to be compatible with such air velocities.

While we are persuaded that there is a need for velocity caps, we looked at the relationship between velocity caps and fire detection systems. MSHA found that the effectiveness of the fire detection system is dependent upon air velocity. As a result, though not proposed, we have included, in § 75.350(a)(3), a requirement that air velocities must be compatible with fire detection systems as well as fire suppression systems used in the belt entry. MSHA has included the requirement that air velocity be compatible with fire suppression systems due to the findings of our report on the VP 8 mine fire (Non-Injury Mine Fire Accident; April 9 & 10, VP 8, I.D. 44–03795, Island Creek Coal Company; Mavisdale, Buchanan County, Virginia; July 15, 2003). It was determined that the air velocity at the belt drive where the fire started was in excess of 1,100 fpm. Testimony given during the fire investigation indicated that this velocity adversely affected the dispersion of the dry-powder chemical fire suppressant during the fire. MSHA's accident investigation report stated that, "Section 17 of the National Fire Protection Association handbook assumes that the protected area will be guarded from adverse air flow influences unless engineering considerations are made for ventilation which would assure proper location and rates of chemical application" (MSHA's Non-Injury Mine Fire Accident Report, Pg. 22). By including this provision, we are assuring the compatibility of velocity caps with fire suppression systems to maintain protections afforded to miners.

Like the proposed rule, final § 75.350(b) addresses the safety requirements that apply when belt air is used to ventilate a working section or an area where mechanized mining equipment is being installed or removed. Final paragraph (b)(1) requires that the mine operator equip the belt entry with an AMS installed, operated, and examined and maintained as specified in § 75.351.

One commenter suggested that MSHA include the following requirements: safeguard AMS cables by installing Kellam grips (braided wire cable securing device) any time a cable enters or exits a box; securely mount outstations to withstand an explosion; require that a six-foot loop of cable be hung in every crosscut during cable installation on a shear-pin hanger to prevent quick-snapping of the cables in the event of an explosion; additional standards for cable installation need to be developed and followed; and testing with known forces on hard-mount versus flexible-mount sensors. These suggestions are focused on the components of the system being able to withstand explosion forces. MSHA did not propose these requirements and has not included them in the final rule because the purpose of early-warning fire detection systems is to provide early warning of fire in the belt entry. The ability of some system components to withstand the forces of an explosion will not guarantee additional protection

to miners in mines that use belt air to ventilate working sections and setup or removal areas.

In addition, based on a commenter's request for clarification concerning battery backup, we have referenced § 75.1600–2(c) in § 75.351(r) when the AMS is used as a communication system. It was MSHA's intent to require operation of the system up to 4 hours after removal of power to the belt, but not to specify that the system be powered by batteries where other alternatives may be as effective. There were no additional comments specific to proposed § 75.350(b)(1); the language in the final section remains as proposed.

Paragraph (b)(2) of the final rule requires the training of all miners annually in the basic operating principles of the AMS, including the actions required in the event of activation of a system alarm. This training must be conducted before miners work underground. This training must be conducted as part of a miner's part 48 new miner training (§ 48.5), experienced miner training (§ 48.6), annual refresher training (§ 48.8), or training conducted as part of the approved emergency evacuation and firefighting program of instruction, § 75.1502. The training should include the purpose of the system, the type of information that it provides, and what responses to specific signals from the AMS are necessary.

The proposed provision received much comment regarding the appropriate training and the need for drills. Generally, commenters expressed concern about an increase in the number of subjects to be covered in the annual eight-hour training session required by 30 CFR part 48. They contend that it is difficult to incorporate new standards, such as the new emergency evacuations standard (§ 75.1502), or requirements contained in new granted petitions into this training time period. Many of the commenters believed there was a need for drills and simulations in the training. MSHA agrees that drills increase the effectiveness of fire-fighting response and currently requires drills in existing standards. Currently both existing § 75.383—Escapeway maps and drills and § 75.1502—Mine emergency evacuations and firefighting program of instruction include a requirement that the mine operator conduct a drill based on the mine's emergency evacuation and firefighting program of instruction. Including drills in this final rule would duplicate these existing requirements.

The Agency's response to these commenters is that current training requirements in part 48 are sufficient to train miners and that the drill requirements in existing standards are sufficient to give miners practical experience in the mine during non-emergency situations. This provision increases protection for miners working at mines with granted petitions. Such granted petition requirements state that "* * * miners shall be trained in proper evacuation procedures, including instruction and drills in evacuation and instruction in precautions to be taken for escape through smoke." In addition, "Personnel stationed at the surface location shall also be trained in the operation of the carbon monoxide monitoring system and in the proper procedures to follow in the event of an emergency or malfunction and, in that event, shall take appropriate action immediately."

The proposed language was that "All miners, including newly hired miners must be trained annually in the basic operating principles of the AMS, including the actions required in the event of activation of a system alarm. This training may be conducted as part of a miner's 30 CFR part 48 new miner training (§ 48.5), experienced miner training (§ 48.6), or annual refresher training (§ 48.8)." Due to the large number of comments received on this proposed language, MSHA has clarified the language of this provision to more clearly express that all miners must receive this training prior to any work underground in a mine that uses belt air to ventilate working sections or areas where mechanized mining equipment is installed or removed. Existing part 48 training requirements already include training on the use of mine communication systems and warning signals. While the proposed rule suggested that this training could be done outside part 48 training, a further review of existing part 48 indicates that this training is currently required. The AMS is considered by this final rule to be a communication system that generates alert and alarm signals, or warning signals, in response to the presence of products of combustion and methane. The final rule states "All miners must be trained annually in the basic operating principles of the AMS, including the actions required in the event of activation of any AMS alert or alarm signal. This training must be conducted prior to working underground in a mine that uses belt air to ventilate working sections or areas where mechanized mining equipment is installed or removed. It must be conducted as part of a miner's part 48 new miner training (§ 48.5), experienced miner training (§ 48.6), or annual refresher training (§ 48.8)."

We have added the term "of any AMS alert or alarm signal" instead of "any system alarm" to clarify the possibility that miners on working sections may act as appropriate personnel have to investigate malfunction or alert signals. It is the responsibility of the mine operator to assure that these training requirements are met.

Final paragraph (b)(3) is unchanged from the proposed rule. It requires that the concentration of respirable dust in the belt air course be maintained at or below 1.0 mg/m^3 because air in the belt entry is intake air. A permanent designated area (DA) for dust measurements must be established at a point no greater than 50 feet upwind from the section loading point in the belt entry when the belt air flows over the loading point or no greater than 50 feet upwind from the point where belt air is mixed with air from another intake air course near the loading point. We require that this DA be specified and approved in the mine ventilation plan.

Two commenters submitted information on this provision. One commenter suggested that the DA should be located at the tailpiece or just inby the tailpiece in order to give a accurate representation of the dust exposure in the entry. Another commented that in the mine where he works, this level is exceeded because the use of belt air increases respirable and nonrespirable coal dust exposure. However, the commenters did not provide data to support their claims or to refute studies conducted by NIOSH and MSHA which show that dust exposures were not increased by the use of belt air above allowable levels. The existing standard, § 70.100(b), specifies that the average concentration of respirable dust in the intake airways within 200 feet of working faces of each section must be continuously maintained at or below 1.0 mg/m^3 in intake air. However, the use of the air from the belt air course as intake air to ventilate working sections or setup and removal areas requires that coal dust sampling be conducted at a location prior to the air reaching these areas or before mixing with other intake air. This means that sampling must be conducted at a point no greater than 50 feet upwind from the section loading point or no greater than 50 feet upwind from the point where belt air mixes with air from another intake air course near the loading point. This new provision is not in conflict with § 70.100(b) because this is an additional requirement to measure the concentration of respirable dust in only the belt air. Therefore, the language

of this final rule remains as proposed and will provide the same level of protection as the existing standard.

Paragraph 75.350(b)(4) requires monitoring of the primary escapeway as described under § 75.351(f), that is, for CO or smoke within 500 feet of the working section or area where mechanized mining equipment is being installed or removed, and within 500 feet of the beginning of the panel. The sensor used to comply with § 75.351(f) may be used to comply with this § 75.350(b)(4) if located in the primary escapeway within 500 feet of the working section or within 500 feet of the beginning of the panel. The point-feed sensor required by § 75.350(d)(1) may be used to meet the requirement of § 75.350(b)(4) if the sensor is located within 500 feet of the beginning of the panel. Alarms activated by these sensors would warn miners of a fire in the primary escapeway upwind of the working section or setup or removal area and give them earlier warning and therefore more time to escape. These sensors will provide significant additional protection for a minimal cost.

One commenter contended that monitoring of the primary escapeway should not be tied into those areas of the mine using belt air to ventilate the working faces. However, as stated above, the intake escapeway is monitored to afford an additional level of protection; therefore, the language of this provision remains as proposed.

Paragraph 75.350(b)(5) is included to limit the use of belt air to areas developed using at least three entries for development in order to provide more protection because two-entry development is considered unique and requires additional protections. Therefore, all existing two-entry petition requirements are unaffected by this rule. Future two-entry mines will need to continue to file petitions to use belt air, since final § 75.350(a) prohibits placing the belt in the return. The Agency believes the two-entry mining system provides a unique set of issues and needs to be approved on a mine-by-mine basis in order to protect miners in these types of mines.

This section has been rewritten to clarify our intent because of concerns that two-entry developments would be affected by the proposed language. Our intention is still that in order for two-entry development systems to permit return air to flow over the belt, a petition for modification will be required. Commenters indicated two-entry mines should also be permitted to use belt air without a petition for § 75.350. We agree that although most of the same provisions of this final rule would apply to these mines, because the two-entry petitions for modification are filed under diminution of safety criteria and not alternate equivalent means (§ 44.4), the granting of such petitions goes beyond the safe use of belt air. In such petitions the mine operator states that development of a three-entry system would be more dangerous, or a diminution of safety, than to develop a two-entry system due to ground control conditions. The mine operator will need to file a petition for modification for § 75.350. Based on these comments, the wording of the proposed provision has been changed to clarify our intent from "the section must be developed with three or more entries", to "the area of the mine with a belt air course must be developed with three or more entries."

Paragraph (b)(6) requires in areas of the mine developed after the effective date of this final rule, that unless approved by the district manager, no more than 50% of the total intake air, delivered to the working section or to areas where mechanized mining equipment is being installed or removed, can be supplied from the belt air course. The proposed rule did not include this requirement; however, in the preamble, MSHA discussed the issue and concluded that pressure differential issues would be better addressed in the mine ventilation plan approval process. The intent of the proposed rule was that the design of the ventilation system would be specified in the mine ventilation plan. Most existing granted petitions limit the quantity of air from the belt entry to no more than 50 percent of the total section intake in areas of the mine developed after the effective date of the petition. This requirement was included in nearly all of the petitions granted since 1996. In these 37 granted petitions the mine operator needs to assure the integrity of all intake air courses is maintained, including the primary escapeway. The requirement helps to maintain the pressure drop from the primary escapeway (*i.e.*, higher pressure in the escapeway) to the belt air course. In addition, in the event that this pressure drop cannot be maintained, the requirement also helps to minimize the pressure drop from the belt air course to the primary escapeway. In the event of a fire in the belt air course, this requirement minimizes the contamination of the primary escapeway with the products of combustion.

Many commenters suggested that this requirement should be included in the final rule. Because of the number of commenters urging MSHA to include this requirement in the final rule, MSHA reconsidered this issue. We concluded that the ratio requirement to limit the contribution from the belt air course to total intake quantity to working sections and setup or removal areas should be included in the final rule. The new provision, § 75.350(b)(6), will help maintain the integrity of the primary escapeway. We also recognize, consistent with the granted petitions, that in some instances the portion of intake air maintained in the belt air course may need to exceed 50 percent of the total. In these instances we believe the district manager must have the authority to approve greater contributing quantities in the mine ventilation plan. A corresponding provision has been added to § 75.371. The location for measurements to determine compliance with this provision must be specified in the mine ventilation plan as required by new § 75.371(kk).

The magnitude of leakage between air courses is a function of both the pressure drop across the stopping line separating the air courses, and the resistance of the stopping to air flow. In the event of a fire, a very low pressure drop with poorly constructed or maintained stoppings can be a greater danger to miners than a higher pressure drop with substantial stopping integrity. This hazard is created due to the leakage of the products of combustion through the poorly constructed or maintained stoppings. The products of combustion will not contaminate the adjacent entry as fast through well constructed and maintained stoppings. Stopping construction and maintenance is addressed in existing § 75.333. We believe that these provisions are sufficient for stopping construction and maintenance in all coal mines.

MSHA has included a new provision, under § 75.350(b)(7), that requires the use of directional lifelines in return entries designated as alternate escapeways. These lifelines must meet requirements in the new section, § 75.380(n). A directional lifeline is most likely a rope made of durable material; marked with a reflective material every 25 feet; located in such a manner for miners to use effectively to escape; and have directional indicators, signifying the route of escape, placed at intervals not exceeding 100 feet. It should be noted that the Advisory Committee's recommendation was to install and maintain lifelines in all underground coal mines, regardless of the use of belt air. The recommendation specified that lifelines had to clearly designate the route of escape. Discussion in the Advisory Committee's report suggested the use of directional

cones to increase the effectiveness of lifelines. In the proposed rule, MSHA solicited information from the public concerning the use and maintainability of lifelines.

Currently, four granted petitions require the use of lifelines in return entries used as alternate escapeways. Many commenters from government, industry, and labor responded to MSHA's request for information on lifelines.

NIOSH commented that lifelines can improve the likelihood of escape from mine fires and suggested that MSHA consider an additional requirement for the installation of lifelines in all escapeways, not just alternate escapeways in return air courses at mines using belt air.

Some commenters testified at the rulemaking hearings that it is difficult to maintain lifelines installed in escapeways where mobile equipment is used, because moving equipment can damage lifelines. One commenter suggested that the idea of lifelines has merit, and if they are used, they must be maintained. Another commenter suggested that lifelines be used in alternate escapeways, not in primary escapeways where equipment transport could damage them. The lifeline at the commenter's mine is located in the main returns and is routed to the closest portal thus avoiding damage from mobile equipment. Other commenters recommended that the use of lifelines is best considered under a separate revision of § 75.380—Escapeways; bituminous and lignite mines.

Another set of commenters voiced disappointment that MSHA did not include a proposed provision that would require the use of lifelines in both primary and alternate escapeways and that these lifelines be maintained. They pointed out that many operations are currently required to install and maintain lifelines as part of the requirements of granted belt air petitions. They claim that MSHA's decision not to include lifelines in the belt air final rule would eliminate that protection, thus reducing safety for the miners working in these mines.

In addition, a witness at the public hearing in Washington, Pennsylvania, testified that the state of West Virginia requires the use of lifelines in a return air course if it is used as an escapeway. The witness reported that West Virginia law requires that lifelines be maintained in the escapeway up until the last open cross cut; be made of a durable material; and be marked with reflective tape once every 25 feet. The commenter also testified that he would like to see lifelines constructed of fire-proof material required in all underground coal mines. Another witness testified at the Birmingham, Alabama, public hearing that he was familiar with situations in other mines where the belts were burned in half and miners had to feel their way out. He is in favor of the use of lifelines in an alternate escapeway. It is his position that during a fire, lifelines could be essential to miners finding their way safely out of a mine.

These commenters maintain that, due to the lack of visibility, lifelines are necessary to escape a smoke-filled atmosphere. A miner testified that at MSHA's Mine Health and Safety Academy at Beaver, West Virginia, he received training for escape at the mine simulation laboratory under simulated smoke conditions. He noted that the lifeline used at MSHA's training facility was a valuable tool in getting him out of very thick smoke. A commenter testified that during the JWR No. 5 mine accident, two miners felt their way out of thick smoke by following a cable out of the mine.

Other miners also testified that the cost of lifelines is insignificant compared to the cost of buying a longwall drive unit or a continuous miner, and that maintenance costs associated with the lifelines are minor. MSHA concurs with the commenter that the cost of a lifeline is far less than that of a longwall unit. However, a longwall drive unit is not purchased to improve miner safety, whereas a lifeline is expected to improve miner safety.

Overall the commenters stated that lifelines could be useful in helping miners escape to the surface of the mine when smoke-filled atmospheres are present. After further review of the granted petitions, reviewing the comments on lifelines, and researching state regulations regarding lifelines, MSHA agrees with the commenters that lifelines can aid in escape during emergency situations, especially in instances of reduced visibility due to smoke. In heavy smoke, a miner can easily become disoriented and cannot determine the proper direction for escape. A directional lifeline gives the miner added safety by directing the miner through the smoke-filled entries to safety. MSHA also recognizes, as did commenters, that there can be maintenance difficulties with lifelines used in the intake entries where the more frequent use of mobile equipment can damage them. Therefore, MSHA, as noted earlier, has added a new requirement under § 75.380(n) to require the use of directional lifelines in return entries when used as alternate escapeways for mines that use belt air to ventilate active working sections and setup or removal areas (§ 75.350(b)(7)). The installation of lifelines in return escapeways will minimize maintenance problems because mobile equipment is seldom operated in return air courses. While the application of lifelines to all underground coal mines is beyond the scope of this rule, the Agency believes, based on the evidence presented during the course of this rulemaking, that it is appropriate to require the limited use of lifelines in this rule.

In the proposed rule, § 75.350(c) would have permitted point feeding air from an intake air course when a mine needs additional air in the belt air course, notwithstanding the provisions of § 75.380(g).

The final rule splits proposed paragraph (c) into two sections, paragraphs (c) and (d) to clearly indicate MSHA's intent. Paragraph 75.350(c) is derived from the proposed paragraph (c) and allows the use of point feeding, notwithstanding the provisions of § 75.380(g), to add additional intake air to the belt air course through a point-feed regulator. The use of point feeding is permitted for all mines as long as the location and use of point feeds are approved in the mine ventilation plan.

Point feeding, as defined in this final rule and allowed under final § 75.350(c), is the process of providing additional intake air to the belt air course from another intake air course through a regulator. Point feeding allows the mine operator to increase airflow within the belt entry from other intake entries at underground locations. This additional air is needed in many mines to dilute methane, coal dust, and diesel-powered equipment exhaust. In addition, point feeding from one intake air course to another reduces the pressure differentials between these entries, which limits uncontrolled leakage from one air course to another air course. Sometimes providing additional air to the belt air course to increase air velocity in the belt entry is necessary to maintain the needed air velocity to assure compatibility with fire-detection sensor spacing. Point feeding must be approved in the mine ventilation plan under § 75.370 and conditions set out in the paragraph must be met.

MSHA believes that point feeds should only be used when needed and the number of point-feed regulators should be kept to a minimum to maintain the integrity of the primary escapeway. This is important because if a fire develops in the belt air course, the primary escapeway is protected from smoke contamination due to a minimum number of point-feed regulators which can be closed remotely. This eliminates

one set of leakage paths for smoke to contaminate the primary escapeway. Point feeding is not meant to compensate for a poorly designed or inadequately maintained ventilation system. Any intake air course can be considered as a source for point feeding. The same requirements will apply to all intake air courses in order to maintain the integrity of the air courses and to facilitate early-warning fire detection capability. Early warning of fire will be facilitated by the required installation of AMS sensors at the point-feed locations in both the intake and belt aircourses.

Paragraph (d) specifies six additional conditions, as proposed under § 75.350(c), which must be met by mine operators if the air through the point-feed regulator enters a belt air course which is used to ventilate a working section or an area where mechanized mining equipment is being installed or removed. The requirements of the final rule are the same as those of the proposed rule. Paragraph (d)(1), formerly proposed paragraph (c)(1), requires monitoring of the air current that will pass through the point-feed regulator for CO or smoke at a point within 50 feet upwind of the point-feed regulator. A commenter recommended that point feeds that introduce fresh air into the belt line need to be monitored regardless of the direction of air flow along the belt. Other commenters agreed that both sides of point feeds need to be monitored due to the dilution effect that air at high quantities have on the products of combustion. Another commenter claimed that MSHA's requirement to monitor CO levels in intake air prior to entering a belt line would not be necessary if the belt air would be monitored using two CO sensors, one located upwind of the point where fresh air is introduced to the belt air course, and one located within 1,000 feet of the point feed on the belt line. MSHA disagrees with this strategy. The protection provided by the sensor required in paragraph (d)(1) located in the intake upwind of the point-feed regulator is needed to identify where a fire is burning. MSHA agrees that both sides of the point-feed regulator need to be monitored, therefore the final language remains as proposed.

Paragraph (d)(2), formerly proposed paragraph (c)(2), requires monitoring of the belt air for CO or smoke at a point within 50 feet upwind of the mixing point with air from the point-feed regulator. The requirements are unchanged from the proposal. If the sensor in the intake air stream gives an alert or alarm signal, the fire in all likelihood will be in the intake air course upwind of the point-feed regulator. If the sensor in the belt entry gives the alert or alarm signal, the source of the contaminants (smoke or CO) is most likely in the belt entry upwind of the mixing point. With this knowledge, the mine operator can take whatever action is appropriate including investigation of the alert, possible evacuation of miners from the affected area, and implementation of firefighting efforts if warranted. Some commenters testified that this provision is not a requirement in existing petitions. This is not correct. Point feeding is a provision included in three recently granted petitions (2001). Monitoring requirements for point feeding have been included in two of these granted petitions.

Another commenter testified that the provision appears to be more appropriate to improving safety for point feeding intake air into a belt air course versus addressing the issue of using belt air at the face. The Agency agrees with this commenter. Approval requirements for point feeding under § 75.350(c) apply to all underground coal mines, regardless of whether or not belt air is used to ventilate working sections or setup or removal areas. Specific provisions under § 75.350(d) apply to underground coal mines that use belt air to ventilate working sections and setup and removal areas. These provisions maintain miner safety by increasing protection when point feeds are used to augment belt ventilation with other intake air that subsequently is delivered to working sections or setup and removal areas. Proper installation and maintenance of point-feed regulators, when used, are critical since they are a major component of a ventilation system. Since point-feed regulators are permanent ventilation controls, the provisions of § 75.333(e)(1) (Ventilation controls) apply. The wording of the final provision remains unchanged from that of the proposed rule.

Final paragraph (d)(3), which was derived from proposed paragraph (c)(3), clarifies the requirements for closing point-feed regulators. The point-feed regulator must be provided with a means to close the regulator from the intake air course without requiring a person to enter the crosscut where the point-feed regulator is located. The point-feed regulator must also be provided with a means to close the regulator from a location in the belt air course immediately upwind of the crosscut containing the point-feed regulator. The modifications to this language from the proposed rule include: "from the intake air course without requiring a person to enter the crosscut where the point-feed regulator is located" and "location in the belt air course immediately upwind of the crosscut containing the point-feed regulator" where the means to close the regulator are found.

This provision provides protection for those miners who may be required to close the point-feed regulator in case of an emergency. Remote closure is especially important if a fire starts in the intake air course upwind from the point-feed regulator. When the point-feed regulator is installed in such a manner, the person closing the point-feed regulator could approach from the upwind side of the regulator in the belt air course. This would enable the person to close the regulator without being exposed to the products of combustion coming through the point-feed regulator when a fire occurs in the intake air course. By closing the point-feed regulator under these conditions, the amount of contaminants entering the belt air course could be limited, thus providing miners additional time to escape.

Some commenters thought that the requirement mandating remote-closing of the regulator is unrealistic. The proposed rule did not mandate closure of the regulator, but rather that a means would be available to close the regulator if needed. Others questioned MSHA on how best to comply with the provision. Based on these comments, the language of this paragraph has been modified to clarify MSHA's intent. The point-feed regulator must be provided with a means to close the regulator, either manually or by remote control, from the intake air course without requiring a person to enter the air stream passing through the point-feed regulator. New language was added to this provision in response to comments, "In addition, the point-feed regulator must also be provided with a means to close the regulator from a location in the belt air course immediately upwind of the crosscut containing the point-feed regulator."

Paragraph (d)(4), formerly proposed paragraph (c)(4), requires that a 300-fpm minimum air velocity be maintained through the point-feed regulator to prevent air reversals and reduce the potential for smoke rollback. No comments were received on this provision, therefore, it remains as proposed.

Paragraph (d)(5), formerly proposed paragraph (c)(5), requires the mine operator to submit a mine ventilation plan that includes the location of all point-feed regulators. The installation of the point-feed regulator must comply

with existing § 75.333 and must meet the performance requirement of remote closure as required by new § 75.350(d)(3). The individual location(s) and use of a point-feed regulator(s) must be approved in the mine ventilation plan to assure that hazardous situations are not created.

In addition, paragraph (d)(5) requires that the locations of point-feed regulators be shown on the mine ventilation map required by § 75.372 (Mine ventilation map). An accurate and complete map enables both the operator and MSHA to evaluate the ventilation system. During escape, it is important that miners be aware of all aspects of the ventilation system that might affect their ability to exit the mine safely, including the location of point-feed regulators. Knowledge of the locations of point-feed regulators will allow miners to efficiently close the ventilation controls in a timely manner to facilitate escape. Although a means for closure is required for all point-feed regulators, closing a regulator, as in making any air change during a mine emergency, should be done only when necessary.

Some commenters believe that this provision is unnecessary. They contend that it will create a number of unnecessary ventilation plan submissions. As an alternative, some commenters suggested that limiting point-feed regulators to one per conveyor belt flight would reduce the number of required plan submissions and allow mine operators to change belt ventilation to accommodate changing methane concentrations on belt lines in a timely manner. They claim that modifying the mine ventilation map to include these point feeds could be done in a timely manner. MSHA disagrees with the commenters. Based on MSHA experience, the installation of point feeds will be infrequent. Modifications to the mine ventilation plan will not be burdensome for operators, since they already submit plans to MSHA under existing § 75.370 that are reviewed twice a year by MSHA. Thus, final paragraph (d)(5) remains unchanged from the proposed rule.

Paragraph (d)(6), formerly proposed paragraph (c)(6), requires an AMS to be installed, operated, examined, and maintained as specified in § 75.351 when point-feed regulators are used. This requirement, which applies to underground coal mines using belt air to ventilate working sections and setup and removal areas, greatly increases protection for miners by increasing the level of atmospheric monitoring of areas where intake air is directed into a belt air course, thereby increasing the ability of the mine operator to detect fires before they can develop into a serious threat to miners and mine property. No comments were received on this provision, and the provision remains unchanged from that of the proposed rule.

Section 75.351 Atmospheric Monitoring Systems

This section of the final rule establishes the installation, location, examination, maintenance, and operational requirements for AMSs. The proper operation of an AMS is the cornerstone on which the safe use of belt air, and other provisions in this final rule, is based. Current AMS technology has proven itself to be reliable. Since 1978, the year when an AMS was first required as a condition for the granting of a belt air petition, we have included performance criteria for an AMS as part of each granted belt air petition. As AMS technology has evolved, the performance requirements in the granted petitions have also evolved. Performance requirements are included in this final rule.

Final paragraph (a) requires that an AMS be in operation whenever personnel are underground and an AMS is used to fulfill the requirements of §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f). At those times the AMS must be operating and a designated AMS operator must be on duty at a location on the surface of the mine where audible and visual signals from the AMS must be seen or heard and the operator can promptly respond to these signals. The Agency intends that "audible" means able to clearly hear the signal above the noise of machinery as required by the National Fire Code (1967) which was incorporated by reference in § 75.1103–2 (1972). It is intended that "visual" means clearly seen as required by language found in nearly all granted petitions. This language is slightly modified from the proposed rule by specifically indicating that both audible and visual AMS signals must be provided to the surface location. Also, the word "can" was replaced with "must" while "and" was replaced with "or." It was the position of some commenters that the AMS operator should be able to "see or hear" AMS signals. It is their position that the AMS operator can do other tasks while monitoring the AMS signals. One commenter also suggested that requiring both signals was "regulatory overkill" and suggested that we include the phrase "and/or" to allow flexibility to operations that need both audible and visual AMS signals. However, this commenter's suggestion would not require that every mine operator provide both audible and visual signals. Both types of signals have been required by nearly all granted petitions. MSHA agrees that AMS operators can do other tasks while monitoring AMS signals. However, primarily because the AMS operator may be conducting other tasks, it is necessary that both visual and audible signals be available and of sufficient magnitude to alert the AMS operator who must always be in a position to either see or hear both types of AMS signals.

The final requirement of this paragraph is similar to existing § 75.351(d)(1), which requires a person designated by the mine operator be stationed at the surface location while anyone is underground. This final requirement clarifies when the AMS must be in operation and when the AMS operator must be at the designated surface location.

Generally, an AMS installed in accordance with §§ 75.350(b) or 75.350(d) monitors the mine atmosphere at all times that a belt air course is used to provide intake air to a working section or areas where mechanized mining equipment is being installed or removed when miners are underground. This requirement is usually independent of belt operation or coal production. This means the AMS must be monitoring the mine atmosphere whether or not the belt is running or coal is being produced, whenever belt air is provided to working sections and locations where mechanized mining equipment is being installed or removed while miners are underground.

Proposed paragraph 75.351(a) would have required "for extended idle periods exceeding 24 hours, when the belt is not operating, the requirements of §§ 75.350(b) or 75.350(c) would not apply after the initial 24 hour idle period." We received many comments on this proposed requirement. Some commenters testified that the traditional period for monitoring the belt line after shutdown is 4 hours, not 24 hours. Other commenters testified that the belt line should be continuously monitored at all times if the air going down the belt line is being used to ventilate working sections. This is particularly relevant, they argued, when any miner is underground. One miner testified that during idle periods at his mine during vacations an estimated 200 miners are still underground. Another commenter stated that if the AMS system is off, because the belt has been down more than 24 hours, air will still be traveling along the belt and passing through common entries where miners may be doing nonproduction jobs, such as

maintenance or deadwork. It was pointed out that the deadly explosions at JWR No. 5 mine occurred during a maintenance shift. Also, commenters testified that many smoldering fires have been found during periods that the belt has been down; indicating a need to keep the AMS operational. Therefore, some commenters argued that the AMS must be kept operational and records kept during idle periods.

As previously stated, we have reviewed our report on the JWR No. 5 mine accident. It was determined that although the accident had occurred on a maintenance shift, the accident was not related to the use of belt air.

Due to commenter concerns, and the acknowledgment that this issue is covered under existing § 75.1103–4—Automatic fire sensor and warning device systems; installation; minimum requirements, the proposed language has been deleted from the final rule. The proposed requirement was not intended to supersede the requirements in § 75.1103–4(e), which applies to all mines with belts. Section 75.350(a) applies only to mines that use belt air to ventilate working sections and areas where mechanized equipment is being installed or removed.

In addition, the last sentence in the proposed provision, "All provisions of this section will become applicable one hour prior to belt start-up following this idle period" has also been deleted since the idle period requirement included in the proposed rule has been deleted from the final language. One commenter was not sure this requirement was necessary. We agree with the commenter that the requirement was not necessary, and therefore it has been deleted.

A number of comments were received urging that we require a four-hour AMS battery backup, a requirement included in recently granted petitions. Other commenters testified that the AMS needs a battery-backup power system of four to five hours in case there is a power failure to maintain system integrity. The typical language from the petitions is as follows: "The low-level carbon monoxide system shall be capable of giving warning of a fire for a minimum of 4 hours after the source of power to the belt is removed, except when the power is removed during a fan stoppage or the belt haulageway is examined as provided in 30 CFR 75.1104–4(e)(1) and (2)."

It is apparent that this provision has been considered by many as a battery-backup requirement. However, this language does not require the installation of an uninterrupted power supply (UPS) for the AMS. The requirement for a UPS was not included in any known existing granted petitions. If power is removed from the belt, the AMS will function properly if powered from a different electrical circuit than the belt. If powered by the same power source as the belt, § 75.1103 requires a battery backup to provide fire detection for at least four hours. If the power source to the surface computer is interrupted, the AMS will not function. Without a UPS to power the system, the mine operator would be required to begin patrolling the belt entries as required by § 75.352(e)(3). If the AMS is used as a communication system to comply with § 75.351(r), then according to § 75.1600–2(c) a means to provide continued communication in the event the mine electric power fails or is cut off is required. This could be accomplished by installing a battery back-up or UPS.

The quoted requirement from the existing petitions is already in effect as a provision for all mines using an AMS to comply with existing § 75.1103–4(e). This section is referenced in new § 75.350(b)(1), therefore no changes in the proposed language are necessary. Although the battery backup is not specifically required by this rule or by the National Fire Code No. 72A (1967), mine operators should consider installation of a UPS to assure system operation in the event of a power interruption.

Proposed § 75.351(b) would have required the mine operator to designate a surface location at the mine for receiving signals from the AMS sensors or, if the operator wanted, at another location, possibly off mine property, approved by the district manager. In addition, the mine operator would assign an AMS operator to respond to those signals when the system is used to comply with existing §§ 75.323(d)(1)(ii) (Actions for excessive methane, Return air split alternative), 75.340(a)(1)(ii) or 75.340(a)(2)(ii) (Underground electrical installations), or 75.362(f) (On-shift examination), and §§ 75.350(b) or 75.350(d) (Belt air course ventilation). Some commenters to this provision thought that having only one surface location was restrictive. Neither the proposed nor the final rule limit the mine operator to designating a single surface location on the mine property. However, if the mine operator designates more than one location, all of the locations must meet the requirements of the final rule. Other surface locations could also be nondesignated monitoring locations if the mine operator chooses to use data from the AMS for other purposes.

Other commenters questioned the logic of the proposed language allowing the surface location to be located at "another location approved by the district manager." They argued that this would allow the monitoring station to be underground or off the mine property. In a mine disaster, the former (an underground location) could endanger the whole system. The latter (off of mine property) could make the specified location ineffective or increase the time that it could take to respond to a danger underground because the mine operator may be relying on communication systems which may be compromised due to weather, natural disaster (*i.e.*, flood, tornado, hailstorm) or accidental damage to overland communication lines. MSHA agrees with the commenters, and has removed the language on allowing other locations from the final provision because such a designation could reduce the effectiveness in responding to the AMS.

Like the proposed rule, § 75.351(b)(1) of the final rule requires that the AMS operator or other appropriate personnel have access to two-way voice communication with persons on working sections, areas where mechanized mining equipment is being installed or removed, and other areas included in the approved emergency evacuation and firefighting program of instruction, § 75.1502. This is consistent with granted petitions. These areas must be equipped with two-way communication in accordance with existing § 75.310(a)(3). These other areas may include belt drives, belt transfer points, underground dumps, and underground shops. We do not intend it to mean areas where persons are assigned to work on a temporary basis, such as areas where miners are installing supplemental roof supports or where they are making repairs to track haulage systems.

Paragraph (b)(2) requires the mine operator to designate an AMS operator to monitor and promptly respond to all AMS signals. This has been modified from what was proposed in that the phrase "* * * and be at a location on the mine surface where the AMS operator can promptly respond to all signals from the AMS" has been rewritten to remove the surface location reference already included in paragraph (b)(1). One commenter asked if the designated AMS operator can be a named person or a position description. For instance, a company may have control room operators who are on duty seven days a week, twenty four hours a day. This would allow designating a position instead of a specific, named individual. The commenter maintained that MSHA needs to clarify this portion of the proposed standard. MSHA agrees that the AMS operator can be a position

description. However, persons filling this position must be listed as required under § 75.351(b)(4) and properly trained to be an AMS operator under § 75.351(q).

We require the AMS operator to notify appropriate personnel in response to a malfunction, alert, or alarm signal. The AMS operator could be the responsible person initiating the approved emergency evacuation and firefighting program of instruction under existing § 75.1502, who could notify the responsible person for initiating the plan. The AMS operator must be on duty while personnel are underground, and must be monitoring the AMS pursuant to the requirements of existing §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), or 75.340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f).

The proposed paragraph (b)(3) stated that the map must be updated daily. Some commenters suggested that the map be updated, instead of daily, to within 24 hours when changes are made, such as adding sensors or changing air flow direction. Because there is no substantial difference between "daily" and "within 24 hours", final paragraph (b)(3) requires the posting at the designated surface location of an up-to-date map or schematic showing air flow directions and the location and type of all AMS sensors to be updated within 24 hours of any change in this information. It is as protective as the proposed language, in that all changes are updated in a similar time frame. The map or schematic could be displayed or stored in the AMS computer and retrieved when needed. By posting an up-to-date map showing the locations and types of AMS sensors and the intended air flow direction, the appropriate personnel will be better able to identify the affected areas of the mine. This requirement also applies to §§ 75.350(b) and 75.350(d).

Paragraph 75.351(b)(4) requires that certain information be provided at the designated surface location. That information includes: the names of the designated AMS operators; appropriate personnel, such as section foreman, maintenance foreman, mine manager, and safety director; the responsible person referred to in § 75.1501; and the method to contact these persons. This will provide a means for an AMS operator to promptly contact the appropriate personnel in the event of an emergency. Some commenters thought that it was unnecessary to require a method of contact because it would require the appropriate personnel to always be positioned by a mine phone. It is MSHA's intent that during each shift miners work underground, there must be at least one appropriate person on site who can be contacted in case of an emergency. This does not preclude appropriate personnel from being underground; however, this person's location must be known and he/she must be able to be contacted by the AMS operator from the designated surface location. If this person is not able to be in contact with the AMS operator, then the mine operator must designate another appropriate person in his/her place who is able to be contacted by the AMS operator.

Other commenters emphasized that the AMS operators must have specialized training that includes mine-specific knowledge of equipment and personnel locations as well as what actions are needed for different AMS signals. The Agency agrees with this comment. The proposed rule included provisions that required specialized training for the AMS operators under § 75.351(q). The final rule is unchanged from the proposed rule.

Paragraph 75.351(c) establishes minimum operational requirements for an AMS installed in accordance with existing §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f). MSHA has developed a tiered response to address malfunction, alert, and alarm signals in order to require proper action by the AMS operator, appropriate personnel, and miners. Malfunction and alert signals from single sensors are addressed in a similar manner in this final rule. It is important to investigate to determine the cause of either the malfunction or alert signal and to correct the condition causing the signal as soon as possible. The AMS operator must be able to tell, by sight or sound, if a signal is the result of a malfunction, alert, or alarm in order to respond correctly to the situation. Malfunction, alert, and alarm signals can be customized by assigning different tones or lights so that the AMS operator can easily distinguish them in order to respond appropriately. For example, while all signals would be indicated by the same audible device, a malfunction could be identified as a communication failure on the computer screen, whereas an alert CO level would be indicated by yellow text on the computer screen, and an alarm CO level would be indicated by red text on the computer screen. Normal conditions would be indicated by green text on the computer screen. Alarms on working sections and on setup or removal areas must be discernable by sight or sound by the miners so that appropriate actions outlined in the § 75.352(c) can be taken.

The proposed rule language in § 75.351(c)(1) stated that alert and alarm signals "* * * can be seen or heard by the AMS Operator * * *". It was our intent that the system would at all times be capable of notifying the AMS operator that action was required in response to a signal. This signal could be either a visual or audible signal, but at a minimum, one of these signals must be seen or heard at all times. The Agency believed that the notification could be in either the visual or audible mode, and the proposed rule was written to require alert and alarm signals that would be adequate for making this notification. The final rule clarifies this intent, by changing the language to "* * * must be of sufficient magnitude to be seen or heard by the AMS operator * * *." In this way it is assured that the AMS operator will be notified of a possible problem.

Proposed § 75.351(c) has been revised in this final rule to clarify the intent of the standard. The final rule specifies that the AMS must provide visual and audible signals in the event of any interruption of circuit continuity and any electrical malfunction of the system. In addition, the final rule specifies the AMS must provide visual and audible signals in the event of the detection of carbon monoxide or methane at the established alert levels, or detection of carbon monoxide, smoke, or methane at the established alarm levels. The final paragraph also requires the signals to be provided at the specified locations as was stated in the proposed rule.

Many comments were received regarding alert and alarm signals at the surface and underground locations. Most commenters suggested the alert and alarm signal requirement should be "seen or heard" rather than "seen and heard". Of utmost importance is that the system must make the required notification. The intent of the proposed rule was to require two signals at the surface location, and that at least one of these signals would effectively provide notification of an emergency or malfunction condition. The language "capable of being seen and heard" and "can be seen or heard" were intended to require substantial and appropriate signal devices, and not that the signals be both seen and heard. The language used was intended to require the signals to be sufficient for the purpose, such as the language in existing § 75.1600–2(b) which states "The incoming communication signal shall activate an audible alarm, distinguishable from the surrounding noise level, or a visual alarm, that can be seen by a miner regularly employed on the working section".

The same modification was made to the alarm signals provision for underground locations under § 75.351(c)(4). The proposed rule stated that the AMS must automatically provide signals that can be seen and heard on all affected working sections and at all affected areas where mechanized mining equipment is being installed or removed when the CO, smoke, or methane concentration reaches alarm levels. It is known that not all miners can see and hear all audible and visual signals at all times. For example, a shuttle car operator may be emptying a load of coal at the tail piece where noise may prevent the operator from hearing the audible signal, yet the operator should be able to see the visual signal. Another example would be a shearer operator who may not be able to see or hear either alarm. However, the stageloader operator would be able to see or hear one of the alarms and notify others on the longwall face. It was the intent of the proposed rule to require that both audible and visual signals be supplied to the affected working section or setup or removal area. It was also intended that at least one of these signals would be seen or heard by at least one of the miners working in the affected area. This miner would then immediately notify other miners in the affected area.

Paragraph (c)(1) requires that the AMS automatically provide visual and audible signals at the designated surface location for any interruption of circuit continuity and any electrical malfunction of the system. These signals must be of sufficient magnitude to be seen or heard by the AMS operator working at this designated surface location. Paragraph (c)(1) also requires the system to identify, at the designated surface location, the operating status of all sensors. As discussed previously, when an AMS is used, it is an integral part of the overall safety program for the mine. It is important that the AMS operator be aware of the operational status of all system components. Without this knowledge of the operational status of the AMS, the AMS operator cannot appropriately respond to alert and alarm signals from the system. As such, it is imperative that the system is in proper operating condition or that the AMS operator knows when it is not operating properly so that remedial measures can be started. By having an automatic monitoring system, this information is more readily available and the AMS operator can notify appropriate personnel.

One commenter agreed that the AMS operator should be required to see or hear malfunction, alert, and alarm signals from the AMS. This would allow the AMS operator to perform other tasks and yet quickly respond to AMS signals. The language of this provision has been modified from that proposed by specifying that both "visual and audible" signals must be provided at the designated surface location.

Final paragraph (c)(2) requires that the AMS automatically provide visual and audible signals at the designated surface location when the carbon monoxide concentration or methane concentration at any sensor reaches the alert level as specified in § 75.351(i). These signals must be of sufficient magnitude to be seen or heard by the AMS operator working at the designated surface location. The language of the final rule has been modified from the proposed rule by specifying that both "visual and audible" signals must be provided. Also, the requirement to have the alert signal be distinguishable from the alarm signal has been moved to § 75.351(c)(3). The final rule language is consistent with language in recently granted petitions by requiring that the AMS provide both types of signals at the designated surface location. Therefore, there will be no reduction in protection afforded miners working at mines with granted petitions containing such a requirement once this final rule is effective.

Final paragraph 75.351(c)(3) requires the AMS to automatically provide visual and audible signals at the designated surface location distinguishable from alert signals when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in § 75.351(i). These signals must be of sufficient magnitude to be seen or heard by the AMS operator working at the designated surface location. The language of the final rule has been modified from the proposal by specifying that both "visual and audible" signals must be provided. Also, the requirement to have the alert signal be distinguishable from the alarm signal has been moved here from proposed § 75.351(c)(2). MSHA agrees with the commenters that suggested that the AMS operator must "see or hear" the required alarm signals instead of "see and hear" both of them.

Final § 75.351(c)(4) requires that the AMS automatically provide visual and audible signals at all affected working sections and at all affected areas where mechanized mining equipment is being installed or removed when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in § 75.351(i). These signals must be of sufficient magnitude to be seen or heard by miners working at these locations. Methane signals must be distinguishable from other signals, due to the explosive nature of the methane gas. The only changes from the proposed language is that the miners underground must either "see or hear" the alarm signal instead of "see and hear" and the signals must be "of sufficient magnitude to be" seen or heard by miners working at these locations. A commenter stated that the alert signals should also be seen or heard by miners working inby the alerting AMS sensor because they could be endangered by increased levels of CO. Some commenters stated that it was unrealistic to expect all miners to see and hear alarms at all times. They suggested that alarm signals at underground locations should be required to be seen or heard.

The same commenter also commented that it was not necessary or reasonable to have distinguishable methane and CO alarms. MSHA believes it is important to distinguish between methane and CO alarms in order to adequately assess the situation and to respond appropriately to the hazard. For example, if a methane alarm in the immediate return is indicated on the working section which cannot be differentiated from CO alarms, section personnel might search the belt entry for a fire rather than take actions to render harmless the methane accumulation. The final rule, consistent with the proposed requirement, is more protective than the granted petition requirement that states only that the two distinguishable audible and visual signals must be provided, not that the alarm signals be distinguishable based on the hazard of CO or methane. The technology to have "distinguishable alarms" at working sections is available, but may require some hardware or software changes at some locations.

As in the proposed rule, final § 75.351(c)(5) requires that the AMS automatically provide visual and audible signals at other locations as specified in the mine emergency evacuation and firefighting program of instruction (§ 75.1502) when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in § 75.351(i). These signals must be seen or heard by miners working at these locations. Methane signals must be distinguishable from other signals. A commenter suggested that this section should be deleted because it is vague. MSHA disagrees with this commenter because the language is clear and there is a need to notify affected miners and, therefore, retains the section. Another commenter also suggested that the audible alarm be heard above the sound of equipment.

Existing § 75.1103–2(b) incorporates by reference NFPA 72A–1967 which requires "Fire alarm systems * * * shall have one or more audible signaling appliances * * * so located that their operation will be heard clearly regardless of the maximum noise level obtained for machinery or other equipment under normal conditions * * *" This final provision requires that the alarm be either heard above the sound of equipment or seen; therefore, the language of the final provision remains as proposed.

As in the proposed rule, final paragraph c(6) requires that the AMS identify the operational status of all sensors at the designated surface location. This provision is consistent with granted petition language. The intent of this provision is to assure that the AMS operator can readily determine that all of the sensors connected to the system are functioning properly. The lack of an alarm from a non-functioning sensor cannot be considered a safe condition. No comments were received on this section; it remains as proposed.

Paragraph 75.351(c)(7) has been added to the final rule, based on MSHA's analysis of the record. This provision requires that the AMS automatically provide visual and audible alarm signals at the designated surface location, at all affected working sections, and at all affected areas where mechanized mining equipment is being installed or removed when the carbon monoxide level at any two consecutive sensors alert at the same time at levels specified in § 75.351(i). These signals must be seen or heard by the AMS operator and miners working at these locations.

Many commenters suggested alert signals should automatically be transmitted to each affected working section and areas where mechanized mining equipment is being installed or removed. Other commenters suggested it is not necessary to report each alert to the sections, and that in mines where frequent nuisance and false alert and alarm signals occur, miners attach a diminished importance to the signals creating a "cry-wolf" syndrome, in which alert and alarm signals are discounted by miners as related to non-fire sources, such as diesel-powered equipment or welding fumes, and not to a real fire event. This new provision should reduce nuisance alert and alarm signals, thus increasing the effectiveness of the AMS as a early-warning fire detection system.

We agree that in many cases the activation of numerous alert signals may lead to complacency; however, we also agree that in some instances the early notification of working sections and setup or removal areas may be desirable. It has been reported that alert levels of CO at individual sensors are produced by diesel-powered equipment exhaust, cutting and welding operations, hot brakes on mobile equipment, and other non-fire conditions. Alert signals have also been caused by radio-frequency interference, and these occurrences are often of a limited duration. In an analysis of AMS system responses to fires, as well as large-scale fire testing by the U.S. Bureau of Mines, researchers found that fires may produce alert or higher levels of CO at consecutive sensors. When this occurs, automatic notification of affected areas is required by this final rule.

For these reasons, while alert signals at individual sensors need not be reported to affected areas, we have included this new requirement so that, in the case of consecutive sensors in alert status, automatic notification of the affected areas is required. Actions required under this section are specified in § 75.352(c). Although automatic notification of single alert signals on working sections and setup or removal areas is not required, the alert signals for individual sensors must still be investigated to determine the CO source, as required by 75.352(b).

The operation of diesel-powered equipment in the belt air course or in adjacent air courses is a concern in mines using CO-based fire detection systems. Possibly, movement of the equipment in these air courses can cause alert or alarm activations at individual sensors as the equipment passes nearby. If there are cases where engines cause numerous alert and alarm signals due to the machine exhaust containing high levels of CO, we believe that the mine operator can perform maintenance on the diesel engines which is likely to be effective in reducing these levels. Proper maintenance of diesel-powered equipment is an important aspect of controlling diesel engine emissions as required by § 75.1914—Maintenance of diesel-powered equipment. Additionally, the use of diesel discriminating sensors (DDS) has been shown to be effective in mines using diesel-powered equipment for reducing the frequency of alert signals. The DDS, as well as the hydrogen-insensitive and smoke sensor technologies, can be employed to reduce or eliminate required evacuations for alert signals.

Like the proposed rule, final paragraph (d) specifies the location and installation requirements for AMS sensors. While no comments were received on proposed paragraph (d), comments were received on the subparagraphs of paragraph (d). These are discussed below.

Like the proposed rule, paragraph (d)(1) requires that AMS sensors be in the airstream they are intended to monitor to assure that measurements are representative of the mine atmosphere. In response to comments, MSHA clarified the language of the proposed rule by adding, "mine atmosphere in these locations" to the final provision. No other changes were made to the proposed language.

Paragraph (d)(1) ensures the positioning of sensors to detect a hazardous condition should it develop. For example, where an electrical installation is monitored to comply with §§ 75.340(a)(1)(ii) or 75.340(a)(2)(ii), the sensor must be positioned downwind in the airstream used to ventilate that installation. This provision will provide the maximum potential for fire detection, since the products of combustion (*e.g.*, CO) will be contained in the air current. Many commenters suggested that in order to ensure the proper location for CO sensors, a smoke test be conducted prior to sensor installation to determine the best location for each sensor, especially in locations that can restrict the flow of air, such as around belt headers and drives. Commenters continued that these sensors should not be hung just over the belt, but staggered across the entry to "catch" the different air flows on the belt. An example was given of a belt fire at the Ohio 11 mine that was not initially detected by the nearest CO sensor to the fire because the sensor was not positioned in the air stream, but was located behind a post.

The petition governing the use of belt air at that mine neither specified the location of sensors nor required a smoke test to determine air flow patterns. Consequently, when the fire started the sensor was located in such a way that the highest concentration of CO within the entry did not pass by this sensor. MSHA has reviewed the accident report of the Ohio 11 mine fire (Accident Investigation Report (MSHA, Underground Coal Mine), Non-Injury Fire, Ohio 11, Island Creek Coal Company, Morganfield, Union County, Kentucky, May 5, 1995). The sensor did detect products of combustion from the fire. The CO sensor in question that was nearest to the fire alerted 30 seconds later than a sensor located 1,000 feet downwind. The fire was extinguished without injury to miners.

The sensor in question at the Ohio 11 mine was reportedly installed out of the air stream behind a post which delayed

transporting of products of combustion to the sensor location.

The final rule requires that sensors be installed in the air stream to assure that the products of combustion are effectively detected. This is consistent with granted petition language which does not require a smoke test prior to sensor installation, because the sensors must be installed in the airstream. Although a smoke test is not required, if a mine operator has a question about proper sensor location then a smoke test could be conducted to determine the optimum location.

Final section 75.351(d)(2) requires installation of CO or smoke sensors near the center in the upper third of the entry, in a location that would not expose personnel working on the system to unsafe conditions. The proposed rule language was very similar. The proposed rule specified that the sensor was to be installed as "near the roof as feasible", whereas the final provision specifies that the sensor is to be installed "in the upper third of the entry". This change was the result of comments that are discussed below.

This requirement is necessary to make certain that sensors are placed away from machinery, such as the belt itself, that could be a hazard to miners working on the AMS. If the sensors are installed too close to machinery, clothing and body parts could be entangled in the equipment, thus endangering miners' safety. This provision was modified following a comment that sensors should be installed in the upper third of belt entries near the center, not as near the roof as feasible, as the proposed provision stated. MSHA agrees since the final language does not reduce safety since it is consistent with the majority of recently granted petitions. We have modified the provision as stated.

As in the proposed provision, final § 75.351(d)(2) also specifies that mine operators not locate sensors in abnormally high areas or in other locations where air flow patterns do not permit products of combustion to reach the sensors. This requirement was developed based on work conducted by the U.S. Bureau of Mines and MSHA experience with existing belt air petitions. This work has shown that during both smoldering and open combustion fires, the products of combustion may stratify. The highest concentrations may be found near the mine roof. Accordingly, the U.S. Bureau of Mines recommended installing sensors near the roof of the entry to take advantage of this stratification. Our experience shows that when operators do not properly position sensors, heatings or fires can go undetected or their detection can be delayed, as was seen with the Ohio 11 mine fire. For example, sensors that are positioned behind posts or equipment will not be exposed to the products of combustion contained in the air stream.

Like the proposed rule, final § 75.351(d)(3) requires that methane sensors be installed near the center of the entry at least 12 inches from the roof, ribs, and floor, paralleling the requirement of § 75.323(a) for conducting methane tests. This final standard specifies the location for an AMS sensor installed to comply with existing § 75.323(d)(1)(ii) which requires the use of an AMS when using the return air split alternative. This final provision also requires installation of methane sensors near the center of the entry in a location that would not expose personnel working on the system to unsafe conditions. No comments were received on language in this provision; therefore, it remains unchanged from that of the proposed rule.

Like proposed paragraph (e), final paragraph (e) specifies the locations along the belt entry where the operator must install sensors to monitor for CO or smoke. Minor editorial changes where made to the proposed language. The phrase "of this section" was deleted and the end of the section was modified by changing "located" to "at the following locations."

A commenter stated that MSHA should require the combined use of smoke detectors, methane sensors, and CO sensors with reduced alert/alarm settings along the belt line. The commenter's rationale is that most mines that use belt air are longwall mines. He contends that more methane is released in these mines "since the belt line is on the solid." He stated that this methane will be transported to the face and if the air is traveling at a high velocity, the methane is transported to working areas even faster. He gave an example that at his mine, methane levels are up to one percent higher at the face when there is a "big proliferation" of methane outby the belt line. While the commenter did not explain how this "big proliferation" of methane occurs, MSHA requires that sufficient air quantities be directed through the belt air course to control methane liberation. Currently, existing § 75.362 requires that during each production shift that a belt operates, the belt air course must be examined for hazardous conditions, including methane. Properly ventilated belt air courses can contribute to the dilution of methane and dust on working sections in many mines. Methane concentrations in belt air courses are currently limited by existing § 75.323. In addition, this final rule requires either the use of CO or smoke sensors. Smoke sensors that meet the requirements of this final rule currently are not commercially available; however, this final rule will allow their use once they become commercially available.

Some commenters stressed that the sensors need to be placed in areas that are in the air flow and are not obstructed by "headers" and "belt take-up" mechanisms. Even though MSHA is not sure what the commenter meant by "headers", we agree that the sensors must be properly installed as required by § 75.351(d).

Like the proposed rule, final paragraph (e)(1) requires a sensor at or near the working section tailpiece. This sensor is to monitor the belt and it is not intended to monitor the section tailpiece or feeder. The tailpiece area is visited frequently and a sensor installed over the loading point would be subject to damage. The sensor must be installed in the air stream ventilating the belt entry. In longwall mining systems using belt air to ventilate the working section, paragraph (e)(1) requires that the sensor near the tailpiece be located in the belt entry at a distance of no more than 150 feet upwind from the mixing point where intake air is mixed with belt air at or near the tailpiece. This requirement specifies that a sensor monitor the belt up to the point that intake air flows into the belt entry mixing with belt air. It is not intended to monitor the section loading point since this location is often attended by miners; therefore, miners would be in the area and aware of any sign of a fire. A commenter stated that there should be an alarm box installed on each section, because if there is only one alarm box back at the feeder while the continuous miner is moving, 30 to 40 minutes may elapse before any person returns to the feeder. Therefore, if an alarm sounds it could be over one-half hour before the miner is aware of it. Like the proposed rule, the final rule requires an alarm unit on each working section (§ 75.351(c)(4)) to notify miners of a fire or methane hazard. The final provision provides the same level of protection as existing granted petition language.

A commenter suggested that an alarm unit be placed on each end of a longwall. Due to the length of some faces, the commenter contended that it could be over one half hour before anyone would be at the transfer point to see the alarm. The commenter also suggested that an alarm box be placed by the power center as well. MSHA

disagrees with the commenter because the standard requires that the alarm signals be seen or heard. It is the responsibility of the mine operator to ensure that this requirement is met. If one alarm unit at the stage loader is not sufficient to meet this requirement, other alarm units may be necessary. Another option for the mine operator to consider could be to automatically de-energize the longwall equipment when an alarm signal is received on the section alarm unit in order for miners to see or hear the alarms. The final language in the provision remains as proposed and provides the same level of protection as a similar requirement in granted petitions.

Like the proposed rule, final paragraph (e)(2) requires that a sensor be located upwind, at a distance of no greater than 50 feet from the point where the belt air course is combined with another air course or splits into multiple air courses. This provision requires placing a CO or smoke sensor in the belt entry (*i.e.*, main belt entry) just before the air stream splits to ventilate another belt entry (*i.e.*, a panel belt). Also, if two belt air splits join, this paragraph requires a sensor in each air split immediately prior to joining. These sensors are required to promptly identify the location of a fire in either air split and would more precisely show the location or air split where the fire originated. No comments were received directly addressing this provision; therefore, the final language in the provision remains as proposed.

Like the proposed rule, final paragraph (e)(3) requires sensors to be installed at intervals not to exceed 1,000 feet along each belt entry in areas where air velocities are maintained at 50 feet per minute or higher. In areas where the air velocity in the belt entry is less than 50 fpm, the sensor spacing must be reduced to 350 feet. Some commenters supported a reduced sensor spacing when velocity levels are less than 50 fpm. Other commenters suggested a sensor spacing of 325 or 300 feet, based on NIOSH research that showed sensor spacing at approximately 344 feet in zero flow conditions is equivalent to 1,000 foot spacing with 50 fpm air velocity. MSHA has re-evaluated the spacing requirement, based on the comments. We recognize that there will be some air movement in the belt entry and zero-flow conditions will not exist. We have consulted with NIOSH on this subject and they have concurred that spacing sensors at 350 feet is appropriate.

In addition, another commenter requested the grandfathering of the 2,000-foot sensor spacing requirement from older granted belt air petitions. That is, if this is allowed, it would mean that mines with existing granted petitions that require 2,000-foot sensor spacing would not have to implement the 1,000-foot sensor spacing required in this final rule in areas of the mine developed prior to the effective date of this final rule. There are 16 mines with granted petitions that specify the 2,000-foot spacing. However, some of these mines are no longer active, while others have implemented new reduced spacing interval of 1,000-foot sensor spacing. There are another 4 active mines, working under older granted petitions, that do not even specify sensor spacing, and therefore, have implemented either a 2,000-foot spacing or a combination of 2,000- and 1,000-foot sensor spacing.

MSHA disagrees that mines with petitions that require 2,000-foot sensor spacing should be allowed to keep this spacing in portions of the mine developed prior to the effective date of this rule. Our experience indicates that the 1,000-foot spacing provides an added level of early-warning fire detection. We are not opposed to giving this limited number of mines more time to comply with this provision because the AMS may require significant modification in order to comply with not only this requirement but also § 75.351(r). Mines with the 2,000-foot spacing requirement will have a longer period to install sensors at the 1,000-foot spacing in older parts of their mines. The final provision remains as proposed except it now requires that "All sensors must be installed at the 1,000-foot spacing, no later than August 2, 2004."

For mines using an AMS with CO or smoke sensors for fire detection in the belt entry, as was proposed, final § 75.351(e)(3), requires a minimum velocity of 50 fpm in the belt entry unless the spacing is reduced to 350 feet between CO sensors, in which case, the velocity can be lower. Our experience with granted petitions shows that for an AMS with CO sensors to function properly as an early-warning fire detection system, the products of combustion must be transported to the sensors. This method of transport is the ventilation air current. The Advisory Committee concluded that a minimum air velocity of 50 fpm is necessary to ensure timely transport of combustion products to sensors. However, more recent research conducted by NIOSH indicates lower velocities can be used if sensor spacing is reduced. In zero-flow conditions, NIOSH has found sensor spacing of 105 meters (344 feet) to be effective for early-warning fire detection (Edwards *et al.* 1997). We recognize that mines will have some air flow within the belt entries. Therefore, we are requiring that maximum sensor spacing be reduced to 350 feet in areas where the velocity is less than 50 fpm to provide adequate fire protection capabilities. One commenter suggested reducing spacing further to 344 feet, but MSHA has determined that the proposed spacing of 350 feet is reasonable. We have consulted with NIOSH on this subject and they have concurred that spacing sensors at 350 feet is appropriate. Therefore, the language in the final provision remains as proposed.

Like the proposed rule, final paragraph (e)(4) requires a sensor be placed not more than 100 feet downwind of each belt drive unit, each tailpiece transfer point, and each belt take-up. The final rule has added the phrase, "for a single transfer point" based on comments and now reads, "If the belt drive, tailpiece, and/or take-up for a single transfer point are installed together in the same air course they may be monitored with one sensor located not more than 100 feet downwind of the last component".

Many comments were received on the language in this section, claiming it was confusing in that it may allow for the monitoring of a single belt flight, no matter what length, by a single sensor, thus replacing the proposed standard requirement of 1,000-foot sensor spacing along the belt. Commenters believed, because each belt flight has a drive unit, tailpiece, transfer point, and take-up, that a single sensor could monitor the entire belt flight. This was not our intention. We intended in the proposed rule that a belt drive and tailpiece of the subsequent belt flight on to which coal is transferred can be monitored with a single sensor rather than requiring a single sensor for each component. Section 75.351(e) includes five requirements, all of which are applicable for mines using belt air. To clarify our intention and to avoid confusion, we have amended this section by adding "for a single transfer point" to § 75.351(e)(4).

Like the proposed rule, final paragraph (e)(5) allows the district manager to require additional sensors as mine conditions warrant and states, "At other locations in any entry that is part of the belt air course as required and specified in the mine ventilation plan." MSHA added the modifier "mine" to clarify that the ventilation plan is the one approved for a particular mine.

As belt drive configurations often require altering the belt entry, additional sensors may be required in this area. Also, other areas may require

additional monitoring due to unusual entry shape or air flow patterns. The location of additional sensors must be specified in the mine ventilation plan. One commenter suggested that the representative of miners be involved in the mine operator's decision to install additional sensors. Existing § 75.370(b) already allows the representative of miners to submit timely comments to the district manager, in writing, for consideration during the ventilation plan process. Therefore, since this suggestion is already part of the existing plan approval process, this provision language remains unchanged from that of the proposed rule.

Like the proposed rule, final paragraph (f) specifies the location of sensors in the primary escapeway. If used to monitor the primary escapeway under § 75.350(b)(4), CO or smoke sensors must be located in the primary escapeway within 500 feet of the working section and where mechanized mining equipment is being installed or removed. In addition, another sensor must be located within 500 feet inby the beginning of the panel. The point-feed sensor required by § 75.350(d)(1) may be used as the sensor at the beginning of the panel if it is located within 500 feet inby the beginning of the panel." Under this situation, only one sensor would be required to comply with both of these requirements.

Some commenters suggested that this provision is not necessary and that it is not required in any of the granted petitions. MSHA believes that the sensors provide an increased level of protection that enables the source of the fire to be quickly identified and minimizes the exposure to products of combustion, such as smoke and CO. Thus, this provision will increase protections to miners. Other commenters suggested that it would be expensive to place sensors in the primary escapeway. Under most circumstances MSHA believes that these costs would be minimal relative to the cost of the AMS, in general. Also, a commenter would like clarified that the phrase "within 500 feet of the working section" means tailpiece of the belt, *i.e.*, the "loading point" on the section and the start of the escapeway. MSHA agrees with the commenter's interpretation. However, the definition for working section in § 75.2 states that the working section is "* * *from the loading point to and including the working faces." Therefore, no changes in the rule are necessary. The final language remains unchanged from what was proposed, except that the phrase "and where mechanized mining equipment is being installed or removed" has been added to clarify our intent. There was also an editorial change to break one sentence into two sentences for clarity ("In addition, another sensor must be located within 500 feet inby the beginning of the panel. The point-feed sensor required by § 75.350(d)(1) may be used as the sensor at the beginning of the panel if it is located within 500 feet inby the beginning of the panel.")

Like the proposed rule, final §§ 75.351(g)(1) and 75.351(g)(2) specify the location for sensors for monitoring return air splits under the return air split alternative (§ 75.323(d)). Two commenters suggested that the methane sensors required by § 75.351(g)(1) be located on the face prior to the air starting down the longwall tailgate return entry to protect the sensors, the cables, and persons required to work on the sensors. A sensor placed at this location would not provide a methane reading between the last working place on a working section and where that split of air meets another split of air, or the location at which the split is used to ventilate seals or worked-out areas as specified in existing § 75.323(c). Therefore, the language of § 75.351(g)(1) remains unchanged from the proposed rule, except a minor editorial change removed the word "or" from the proposed language. It now reads "* * *last working place, longwall, or shortwall* * *" instead of the proposed language, "last working place, or longwall or shortwall* * *"

Monitoring in return air courses where auxiliary fans are used is addressed by § 75.351(g)(2). This provision requires an AMS to monitor the mine atmosphere for methane concentration at two locations. Like the proposed rule, final § 75.351(g)(2)(i) states that sensors must be located in the return air course opposite the section loading point, or, if exhausting auxiliary fan(s) and tubing are used, in the return air course no closer than 300 feet downwind from the fan exhaust and at a point opposite or immediately outby the section loading point. No comments were received on this provision, and it remains unchanged from that proposed.

Like the proposed rule, final § 75.351(g)(2)(ii) requires that the mine atmosphere be monitored immediately upwind from the location where the split of air meets another split of air or immediately upwind of the location where the split of air is used to ventilate seals or worked-out areas. Placing methane sensors at these locations allows for the monitoring of the methane concentration near the beginning and the end of the immediate return. By utilizing two sensors, the mine operator will be able to determine if excessive methane levels are being produced from the sealed or worked-out areas, or if the methane is present in the return prior to ventilating these areas. The AMS must provide an alarm when either sensor reaches 1.5 percent methane. This concentration specified in § 75.351(i)(1) is the action level specified for methane levels in the existing § 75.323(d)(2). No comments were received on this provision, and it remains unchanged from the proposed rule.

Like the proposed rule, final § 75.351(h) retains the requirement of existing §§ 75.340(a)(1)(ii) and 75.340(a)(2)(ii). Under these existing requirements, when the mine operator chooses to monitor these locations in lieu of venting the air to the return air course, mine operators must install at least one CO or smoke sensor located downwind no greater than 50 feet, from the electrical installation to monitor transformer stations, battery charging stations, substations, rectifiers, and water pumps. Electrical installations include transformer stations, battery charging stations, substations, rectifiers, and water pumps.

Some commenters suggested if a CO sensor is used that it be placed no closer than 50 feet and not further than 100 feet from the battery charging stations to allow for the dilution of hydrogen. Hydrogen is produced as a by-product of the charging process, and adversely affects the CO sensors by causing a false indication of CO when hydrogen is present. A commenter suggested the use of a CO sensor to monitor electrical installations because reliable smoke sensors are not presently commercially available. Another commenter would like the sensors to be installed within 50 feet of the electrical installation.

Existing § 75.340(a)(1)(ii) already requires the sensor used to monitor battery charging stations be unaffected by hydrogen. Since the publication of the proposed rule, MSHA has evaluated a hydrogen-insensitive CO sensor which has been shown to be effective for monitoring for fires near locations where hydrogen gas may be produced, such as battery charging stations. If the sensor spacing required by this section is inappropriate for CO sensors due to the presence of hydrogen, the use of the hydrogen-insensitive sensors can resolve the problem, thus protecting miners from the hazard of fire. The final provision remains unchanged from the proposed language.

Final § 75.351(i) establishes and standardizes specific alert and alarm settings for any AMS used in accordance with §§ 75.323(d)(1)(ii),

75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f). The final rule language modifies the proposed rule language by renumbering § 75.350(c) to § 75.350(d) due to the split in the final rule of proposed § 75.350(c) into two sections (§§ 75.350(c) and (d)). The alert and alarm levels are consistent with alert and alarm levels in recently granted petitions, thus providing the same level of protection to miners.

One commenter suggested that alert and alarm levels be established on a mine-by-mine basis due to various complicating factors, such as "volume of diesel equipment that is used in mines, placement of sensors, the velocities of air and different things of that nature that should be taken into consideration when the levels of alert and alarm are to be established." MSHA agrees that some factors may require reducing alert and alarm levels below 5 and 10 ppm above ambient, respectively. The 5 and 10 ppm levels above ambient are considered to be maximum levels and cannot be increased to account for the use of diesel-powered equipment. Both the final rule and the proposed rule allow for variations in the ambient CO concentrations to account for diesel equipment operation or other sources of CO such as natural liberation from the coal itself. Other methods, such as diesel-discriminating sensors, are available that have been shown to effectively deal with the effects of diesel exhaust. The alert and alarm levels can be lowered from 5 and 10 ppm above ambient, respectively, if high air quantities dilute the products of combustion. As discussed elsewhere in this preamble, the maximum velocity in the belt air course is 500 fpm without specific district manager approval. Such approval would require reduced alert and alarm levels and would be addressed in the mine's ventilation plan.

Like proposed paragraph (i)(1), the final rule requires that when an AMS is used to monitor methane concentrations in return air splits to comply with § 75.323(d)(1)(ii), the AMS alarms at 1.5 percent methane. If a methane alarm signal is received by the AMS operator, the actions specified in § 75.323(d)(2) must be taken. An alert level is not specified for methane sensors monitoring immediate return splits under § 75.323(d)(1)(ii). The return air split alternative provisions under § 75.323(d) only require action when the methane concentration is 1.5 percent or higher. Therefore, no alert level is specified. The alarm must be given at the working section so personnel can start the actions required by existing § 75.323(d)(2). No comments on this section of the proposed rule were received, so the final provision remains unchanged from the proposed rule.

Existing § 75.340(a) requires the ventilation of specified electrical installations with intake air and permits options, such as allowing ventilation with intake air coursed into a return air course or to the surface and not used to ventilate working sections; or using intake air which can be used to ventilate "working places" when an AMS is used to monitor in accordance with existing § 75.351. The option of using intake air which can be used to ventilate "working places" is provided to allow the mine operator to use this air to ventilate other areas before directing the air to the return air course and out of the mine. By monitoring the electrical installations, which are potential fire sources, the mine operator provides an additional protection by providing fire detection for these locations. For example, if an electrical installation is located such that it is vented to the return air course, it is not required to be monitored by an AMS under any regulations. Although the installation may be enclosed in a noncombustible structure or equipped with a fire suppression system, the mine operator would have difficulty detecting the fire at its early stages of development. This option under existing § 75.340(a)(1)(ii) requires that the installation be monitored for CO or smoke using the AMS. The sensor at this location provides an early warning of fire.

Some commenters suggested the rule allow for higher alert and alarm levels if there is a zero CO ambient level. This approach attempts to account for ambient CO levels when setting alert and alarm levels that would be higher than what is allowed by this final rule. Commenters also suggested that these alert and alarm levels apply only to the belt entry and not to the intake escapeway. The final rule's alert and alarm levels apply to both the belt entry and to the primary escapeway. In the absence of research on fire detection in entries other than the belt, we relied upon the best available guidance which indicates early fire detection can be accomplished using alert and alarm levels established in the final rule. Thus, we are providing protection greater than that provided by granted petition requirements.

One commenter argued that alert and alarms levels in this intake should be 25 and 50 ppm CO, respectively. These levels are much higher than those traditionally used by mine operators for early-warning fire detection. The results of years of research by NIOSH have provided sufficient documentation supporting the use of 5 and 10 ppm above ambient maximum alert and alarm levels for CO in the belt entry (RI 9380). No research on fire detection for air courses other than the belt air course was submitted to the record and the Agency is unaware of any such research.

As proposed, final paragraph (i)(2) also requires that an AMS with smoke sensors alarm at a smoke optical density of 0.022 per meter. There is no alert level for smoke sensors required since these detectors do not typically provide an analog signal which can provide multiple levels of detection. On the other hand, CO sensors provide a full range of measurement so that multiple levels of detection are available. Because some belt materials do not produce sufficient CO for detection by an AMS when the material is frictionally heated (such as belt slippage) smoke sensors can provide greater detection of this condition than CO sensors. The 0.022 per meter smoke optical density requirement is the same as in existing § 75.340(a)(1)(iii)(B) for smoke sensors monitoring noncombustible areas used to house electrical installations. However, the requirement for smoke sensors to provide an alarm at a smoke optical density of 0.022 per meter is a lower alarm threshold than the existing threshold of 0.05 per meter in former § 75.351(a)(4). We explained this difference in the preamble to the final rule on safety standards for underground coal mine ventilation (61 FR 9764, 9786–87, March 11, 1996). We reprint the text of this explanation here for the convenience of the reader.

In § 75.340 (a)(1)(iii)(B) of the proposal and the preamble discussion on page 26371 [of Volume 59 of the **Federal Register**, May 19, 1994], MSHA refers to the optical density of smoke of 0.05 per meter to characterize the sensitivity of smoke detectors. As discussed in MSHA's opening statement to the ventilation rulemaking hearings, the value used for the optical density of smoke is based on information provided from the former [U.S. Bureau of Mines]. MSHA pointed out that based on comments received from the former USBM, this number is incorrect and should be divided by 2.303 to conform to the internationally accepted term of optical density. No commenter took issue with this point. MSHA has made the correction in the final rule. One commenter suggested that optical densities be increased and based on an ambient to account for background dust. In contrast, another commenter suggested that the specified optical density should be reduced by half. MSHA has found insufficient justification to adopt either of these suggestions and believes that the specified 0.05, corrected to 0.022 based on comments from the former USBM, is the appropriate level for optical density used in

§ 75.340. Existing § 75.351 Atmospheric monitoring system (AMS), uses a level for optical density of smoke of 0.05 per meter. MSHA recognizes that the level in § 75.351 should also be corrected. MSHA intends to correct the level for optical density used in § 75.351 in a future rulemaking. In the meantime, MSHA will use an optical density of 0.022 per meter for purposes of § 75.340.

This rulemaking therefore lowers the optical density to the proper level of 0.022 per meter when fire detection relies on smoke sensors.

We have standardized the alert and alarm levels in § 75.351 from those required by some petitions to provide a more practical approach to setting alert and alarm levels. Paragraph (i)(2) requires an alert signal at 5 ppm and alarm at 10 ppm CO above the ambient level based on U.S. Bureau of Mines research, Agency experience with petitions, and the Advisory Committee recommendation. These levels will provide early-warning capability. A commenter protested the assignment of alert and alarm levels because, without a specified method for determining the ambient level at a mine, the commenter cannot be certain levels specified by any particular operator are accurate. The commenter continued by saying that the alert and alarm levels should never exceed 5 and 10 ppm, respectively. Another commenter testified that alert and alarm settings must be established on a mine-by-mine basis since mine-specific conditions that affect CO levels will vary. The method for establishing the ambient level is consistent with existing § 75.371(hh). The maximum alert and alarm levels are 5 and 10 ppm CO, respectively, and can be reduced, as warranted, depending upon mine conditions, by the district manager. Another commenter testified that the alert and alarm levels specified in granted petitions should be grandfathered, since they have proven to be effective without the occurrence of nuisance alarms.

Alert and alarm levels below 5 ppm and 10 ppm may be necessary when large air quantities dilute the CO in the air course. Some fire detection research (RI 9380) set alert and alarm levels based upon air velocity, cross-sectional area, and CO generation rates from smoldering and burning fuel sources. This research was presented as nomographs (multi-axis charts) used to set CO sensor settings for different sensor spacings using air velocity and entry area parameters. Tables were derived in an attempt to simplify the application of research data because the nomographs were difficult to use. Because of overlap in the tables, conflicting determinations for alert and alarm settings occurred. Though the tables provided a simpler method for reducing alert and alarm settings based on increased air flow quantities and cross-sectional areas, they have not always been easy to use because of variations in entry configuration and air velocity in an air course. MSHA believes the mine ventilation plan offers the best tool to handle special circumstances, such as when lower alert and alarm levels are needed due to increased air volume.

Diesel-discriminating sensors have proven to be effective in reducing the frequency of nuisance alert and alarm signals which are not the result of fire, but which are due to diesel exhaust. These sensors can allow operators to improve fire detection capabilities by lowering alert and alarm levels. Therefore, MSHA is limiting CO alert and alarm levels to 5 and 10 ppm above ambient, respectively.

The final rule does not provide for approving alert and alarm levels for CO sensors installed in accordance with § 75.350(b)(1) greater than 5 and 10 ppm above the ambient level, respectively. This flexibility is not needed because the specified alert and alarm levels are above the ambient level, and because the final rule permits the use of time delays or other techniques to reduce non-fire related alert and alarm signals. This provision maintains the early-warning fire detection capability of the AMS. Elevated alert and alarm levels reduce the detectability of the AMS. Some commenters suggested higher alert and alarm levels; however, we do not believe that they provide the protection that is necessary to protect miners by giving them early warning in the case of a fire. Higher alert and alarm levels would delay the early-warning fire detection response by appropriate personnel because higher concentrations of the products of combustion would be required to trigger alert and alarm signals. Therefore, this final provision remains as proposed.

Like the proposed rule, final paragraph (i)(3) establishes alert and alarm levels when an AMS is used to conduct the methane tests required by existing § 75.362(f). It requires the AMS to provide an alert signal at 1.0 percent methane and an alarm signal at 1.5 percent methane. If a methane alert or alarm signal is received by the AMS operator, the actions specified in § 75.323(d)(2) must be taken. This is consistent with the action levels stipulated under existing §§ 75.323(c)(1) and 75.323(c)(2) for methane in any return air split between the last working place on a working section and where that split of air meets another split of air or the location to ventilate seals or worked-out areas. Since existing § 75.323(c) requires specific actions at these methane concentrations, personnel will receive timely notification with these alert and alarm levels. The final rule does not preclude the mine operator from using alert and alarm levels that are lower than those required by this provision. No comments were received on this provision, therefore, it remains as proposed.

Like the proposed rule, final § 75.351(j)—Establishing CO ambient levels, requires that CO ambient levels and the means to determine these levels must be approved in the mine ventilation plan (§ 75.371(hh)) for sensors installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), and 75.350(d). In order for an AMS with CO sensors to be effective, the ambient levels must represent conditions over a broad range of mining activities. We recognize that the ambient levels in the mine may vary because of mining conditions and activities, such as the use of diesel-powered equipment and varying conditions of roadways which vary the engine loads for diesel-powered equipment. Since mining activities vary from mine to mine, we believe the mine ventilation plan is the most effective tool to set the ambient levels since this is consistent with existing § 75.371(hh). Therefore, the Agency chooses to continue the requirements contained in the granted petitions that the ambient levels, and the method for determining the ambient levels, be specified and approved in the mine ventilation plan. This provides flexibility by allowing more than one ambient level within the mine, and allowing the operator to reestablish ambient levels for some areas. Any changes in the ambient levels must be specified and approved in the mine ventilation plan. Further information concerning the setting of an ambient level can be found in the discussion for the definition of CO ambient level. A commenter, in a written submission, wanted specific language included in the final rule on how the ambient is established:

(1) A properly calibrated carbon monoxide sensor(s) shall be used for an ambient determination. Measurements from all sensors in the conveyor belt entry shall be used to determine the ambient level for each separate conveyor belt air split. Continuous readings shall be taken and recorded for a total of five (5) production shifts to establish a mine history of carbon monoxide levels. The average of the data collected for each separate conveyor air split will determine its ambient level. (2) Ambient levels shall be

representative of normal operating conditions. Diesel equipment shall not be unnecessarily idled in the air split where the ambient level is being determined. (a) The cross-sectional areas where velocity readings are taken which are used for alert and alarm level determination shall be measured at locations in the entry representative of the cross-sectional areas found throughout the entry and not at locations where the entry is abnormally high (*i.e.* belt drives) or low (*i.e.* under overcasts). For belt entries that are common with other entries, the sum of cross-sectional areas for belt entries and the common entries shall be used.

MSHA's response is that the submitted method is an adequate method to determine an ambient. However, it is not the only method available. Other methods include the use of bottle samples analyzed using a gas chromatograph to determine actual concentrations of CO in the belt entry or simply setting the ambient at zero ppm without verification due to the absence of diesel-powered equipment and naturally-occurring CO in the mine. MSHA's experience is that the ambient method is appropriately specified through the mine ventilation plan process and is consistent with existing § 75.371(hh). Therefore, the final rule retains the same language as the proposed rule.

Like the proposed rule, final paragraph (k) requires that an AMS installed in accordance with §§ 75.323(d)(1)(ii), 340(a)(1)(ii), 340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f) be installed and maintained by personnel trained in the installation and maintenance of the system. It also requires that the system be maintained in proper operating condition. The final rule language modifies the proposed rule language by renumbering § 75.350(c) to § 75.350(d) due to the split in the final rule of proposed § 75.350(c) into two sections (§§ 75.350(c) and (d)).

Agency experience is that proper functioning of an AMS is directly related to the quality of the maintenance provided. For example, in mines where sensors are not properly calibrated, these sensors will not be able to provide appropriate early-warning fire detection capability. In paragraph (k) we require trained personnel to perform the maintenance. Although we did not include a requirement for a specific training plan for maintenance personnel, as we explained earlier in this preamble, this training could be conducted under existing training programs. Some commenters testified that the Agency should include specific training and retraining requirements for AMS maintenance personnel because the requirements cannot be covered in the annual refresher training. MSHA's experience indicates that this training is already conducted by the operator as task training. Therefore, the final rule retains the same language as the proposed rule.

Like the proposed rule, paragraph (l) of § 75.351 specifies that sensors must be listed and installed in accordance with the recommendations of nationally recognized testing laboratories (NRTLs) approved by the Secretary or be of a type and installed in a manner approved by the Secretary under the procedures outlined in our "Program Policy Manual, Volume V for §§ 75.1101–5 through 75.1103–5." This volume of MSHA's Program Policy Manual can be found at *http://www.msha.gov/REGS/COMPLIAN/PPM/PMVOL5J.HTM#123*. A list of NRTLs can be found at *http://www.osha.gov/dts/otpca/nrtl/index.html*. Paragraph (l) provides the requirements for CO, smoke, and methane sensors. This section is based on the existing § 75.1103–2(a) which requires components of automatic fire sensor systems in belt entries to be of a type and installed in a manner approved by the Secretary to ensure reliable fire detection. Currently, because the AMS is being used as an "Automatic fire sensor and warning device system" it must comply with the 1967 National Fire Code (§ 75.1103–2; Automatic fire sensors approved components; installation requirements). In the proposed rule, MSHA solicited comments on whether AMS components and the aforementioned automatic fire sensor systems should comply with appropriate sections of the 1999 National Fire Alarm Code. The National Fire Alarm Code is also an American National Standard. A commenter encouraged modification of § 75.1103–2(b) by the Agency adopting the latest edition of the National Fire Alarm Code, NFPA 72–2002 because the 1967 edition is "obsolete." The current reference in that section is the 1967 edition of NFPA 72A, "Standard for the Installation, Maintenance and Use of Local Protective Signaling Systems for Guard's Tour, Fire Alarm and Supervisory Service." The commenter further said that the NFPA standards for protective signaling systems (visual and audible signal systems) have evolved substantially since 1967.

The 2002 edition includes many requirements that are substantial revisions and additions to those found in the 1967 document. The commenter noted that the requirements of NFPA 72A, as well as other related standards, have been updated many times and have been consolidated into a single National Fire Alarm Code since 1993.

As the commenter points out, the newer NFPA standard does not directly address the use of protective signaling systems in coal mines. Additionally, the commenter implied that application of the newer NFPA standard to coal mines was not specifically contemplated when the standard was developed. The 2002 NFPA standard is a voluminous document that is a compilation of several different standards, with many requirements that are not applicable to AMSs and therefore is beyond the scope of this belt air final rule.

The section to which the commenter proposed changes is § 75.1103–2(b). This section is a part of Subchapter L, "Fire Protection," and gives requirements for the installation of automatic fire sensors on all belts. A revision to this section would change the requirements for all belt fire detection systems, not just those systems installed in intake air courses to ventilate working sections and setup or removal areas. A revision to this section will require additional study that is beyond the scope of this rulemaking.

AMS components are required to be of a type listed and installed in accordance with the recommendations of a nationally recognized testing laboratory (NRTL) approved by the Secretary. This provision merely expands the requirement to include methane sensors. The provision for approval by the Secretary is expected to be used for new technology, as MSHA does not have approval standards for these types of sensors because the Agency has determined that consensus standards exist. It is expected that NRTL approval of sensors will be the most prevalent vehicle for acceptance of the sensors. A review of the standards shows that ANSI/ISA92.02.01 covers CO sensors; ANSI/ISA12.13 covers combustible gas detectors, including methane sensors; and ANSI/UL 268 covers smoke sensors. It is anticipated that the sensors will be compared to these standards by the NRTLs. No other comments were received on this provision, therefore it remains as proposed.

Like the proposed rule, final paragraph (m) of the final rule permits the use of reasonable time delays when there is a demonstrated need and when the delays are approved as part of the ventilation plan. Time delays would be approved in order to prevent the triggering of alert or alarm signals when the CO being detected by the AMS is from a non-fire source, such as diesel-powered mining equipment. MSHA has approved mine ventilation plans that have included time delays of up to 3 minutes. This practice is consistent with

requirements in recently granted petitions.

We are requiring that the use and length of the time delay be approved in the mine ventilation plan submitted under existing § 75.370. Before approval in the mine ventilation plan, a demonstrated need for time delays must be documented. An example could be frequent non-fire alert and alarm signals caused by diesel exhaust emissions which exist for a short duration for any particular sensor as diesel-powered equipment is moving through air course. The total time delay for any given sensor must not exceed three minutes. Agency experience shows this time to be the maximum delay necessary to eliminate alert and alarm signals generated by diesel-powered equipment. The final provision also permits other computer or administrative techniques (such as wave-cross trending, limiting vehicular traffic, and pre-notification of actions that could produce CO to be conducted underground) for reducing the number of non-fire produced sensor signals provided they are approved in the mine ventilation plan. The use of reasonable time delays and other approaches, such as diesel-discriminating sensors, has been successful in reducing the number of alert and alarm signals from CO that are not a result of a fire or heating. The three minute time delay required by this final rule is a maximum time delay that must have a demonstrated need. This is not a blanket approval of time-delays. The district manager has the authority to disapprove their use.

We do not consider the use of time delays or other computer or administrative techniques as a replacement for the proper installation and maintenance of the AMS. For example, alert and alarm signals that are the result of short duration spikes caused by radio frequency interference could be eliminated by using shielded cable. Also, if higher levels of CO result from improperly maintained diesel-powered equipment, we expect correction of this condition in accordance with existing standards, before we would consider approving a time delay.

Comments received on this provision generally agree with MSHA's reasoning for the need to reduce the occurrence of nuisance alarms due to other sources of combustion products to reduce miner complacency, as discussed earlier in this preamble. The provision remains unchanged from that proposed, except one editorial change was made that moved the sentence referring to "these time delays are limited to no more than three minutes" one sentence up in the paragraph and another editorial change was made to specify "alert and alarm" sensor signals.

Like the proposed rule, final paragraph (n) deals with the examination, testing, and calibration of sensors used as part of an AMS. Many commenters suggested that calibration be done during non-production shifts to avoid confusion on the working sections when sensors are calibrated. Part of the calibration process involves sounding of alarms on working sections. One commenter suggested that part of the calibration process include verification that the alarm actually activate on the working sections. It is possible that some of the alarms cannot be heard in all locations above the noise of machinery; therefore, placement of the visual alarm should be given careful consideration. Other commenters focused on the need for two-way communication between the AMS operator, the maintenance technician conducting the calibration, and the miners on the working sections to make sure that everyone in the mine understands that calibration of the alarms is being conducted, thus reducing confusion. This final rule requires two-way communication between the AMS operator and maintenance personnel (§ 75.351(b)) to enhance safety by informing affected personnel that the activated alarm is due to sensor calibration and not due to a fire event (§ 75.351(n)(4)).

Final paragraph (n)(1) requires that at least once each shift when belts are operated as part of a production shift, sensors installed in accordance with §§ 75.350(b) and 75.350(d) used to detect carbon monoxide or smoke, and alarms installed in accordance with § 75.350(b) must be visually examined. The change from the proposed rule adds the reference to § 75.350(d), formerly § 75.350(c) of the proposed rule, that addresses AMS sensors at point-feed locations.

We are aware of instances where operators have placed sensors in improper locations following belt moves or sensors have been damaged by roof falls or equipment. Sometimes these conditions have gone undetected. A visual examination will enable these conditions to be discovered and repaired, thus maintaining the level of safety afforded miners. As discussed earlier, a sensor that is improperly located, may not detect the products of combustion as effectively as one that is properly installed and maintained. Since existing § 75.362(b) already requires an examination for hazardous conditions in the belt entry once each shift that the belt operates, the sensor examinations could coincide with the on-shift examination.

Final paragraph (n)(1) states the requirement that the sensors be visually examined. It is anticipated that generally this will not cause any additional time to be spent doing the on-shift belt examination. The requirement for such an examination was developed to be consistent with on-shift examination requirements in existing § 75.362(b). We believe that inoperable or inappropriately placed sensors can be found and the necessary corrective action taken in a timely manner. Many commenters on this provision agree that during the on-shift examination many hazards are found, including fires along the belt lines. Another commenter suggested that the visual examination include other areas of the mine, such as rectifiers, substations, battery charging stations, water pumps, and power centers that are ventilated to the belt line. Finding these hazards in a timely manner increases the safety afforded miners. MSHA agrees with the commenter. Existing § 75.360(b)(9) requires preshift examination of electrical installations referred to in § 75.340(a). Therefore, AMS sensors in these areas will be examined during the preshift examination of these installations.

A commenter suggested that a record be made of all visual inspections, to assure that they are being completed. The conditions identified by this commenter are addressed by existing standards. MSHA's existing § 75.363 requires that a certified person must make a record of hazardous conditions. The record will include improperly located and damaged sensors because these conditions are considered to be hazardous. This existing provision will continue to be in effect. MSHA believes that it is not necessary to record conditions that are not hazardous. Therefore, no changes have been made in the proposed provision and it remains as proposed.

Like the proposed rule, final paragraph (n)(2) requires that at least once every seven days alarms for an AMS installed in accordance with §§ 75.350(b) and 75.350(d) must be functionally tested for proper operation. The final rule language modifies the proposed rule language by renumbering § 75.350(c) to § 75.350(d) due to the split in the final rule of proposed § 75.350(c) into two sections (§§ 75.350(c) and (d)).

Testing of alarms is critical to assure that they will function properly when needed. The testing method is dependent upon the type of alarm installed but should include application of calibration gas to selected sensors.

Some commenters to this provision suggested that testing every seven days is too restrictive and were in favor of a longer testing interval of up to 10 days to cover holidays and weekends. Other commenters agreed that a 7-day period would be appropriate. Expanding to a 10-day cycle would decrease the number of examinations from 52 to 36 per year, thus adversely affecting safety by reducing the number of examinations over the course of the year and subsequently increasing the probability that a hazardous condition could go undetected for a longer period of time. This final provision requires the testing of alarms for proper operation at least once every 7 days; it remains as proposed except for the renumbering of § 75.350(c) to § 75.350(d). This is comparable to requirements in existing § 75.364 for weekly examinations for hazardous conditions, and air and methane measurements in underground coal mines.

Like the proposed rule, final paragraph (n)(3)(i) requires that, at intervals not to exceed 31 days, each carbon monoxide sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(d) must be calibrated in accordance with the manufacturer's calibration specifications. The final paragraph also requires that calibration must be done with a known concentration of CO in air sufficient to activate the alarm. The final provision remains unchanged from that of the proposed rule except for the renumbering of § 75.350(c) to § 75.350(d). The final rule language modifies the proposed rule language by renumbering § 75.350(c) to § 75.350(d) due to the split in the final rule of proposed § 75.350(c) into two sections (§§ 75.350(c) and (d)).

Some commenters suggested that this calibration interval for CO sensors be increased to between 45 to 70 days and would "not really" create a safety hazard. MSHA disagrees with the commenters because the proper operation of the AMS sensors is central to the safe operation of the system that protects both the miners and the mine itself and is consistent with calibration schedules in granted petitions. The calibration schedule ensures that the AMS sensors are properly functioning, thus providing an efficient early-warning fire detection system. Miner safety is protected by the calibration schedule due to the fact that periodic calibration adjusts the response characteristics of these sensors to the correct settings.

Like the proposed rule, final paragraph (n)(3)(ii) requires that each smoke sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(d) must be functionally tested every 31 days in accordance with the manufacturer's calibration specifications. The final rule language modifies the proposed rule language by renumbering § 75.350(c) to § 75.350(d) due to the split in the final rule of proposed § 75.350(c) into two sections (§§ 75.350(c) and (d)).

The testing method is dependent upon the type of smoke sensor installed. Functional testing may not be limited to just the appropriate response by the sensor but also could include receiving the appropriate signal at the designated surface location. As stated in the proposed rule, the nature of the functional test would be to subject the sensor to one of the following methods to assure proper sensor response: "(1) Calibrated test method, (2) Manufacturer's calibrated sensitivity test instrument, (3) Listed control equipment arranged for the purpose, (4) Smoke detector/control unit arrangement whereby the detector causes a signal at the control unit where its sensitivity is outside its listed sensitivity range, [and] (5) Other calibrated sensitivity test methods approved by the authority having jurisdiction" (2002 NFPA 72). This is the accepted method of calibrating smoke sensors as set forth in the consensus standard NFPA 72 (2002).

It has been our experience through granted petitions and existing standards that the calibration schedule for CO sensors in this final rule is sufficient to assure proper operation. Our experience is also consistent with manufacturers' recommendations. Miner safety is protected by the testing schedule due to the fact that periodic tests inform the AMS operator that the sensor is operating within manufacturer's specifications. This final § 75.351(n)(3)(ii) mandates a maximum time period of 31 days between sensor functional tests. However, final § 75.351(k) requires that AMSs be maintained in proper operating condition. If experience at an individual mine indicates that more frequent calibration is necessary to maintain proper operating condition pursuant to § 75.351(k), the operator must calibrate the sensor at an interval, which may be less than every 31 days, to assure that the AMS sensor is maintained in proper operating condition.

Like the proposed rule, final paragraph (n)(3)(iii) requires that each methane sensor installed in accordance with §§ 75.323(d)(1)(ii) or 75.362(f) must be calibrated in accordance with the manufacturer's calibration specifications. Calibration must be done with a known concentration of methane in air sufficient to activate the alarm. No comments were received on these sections of the proposed rule, and therefore they remain as proposed.

However, MSHA did receive many comments on the need for personnel in affected sections to be notified prior to, and upon completion of, calibration of sensors in order to avoid miners becoming unresponsive to alarms. Also, commenters suggested that it was important to make sure that the alarm actually activates on affected sections. MSHA agrees with the commenters on the issue of calibration notification and has added a new paragraph, § 75.351(n)(3)(iv), to this section. It requires that if the alert or alarm signal will be activated during calibration of sensors, the AMS operator must be notified prior to, and upon completion of, calibration. The AMS operator must then notify miners on affected working sections, areas where mechanized mining equipment is being installed or removed, or other areas designated in the approved emergency evacuation and firefighting program of instruction (§ 75.1502) when calibration will activate alarm signals, and when calibration is completed.

Like the proposed rule, final paragraph (n)(4) requires certification of the accuracy of calibration gases as directly traceable to National Institute of Standards and Technology (NIST) standards. When these referenced standards are not available for a specific gas the final paragraph (n)(4) requires calibration gases be traceable to an analytical standard which is prepared using a method traceable to NIST. This provision provides for the use of new technology for fire detection. This paragraph is necessary since the accuracy of the calibration gas has a direct bearing on the accuracy and functional performance of the sensor, and therefore increases confidence that the AMS sensor readings are accurate. The traceability of the calibration gas directly affects the effectiveness of the AMS system, thereby, affecting the safety of miners working underground. Without the sensors being properly calibrated, there is no assurance that the AMS system is functioning properly. According to NIST, traceability is "* * * the property of the result of a measurement or the value of a standard whereby it can be related to stated references, usually national or international standards, through an unbroken chain of comparisons all having stated uncertainties." In other words, if traceability is maintained, the user can be confident that the concentration of the calibration gas is as

stated on the container. The NIST standard is a physical standard: "Only measurement results and values of standards are traceable. To support a claim (of traceability), the provider of a measurement result or value of a standard must document the measurement process or system used to establish the claim and provide a description of the chain of comparisons that were used to establish a connection to a particular stated reference." All of the information regarding traceability to NIST is available on-line at *http://www.nist.gov/traceability*. No comments were received on this section of the proposed rule. The final provision remains as proposed.

Like the proposed rule, final paragraph (o)(1) requires that when an AMS is used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f), individuals designated by the operator must make the required records by the end of the shift in which the specified event(s) occur. The final rule language modifies the proposed rule language by renumbering § 75.350(c) to § 75.350(d) due to the split in the final rule of proposed § 75.350(c) into two sections (§§ 75.350(c) and (d)).

These records will provide a history of system performance and mine operator response. They are considered essential to the operation of an effective system and can be invaluable in determining sources of recurring alert and alarm signals and system malfunctions. This will enhance safety because it will reduce the number of non-fire alerts and alarms, thereby reducing the occurrence of the "cry-wolf syndrome" (ignoring alerts and alarms because of numerous non-fire alerts and alarms in the past) underground. One commenter wrote that these requirements are far more extensive than any requirements under any of our existing petitions for modification and they contend that they are not necessary. After a review of granted petitions, MSHA disagrees with the comment, because many of the petitions contain similar paperwork requirements to document that these actions have been taken. Therefore, the language of the final provision remains as was proposed, except for the renumbering of § 75.350(c) to § 75.350(d).

Final § 75.351(o)(1) requires that individuals designated by the operator record events related to the AMS as described in § 75.351(o)(1)(i)–(iii) by the end of the shift in which the event(s) occur(s). Proposed § 75.351(o)(1) is almost identical to the final rule language except that it uses the term "responsible persons designated by the operator" to make the records identified in this section. A comment on this section requested clarification on the term "responsible persons." The commenter wanted to know whether this is the same "responsible person" identified in 30 CFR 75.1501 or does MSHA have other criteria for these responsible persons? The commenter continued that it would be helpful to know what occupations MSHA considers to be included in this phrase. MSHA agrees that the responsible person may be the same person as designated in § 75.1501 or could be someone else. Therefore, in order to avoid confusion the term "responsible person" was replaced with "individuals" in the final rule. Each mining operation knows what the different job categories at its mine are. We will not specify any in this final rule.

The final rule language also modifies the proposed rule language by renumbering § 75.350(c) to § 75.350(d) due to the split in the final rule of proposed § 75.350(c) into two sections (§§ 75.350(c) and (d)). Other than these clarifications, the final provision remains as proposed.

Like the proposed rule, final paragraph (o)(1)(i) requires that a record be kept of all alert and alarm signal activations. The required record will include the date, time, location and type of sensor, and the cause of the activation. Like the proposed rule, final paragraph (o)(1)(ii) requires a record to be made of all AMS malfunctions. This record will contain the date, extent, and cause of the malfunction. It will also include the corrective action taken to return the system to proper operation. As specified by this section, the records required by paragraphs (o)(1)(i) and (ii) will be made by individuals designated by the operator. No comments were specifically received on these two sections and they remain as proposed.

Like the proposed rule, final paragraph (o)(1)(iii) requires that a record also be maintained of the seven-day test of alert and alarm signals, calibrations, and maintenance of the AMS. Unlike the records required by §§ 75.351(o)(1)(i) and 75.351(o)(1)(ii), the records required by paragraph (o)(1)(iii) must be made by the person(s) doing the test, calibration, or maintenance. No comments were specifically received regarding § 75.351(o)(1)(i) through § 75.351(o)(1)(iii). However, a general comment focused on the belief that the mine operator should be the person responsible to certify the records, not the persons doing the tests, calibrations, or maintenance. MSHA requires certification by the individuals having firsthand knowledge of how the sensors performed during their calibration and testing and any maintenance required. This requirement is similar to recordkeeping requirements for methane monitor calibration tests found under existing § 75.342(a)(4)(ii). Only editorial changes were made in this provision. Instead of reading as proposed, "A record of the seven-day test of alert and alarm signals, calibrations, and maintenance performed on the system must be made by the person(s) performing the test, calibration or maintenance"; the final provision reads, "A record of the: seven-day tests of alert and alarm signals; calibrations; and maintenance of the AMS must be made by the person(s) performing these actions." No comments were received regarding this section. The final rule language remains the same as was proposed, except for the editorial change as stated above.

Final paragraph (o)(2) requires the person entering the record to include their name, date, and signature. These records are necessary because they will document the test, calibration, and maintenance history of the AMS and will provide the operator with an overall perspective of how the AMS is operating. Some commenters testified that they did not think it was necessary to include the title of the person in the log entry. MSHA agrees that it is not necessary to include a person's title in the log entry since titles are not consistent across the industry and the inclusion of this information does not further enhance the safety of miners. Therefore, the word "title" was deleted from the language of the final provision. No other changes were made to the language of the final provision.

Consistent with other requirements of this subpart, final paragraph (o)(3) requires that all records required by this section be maintained either in a secure book that is not susceptible to alteration, or electronically in a computer system that is secure and not susceptible to alteration. This section requires that these records be maintained separately from any other record and be easily identifiable by a title, such as the "AMS log." This requirement is important because these records verify that the actions required to be taken to maintain the AMS were actually taken. The records help to assure the safety of miners. Proposed paragraph (o)(3) had similar language to the final rule language but failed to include the term "either" when giving the mine operator the option of maintaining the records in this section either in a secure book that is not susceptible to alteration, or

electronically in a computer system that is secure and not susceptible to alteration. A commenter suggested that if MSHA requires that a hard copy with a signature be maintained, that this should preclude a requirement that any electronic records being kept. The final provision is modified to eliminate any confusion by adding the word "either." The provision now states: "The records required by this section must be kept either in a secure book that is not susceptible to alteration or electronically in a computer system that is secure and not susceptible to alteration." In addition, an editorial change was made to remove a duplicative phrase "must be kept" from the provision following the phrase "* * * secure book that is not susceptible to alteration or * * *" No other changes were made in this provision. Accordingly, the final rule language remains unchanged.

Like the proposed rule, final paragraph (p) requires that all records must be retained for at least one year at a surface location at the mine and made available for inspection by miners and authorized representatives of the Secretary. No comments on this provision were received. The final provision remains as proposed.

Final paragraphs (o) and (p) are consistent with existing standards and recently granted petition requirements. These sections are intended to assure that these records are retained and made available, and that the appropriate level of mine management is made aware of AMS conditions or problems requiring attention. The safety purpose of these provisions is to analyze the performance of the AMS to ensure continued reliable operation of the AMS. The final rule also will help to assure the integrity of records and enable mine management to review the quality of the examinations. Consistent with existing standards in this part, we intend the term "secure and not susceptible to alteration" when applied to electronic storage to mean that the stored record cannot be modified. One example of acceptable electronic storage would be a "write once, read many" file.

Like the proposed rule, final paragraph (q) requires that all AMS operators be trained annually in the proper operation of the AMS. In addition, the final paragraph requires that the mine operator retain a record of the content of training, the person conducting the training, and the date the training was conducted at the mine for at least one year.

MSHA believes that the training program for an AMS operator should address at least two topics: the AMS system operation and legal requirements. The AMS system operation includes hardware and software issues.

The hardware training should at least include the following subjects:

1. A complete AMS overview, including orientation with the central computer system and its components, the data highway, outstations, and sensors.

2. Common system problems and diagnostic tools, as well as any special features of the system.

The AMS system operation would also include software training. As noted in the proposed rule, such training should include at least the following subjects as they relate to the AMS:

1. The basic computer operating systems used, such as MS–DOS or Windows.

2. CMOS setup, board(s), jumper and address settings, directory and file allocation, program start-up, logging in/out of system, system shutdown and other AMS software functions.

3. Printing, editing sensor points, setting communication parameters, creating reports, and device controls.

4. Special features of the system, such as networking, graphics editing, and database management.

Legal requirements include provisions and requirements of the ventilation plan, emergency evacuation and fire fighting program of instruction, and the requirements of this final rule.

Finally, AMS operators would need to be trained on the following issues:

1. The provisions and requirements of the mine ventilation plan, emergency evacuation and fire fighting program of instruction, and

2. The requirements of this rule.

All of this training will assure that the AMS operator maintains proficiency in the operation of the AMS and the understanding of his/her responsibility under this final rule. Such training is necessary because, in the event of a mine fire or other emergency, the AMS operator will be one of the first individuals to detect a serious problem underground based on AMS signals which may require the evacuation of the mine.

Numerous comments were received on this section. Some commenters thought that the recommended training for the AMS operator, as outlined in the previous paragraphs, was not applicable to many AMS operators. It is MSHA's intent that the AMS operator be specifically trained to conduct the task of monitoring the AMS and trained to respond appropriately to its different signals. It is imperative that the "AMS operator," as defined in this final rule, receive annual training on conducting the tasks as required. If a mine operator wishes to limit the understanding of the AMS operator on "how" the system actually operates, then it is imperative that this operator have personnel on call to handle computer programming and failure issues and the AMS operator must be trained to contact such individuals immediately to fix problems. In cases where hardware and software issues affect the safety of the miners underground, manual monitoring of the belt entry, as specified under § 75.352(e), would need to be conducted.

Other commenters wanted the AMS operator to be better trained in all aspects of mine operation. This training would include mine layout, location of all workers underground, and a working knowledge of the mine's fire and evacuation plan. In addition, a commenter suggested that the training provided to the AMS operator be system specific as well as be consistent with all aspects of part 48 training.

MSHA agrees that the AMS operator should have specialized training. As indicated earlier, if a mine operator wishes to expand the training of the AMS operator beyond what is required by this final rule, then it is up to the mine operator to provide that individual with the necessary information. MSHA experience with granted petitions and fire investigations indicate the final rule's provision is sufficient to protect safety. For example, during the initial phase of the fire at Mine 84, the AMS operator appropriately responded to alert signals that, upon investigation, resulted in the discovery of a fire. The AMS operator in this instance utilized his knowledge of the AMS to help rapidly investigate and evacuate the miners. These actions helped to avoid miner injury and death. For these reasons, MSHA believes that the provision, as proposed, is sufficient. The final provision language remains unchanged from that in the proposed rule.

MSHA expects that many operators will be able to fulfill these training and recordkeeping requirements in the course of meeting their responsibilities under 30 CFR Part 48. MSHA agrees with the commenter requesting that AMS operator training be system specific as well as consistent with Part 48 training. Mine operators with granted belt air petitions that address this training requirement fulfill this provision for AMS operator training and recordkeeping requirements under a modified 30 CFR Part 48 training plan. While this provision is not intended to require a separate, stand-alone training

program and recordkeeping system, operators could opt to administer the AMS operator training this way.

Proposed paragraph (r) would have required that when an AMS is used to comply with § 75.350(b), a two-way voice communication system, as required by § 75.351(b)(1), would have been installed in a different entry from the AMS. Commenters to this section that already use belt air disagreed with the need to separate the cables in the belt entry. They argued that operators with existing belt air petitions be grandfathered on this requirement for all areas of the mine where the two systems are installed in the same entry prior to the effective date of the rule. MSHA does not believe that grandfathering existing developed areas of mines that currently have both the voice communication line and the AMS cable in the belt entry would achieve the level of safety required by this final rule. Therefore, grandfathering of existing communication lines will not be allowed. However, MSHA recognizes that additional time may be required for some mines to comply with this provision. Therefore, this final rule has been changed from that proposed to allow for additional time for the implementation of this provision; the phrase, "no later than August 2, 2004."

One commenter argued that "Under the proposed standard, the primary escapeway will need to be monitored at the mouth of a section and near the loading point. If the AMS system lines are in the belt entry and the communication lines are in the intake (primary escapeway), compliance cannot be achieved." MSHA agrees with the commenter and has modified the provision language to read, "However, the two-way voice communication system may be installed in the entry where the intake sensors required by §§ 75.350(b)(4) or 75.350(d)(1) are installed."

Another commenter argued, "Normally, an operator would want the AMS line in the belt entry and the additional communication line in the intake entry. Normally, the operator would also have phones at belt drives and transfers. This requirement would appear to require two separate systems unless the AMS sensors in the non-belt entries can be fed off the belt entry system and the phones in the belt entry can be fed off the communication line in the intake entry or vice versa, and that is not clear from the proposed rules." The commenter suggested that this requirement be deleted.

In response to these comments, the provision clearly requires that the trunk lines for the AMS and communication systems be installed in separate entries. MSHA agrees with the commenter, however, that branch cables from these trunk lines can extend into the entry in which the other communication line is installed. However, with this clarification MSHA believes that deleting the provision would negatively affect miner safety.

Another commenter wrote that installing communication lines in separate entries is not practical because trunk and branch lines of both the AMS and communication systems must be placed in both entries and therefore, this requirement is not reasonable for three-entry sections with the belt in one entry and the primary escapeway in the next entry. A commenter stated that this requirement is not included in existing petitions. One other commenter said, our "mine has miles of communication lines in the same entry as the AMS system lines. There has never been an incident or indication that this may be a problem. Requiring the two lines be separated will only move one of the lines into an entry where the likelihood of being damaged is greater. Therefore we feel the proposed standard will complicate and endanger a system that is working well."

MSHA disagrees with the commenters that the branch lines for both the AMS and voice communication system should not be installed in separate entries. MSHA does not believe that placing both the voice communication line and the AMS cable in the same entry would achieve the level of safety required by this final rule, since voice communication problems have occurred due to damage to the phone line in the belt entry, as discussed in this section of the preamble. Therefore, installation of the branch lines for the AMS cables and the voice communication line must be in separate entries.

Other commenters repeatedly stated that two forms of communication independent of the regular mine phone system are necessary on sections, longwalls, belts, and outby areas of the mine that do not include the AMS. Examples of independent forms of communication include a leaky feeder radio system or a personal evacuation device (PED) emergency communication system. They also suggested that phone directories listing each mine phone be posted at each phone, and the location of each underground phone should be mapped on the surface to inform surface personnel of their locations. In addition, the commenter stated that "* * * the proposed rules do not address the fact that current mine communication systems do not reach all of the miners all of the time, as assumed in the proposed belt air standards. Thus there will always be miners who may not be contacted in case of an emergency created by the use of belt air to ventilate an active working mine." The commenters also argued that a communication device be located every 1,000 feet, not every 2,000 feet, as proposed because a fire could grow to be out-of-control while the miner walks the extra 1,000 feet to a phone. In addition, one commenter asked if this proposed requirement was different than the requirements of existing § 75.1600 which requires that whenever miners are underground, two-way communication must be made available to the miners.

MSHA agrees that the ability to communicate is essential during emergency situations, such as a fire. Therefore, it is critical that at least one line of communication remain intact. This provision is consistent with existing petition requirements. Nearly all of the granted petitions approved since 1978 required two-way communications. In response to the commenter about requiring two independent forms of voice communication other than that required by § 75.1600, the mine operator is responsible to provide equipment that is necessary for the safe operation of the mine. MSHA recognizes that it is not reasonable to expect that every underground miner has immediate access to a voice communication line. However, MSHA believes that the requirement to have voice communication available every 2,000 feet in the belt entry if the AMS system fails is sufficient to maintain miner safety. In response to the commenter's suggestion that a phone directory and map be provided at each phone underground, MSHA is requiring that the AMS operator have the ability to contact various individuals on the surface and underground in order to fulfill the responsibilities of the AMS operator. Part of this responsibility is the requirement to have two-way voice communication from the surface to affected areas to notify personnel. Also, a directory would not apply if the mine has a paging system.

In the event of a roof fall, fire, or other event in one entry that could damage either the AMS or the two-way voice communication, it is more likely that one of these systems will remain functional when installed in an alternate entry, thus providing an additional measure of protection. Therefore, the language of this provision has been changed to read, "When an AMS is used to comply with § 75.350(b), a two-way voice communication system

required by § 75.1600 must be installed in an entry that is separate from the entry in which the AMS is installed * * * However, the two-way voice communication system may be installed in the entry where the intake sensors required by §§ 75.350(b)(4) or 75.350(d)(1) are installed."

Section 75.352 Actions in Response to AMS Malfunction, Alert, or Alarm Signals

Final § 75.352(a) requires that when the AMS operator receives either a malfunction, alert, or alarm signal at the designated surface location, the sensor(s) that are activated must be identified and the AMS operator must notify the appropriate personnel to take action. The AMS operator can be designated as one of the appropriate personnel who is responsible to carry out actions required by this section. This provision was modified from the proposed rule that stated, "The designated AMS operator or other designated responsible person must promptly initiate * * * actions:" This change was made to clarify our intent that the AMS operator must notify appropriate personnel when either a malfunction, alert, or alarm signal is received at the designated surface location.

Some commenters asked for clarification on the actions of the responsible person under § 75.1502 and the AMS operator under this section. AMS operators may be designated by the mine operator as "appropriate personnel" (see § 75.301 definition). Since appropriate personnel includes the "responsible person" for emergency mine evacuations under §§ 75.1501 and 75.1502, the AMS operator can be the responsible person for emergency evacuations. However, the AMS operator must meet the criteria described in § 75.1501 in order to be the responsible person. The mine operator is free to select any miner meeting the § 75.1501 criteria to be the responsible person. The final provision was modified from that proposed.

Proposed paragraph (a)(1) of § 75.352 stated, "When a malfunction or alert signal is given, notify appropriate personnel, immediately begin an examination to determine the cause, and take required action to address it, and". Final paragraph (b), that parallels proposed paragraph (a)(1) has been modified to clarify MSHA's intent to read, "Upon notification of a malfunction, alert, or alarm signal, appropriate personnel must promptly initiate an investigation to determine the cause of the signal and take required actions set forth in §§ 75.352(c), (d), or (e) below." These actions are required unless the cause of the malfunction, alert, or alarm signal is known not to be a hazard to the miners. If the cause of the malfunction, alert, or alarm signal is known not to represent a hazard, such as sensor calibration, or cutting and welding near a sensor, the final rule does not require notification of affected workers under § 75.352(c).

However, we still require a record of these events under § 75.351(o).

Proposed § 75.352(a)(2) stated that, "When an alarm is given, notify appropriate personnel, including miners in affected working sections, in areas where mechanized mining equipment is being installed or removed, and in other locations specified in the approved program of instruction as set forth in § 75.1502." This proposed section has been renumbered and restated in final §§ 75.352(c), 75.352(c)(1), and 75.352(c)(2) to clarify MSHA's intent that certain actions must be taken when the alarm signal is received at the designated surface location.

Many commenters suggested alert signals should also be automatically transmitted to each affected working section and areas where mechanized mining equipment is being installed or removed. Other commenters suggested it is not necessary to report each alert to the sections, and that in mines where frequent nuisance and false alert and alarm signals occur, miners attach a diminished importance to the signals creating a "cry-wolf" syndrome, in which alert and alarm signals are discounted by miners as related to non-fire sources, such as diesel-powered equipment or welding fumes, and not to a real fire event. This new provision should reduce unnecessary notification of miners, thus increasing the over-all effectiveness of the AMS as an early-warning fire detection system.

We agree that in many cases the activation of numerous alert signals may lead to complacency; however, we also agree that in some instances the early notification of working sections and setup or removal areas may be desirable. It has been reported that alert levels of CO at individual sensors are produced by diesel-powered equipment exhaust, cutting and welding operations, hot brakes on mobile equipment, and other non-fire conditions. Alert signals have also been caused by radio-frequency interference, and these occurrences are often of a limited duration. In an analysis of AMS system responses to fires, as well as large-scale fire testing by the U.S. Bureau of Mines, researchers found that fires may produce alert or higher levels of CO at consecutive sensors. When this occurs, automatic notification of affected areas is required by this final rule.

For these reasons, while alert signals at individual sensors need not be reported to affected areas, we have included this new requirement so that, in the case of consecutive sensors in alert status, automatic notification of the affected areas is required. Actions required under this section are specified in § 75.352(c). Although automatic notification of single alert signals on working sections and setup or removal areas is not required, the alert signals for individual sensors must still be investigated to determine the CO source, as required by 75.352(b).

The operation of diesel-powered equipment in the belt air course or in adjacent air courses is a concern in mines using CO-based fire detection systems. Possibly, movement of the equipment in these air courses can cause alert or alarm activations at individual sensors as the equipment passes nearby. If there are cases where engines cause numerous alert and alarm signals due to the machine exhaust containing high levels of CO, we believe that the mine operator can perform maintenance on the diesel engines which is likely to be effective in reducing these levels. Proper maintenance of diesel-powered equipment is an important aspect of controlling diesel engine emissions as required by § 75.1914—Maintenance of diesel-powered equipment.

Additionally, the use of diesel discriminating sensors (DDS) has been shown to be effective in mines using diesel-powered equipment for reducing the frequency of alert signals.

Final § 75.352(c) requires that upon notification of an alarm signal or when alert signals at two consecutive sensors are indicated at the same time, the appropriate personnel must take various actions specified in §§ 75.352(c)(1) and 75.352(c)(2). Under final § 75.352(c)(1) the appropriate personnel must notify miners in affected working sections, in affected areas where mechanized mining equipment is being installed or removed, and at other locations specified in the approved mine emergency evacuation and firefighting program of instruction (§ 75.1502). Under final § 75.352(c)(2), all personnel in the affected areas, unless assigned other duties under § 75.1502 must be withdrawn promptly to a safe location identified in the mine emergency evacuation and firefighting program of instruction. This section has been reworded and renumbered from that proposed to clarify MSHA's intent that appropriate personnel have responsibilities to not only notify

affected workers upon the receipt of an alarm signal but also to notify affected workers upon receipt of alert signals at two consecutive sensors. This inclusion is based upon MSHA's analysis of the record and corresponds to the new requirement under § 75.351(c)(7) that requires the AMS to automatically provide visual and audible alarm signals at the designated surface location, at all affected working sections, and at all affected areas where mechanized mining equipment is being installed or removed when the carbon monoxide level at any two consecutive sensors reaches and remains at the alert level specified in § 75.351(i).

Another commenter said that communication errors were reported by the AMS in JWR No. 5 Mine in September 2001 subsequent to the initial explosion. "However, the Control Room operator simply did not deem these errors as significant and did not plan further action. Yet computer printouts from the AMS showed that the errors were acknowledged or silenced by the CO supervisor." This final rule requires that communication failure must be investigated, not ignored by the AMS operator. Section 75.352(a) requires that when the alert level is reached or a malfunction occurs, the sensor involved is identified, and appropriate personnel are notified immediately. Section 75.352(b) requires that appropriate personnel promptly initiate an investigation to determine the cause of the alert, malfunction or alarm signal. Some commenters also suggested that an alert response should include communication and coordination of maintenance personnel with the AMS operator to limit the number of people who enter the mine until the incident is verified. In addition, commenters wanted the miners in affected sections to be withdrawn outby the alerting sensor. Other commenters opposed the sounding of alerts on working sections because it "would propagate indifference to its sounding." MSHA agrees that communication errors should be investigated as malfunctions, as required by this section. However, MSHA disagrees with the comment that miners on working sections should be withdrawn outby a single alerting sensor unless an investigation confirms a problem or a problem is confirmed by other means such as a second sensor alert. We believe that automatic activation of signals on the working section at alert levels could potentially inhibit the system's effectiveness if a "cry wolf" syndrome develops. A miner receiving an alert signal from an AMS that later is determined not to represent a hazard may lose confidence in the system and become desensitized to these signals. Such a situation reduces a miner's confidence in the AMS and may reduce the importance of an alarm to the worker. We believe that the procedures outlined in §§ 75.352(a) and (b) provide the early warning intended under an alert, malfunction, or alarm condition. Therefore, the requirement to withdraw workers to a safe location upon receipt of a single alert signal was not included in this final rule. This action is consistent with recently granted belt air petition requirements. In addition, MSHA has included a requirement under 75.351(c)(7) that mandates miners be withdrawn to a safe area if two consecutive sensors indicate an alert level as specified in § 75.351(i) at the same time. This provides protection to miners without causing unnecessary withdrawals caused by malfunctions or other non-fire related alerts.

When it is necessary to withdraw personnel under § 75.352(c)(2), the personnel must be withdrawn promptly to a safe location identified in the mine emergency evacuation and firefighting program of instruction. Based on the results of the investigation, a determination will be made by the § 75.1501 responsible person on whether or not to initiate an emergency evacuation. Some commenters repeatedly suggested that an action that should be taken by the responsible person under this section is to limit the number of people entering the mine, as mandated by § 75.1502, until the investigation is completed. MSHA has already stated that the investigation prompted by the alarm will determine the extent of the hazard to miners, and therefore, the necessary response under either §§ 75.352 or 75.1502.

A commenter suggested that miners working in the affected section be withdrawn outby the alerting sensor. MSHA has previously stated that we disagree with this suggestion because constantly notifying and withdrawing miners following every single alert signal, increases the occurrence of the "cry-wolf" syndrome. Investigation of the alert by the appropriate personnel is required and should reduce the occurrence of non-fire related signals that unnecessarily cause miner withdrawal. Therefore this provision should improve safety. The proposed language has been modified as discussed above.

By not requiring the withdrawal of miners outby to a safe location we are reducing the occurrence of the "cry-wolf" syndrome. By requiring the withdrawal of miners outby to a safe location when alert signals are indicated at two consecutive sensors at the same time we are improving miner safety because if two sensors are in the alert mode, this is a more likely indication that a fire hazard exists. It is more likely that the AMS operator would receive alert signals on two consecutive sensors when a fire condition exists. This position is supported by an analysis of AMS system responses to fires, as well as large-scale fire testing by the U.S. Bureau of Mines, that indicates that fires may produce alert levels or higher of CO at consecutive sensors. Under this condition, automatic notification of affected areas is prudent.

Many commenters noted that many of the granted petitions require notification of alarms and withdrawal of personnel outby the alarming sensor. MSHA agrees that this action is prudent. The language in the final provision has been modified to reflect withdrawal of affected miners to a safe location. Withdrawal of miners outby the alarming sensor may not always place the miners in a safe location and actually could move miners into smoke. Therefore, the last requirement of this provision has been modified, based on comments, from that proposed, eliminating the phrase "outby the next functioning sensor upwind of the alarming sensor" and replacing it with "must be withdrawn promptly to a safe location identified in the mine emergency evacuation and firefighting program of instruction." MSHA agrees with the commenters that miners need to be evacuated to a safe place, as required by § 75.352(c)(2), and not just outby the next functioning sensor upwind of the alarming sensor, since this location may not be as safe as some other withdrawal sites depending on the location of the fire. MSHA disagrees with a commenter who contended that for each alarm that the miners must be brought to the surface. Miners will be withdrawn to a safe location if either two consecutive alert signals or an alarm signal is received by the AMS operator. They will remain in the safe location until the investigation required by § 75.352(b) is conducted and either results in an "all clear" to return to the affected areas of the mine or the miners are evacuated according to the requirements of § 75.1502.

Some commenters recommended the review of each mining operation's approved emergency evacuation and firefighting program of instruction to ascertain if they have been updated to include the new provisions of § 75.1502—Mine emergency evacuation and firefighting program of instruction. In addition, these commenters are

uncomfortable with including new belt air requirements in these plans, until the Agency ascertains that these emergency plans have been updated to incorporate the new § 75.1501 standard. The commenters are convinced that this action is necessary, since many of the existing plans are "antiquated" and unable to meet the additional requirements imposed upon them.

The Emergency Temporary Standard (ETS) on emergency evacuations was published on December 12, 2002. Mine operators were required by the ETS to submit for approval their emergency plans by January 13, 2003. MSHA published the final emergency evacuation rule on September 9, 2003. This rule was effective immediately. In light of this, MSHA believes that these mine emergency plans are not "antiquated." The final emergency evacuations rule amended annual refresher training to allow MSHA to approve the mine operator's annual course of instruction regarding their emergency evacuation and fire fighting program of instruction (§ 48.8 as amended). If MSHA deems that this course is not consistent with current conditions found at the mine, then MSHA will require that modifications be made to the course, and consequently to the emergency evacuation plan, to reflect these conditions. Such changes might also include revisions to the training to include relevant final belt air provisions, such as the withdrawal of miners required by § 75.352(c)(2).

Proposed § 75.352(c) stated, "If an alert or alarm signal from a methane sensor in a return air split is activated, the sensor producing the alert or alarm signal must be identified, an examination must be made to determine the cause of the activation, and the actions required under [existing] § 75.323 must be taken." This proposed section has been renumbered and editorially revised to be final § 75.352(d). This provision addresses the actions required in case an alarm from a methane sensor in a return air split is activated. These actions apply also to methane sensors installed in accordance with §§ 75.323(d)(1)(ii) and 75.362(f) that alarm. The specific actions required by the final rule include identification of the sensor that is causing the alarm, an investigation into the cause of the alarm, and actions required by existing §§ 75.323(c) and § 75.323(d). The final provision reads, "If there is an alert or alarm signal from a methane sensor installed in accordance with §§ 75.323(d)(1)(ii) and 75.362(f), an investigation must be initiated to determine the cause of the signal, and the actions required under § 75.323 must be taken." No specific comments were received on this paragraph; therefore, except for the renumbering and editorial changes, it remains as proposed.

Like the proposed § 75.352(d), final paragraph (e) of § 75.352 addresses the actions required if any fire detection component of the AMS malfunctions or is inoperative. The final rule requires the operator to take immediate action to return the system to proper operation. MSHA will allow continued operation of the belt only when certain safety precautions described in § 75.352(e) are taken to assure miners' safety. This standard is consistent with recently granted petitions that permit the use of belt air to ventilate working places. This provision will maintain the safety in mines that currently have a granted belt air petition with such a requirement and will increase safety for miners that currently do not work under such a granted petition requirement if the mine operator chooses to use belt air.

Some commenters testified that, if the AMS is inoperative for more than eight (8) hours, the mine operator must notify the district manager. MSHA does not believe that notification of the district manager is necessary since this final rule specifies equivalent actions that must be taken to protect miners. Hand-monitoring of the belt air course as required by this final rule is an equivalent method to AMS monitoring of the belt air course. Therefore, the paragraph remains unchanged from that of the proposed rule.

Like the proposed § 75.352(d)(1), final paragraph (e)(1) covers those instances when one sensor becomes inoperative. Under this condition, we require the operator to station a person trained in the use of hand-held devices to continually monitor for CO or smoke near the inoperative sensor. This action is consistent with current requirements in granted petitions and gives the mine operator needed information on the atmosphere at the location of the inoperative sensor. This action will maintain safety because hand-monitoring of the belt air course, as specified in this final rule, is an equivalent method to AMS monitoring of the belt air course. No comments were received on this paragraph. The final language remains as proposed, except that the proposed phrase "During that time that" has been replaced with the word "While" to make the provision read better.

Like proposed § 75.352(d)(2), final paragraph (e)(2) specifies the monitoring required if two or more adjacent AMS sensors become inoperative. Under the final rule, a sufficient number of trained persons would be required to patrol and continuously monitor the area affected so that the area is traveled each hour. As an alternative under (e)(2), the operator could station a trained person near each inoperative sensor to continuously monitor for the presence of CO or smoke. These actions are consistent with current requirements in granted petitions and give the mine operator needed information on the atmosphere at the locations of the inoperative sensors. This action will maintain safety because hand-monitoring of the belt air course, as required by this final rule, is an equivalent method to AMS monitoring of the belt air course. No comments were received on this provision. The final language remains as proposed except for the section being renumbered.

Like proposed § 75.352(d)(3), final paragraph (e)(3) specifies actions required if the complete AMS becomes inoperative. When determining what is complete system failure, we do not necessarily mean that every component of the system does not function. It is intended that this paragraph of the final rule would apply when part of the system is inoperative to render the system incapable of performing its intended function. For example, if a break in the data transmission line occurs that does not permit sensors to communicate with the central processing unit (CPU) on the surface or if the CPU itself becomes inoperative although all underground components continue to operate, then the entire system should be considered inoperative. When the entire system becomes inoperative, paragraph (e)(3) requires the mine operator to take immediate action to have trained persons patrol and continuously monitor for CO or smoke so that the affected areas will be traveled each hour in their entirety. This action will maintain safety because hand-monitoring of the belt air course, as required by this final rule, is an equivalent method to AMS monitoring of the belt air course. No specific comments were received on this provision. However, MSHA is clarifying language in the final provision to change "belt entry(ies)" to "affected areas" to include monitoring at sensors located in entries outside of the belt entry, such as at the sensors located in the primary escapeway under § 75.351(f). This action will maintain safety by reducing the possibility that hand monitoring will not be conducted at these other sensors. Other than this change and the renumbering, the final language remains as proposed.

When monitoring is conducted during times of system or sensor malfunction, the person doing the monitoring must be trained to make these tests. As in proposed § 75.352(d)(4), final paragraph (e)(4) requires the person monitoring under this section must have voice communication available with the designated surface location. Communication capabilities must be available to trained persons patrolling at intervals not to exceed 2,000 feet. This could be a mine phone, telephone, trolley phone, or radio location. Easily accessible communication is necessary to ensure quick notification to the designated surface location when an alert or alarm level is reached. Some commenters suggested that the mine phones be positioned at a shorter distance than every 2,000 feet, such as every 1,000 feet, or that MSHA require the use of a leaky feeder system (*i.e.,* walkie talkies with feeder antennas) in the track entries. The 2,000-foot spacing is consistent with granted petition requirements and will maintain the level of safety afforded miners.

In addition, proposed (d)(5) stated that "The trained persons monitoring under this section must report the AMS sensor(s) at intervals not to exceed one hour." This requirement has been included in final paragraph (e)(4), but modified to require that the trained person "report contaminant levels to the AMS operator at intervals not to exceed 60 minutes." This requires that, even if alert or alarm levels are not exceeded, the trained persons must report to the AMS operator at intervals not to exceed one hour. This will verify to the AMS operator that there are no elevated levels of contaminants at the monitoring locations in the belt entry. These actions give the mine operator needed information on the atmosphere at the locations of the affected sensors and assure that appropriate action is taken as needed.

Some commenters suggested that the trained person monitoring the AMS by hand should report to the AMS operator at least every 15 to 20 minutes, not once per hour, as required by the provision. MSHA believes that it is not necessary for the trained person to report normal conditions more often than once per hour to the AMS operator. Miner safety is not affected by reporting normal conditions every 60 minutes instead of every 20 minutes. This ensures that the hand-held monitoring is occurring as required. It is important to note, that the AMS is not required to report levels of CO, smoke, and methane below established alert and alarm levels. As previously discussed, MSHA moved the requirement in the proposed rule (proposed paragraph (d)(5)) for trained persons to report to the AMS operator at intervals not to exceed one hour to final paragraph (e)(4). Therefore, the final provision (e)(4) is modified, as discussed above, from that proposed in (d)(4).

Like proposed § 75.352(d)(5), final paragraph (e)(5) requires the trained person to immediately report to the AMS operator any concentration of the contaminant that reaches either the alert or alarm level specified in § 75.351(i), or the alternate alert and alarm level specified in paragraph (e)(7) of this section, unless the source of the contaminant is known not to represent a hazard. This provision was modified from the proposed requirement to emphasize the importance that the trained person immediately report any concentrations at or above the alert or alarm levels specified in § 75.351(i), unless the source of the contaminant is known not to create a hazard to miners. The proposed provision stated, in part, "* * * the trained person must report as soon as possible to the AMS operator any concentration of the contaminant that reaches either the alert or alarm level specified in § 75.351(i), or the alternate alert and alarm level specified in paragraph (f)(8) of this section, unless the source of the contaminant is known not to represent a hazard." Whereas, the final provision states, "The trained person(s) monitoring under this section must report immediately to the AMS operator any concentration of the contaminant that reaches either the alert or alarm level specified in § 75.351(i), or the alternate alert and alarm levels specified in paragraph (e)(7) of this section, unless the source of the contaminant is known not to present a hazard." MSHA believes the modified language clarifies our intent that the trained person monitoring for fires immediately report any contaminant levels at or above the mine's alert or alarm level to the AMS operator.

Like proposed § 75.352(d)(6), final paragraph (e)(6) requires that detectors used to comply with this paragraph have a level of detectability comparable to those required for AMS sensors by § 75.351(l). That is, the hand-held detectors and the AMS sensors have the same resolution and detection range to detect CO at both the alert and alarm levels. The proposed rule used the term "instruments." MSHA has changed this to "detectors" to clarify our intent because the term "detector" is more specific for portable gas-detection equipment used in underground mines. No comments were received on this section, therefore, other than this one word change and the renumbering of the provision, it remains as proposed.

Hand-held methane and CO detectors are commercially available. Some AMS sensors do not have commercially available hand-held counterparts, such as smoke, so that an alternate instrument would be needed as required in both proposed § 75.352(d)(7) and final paragraph 75.352(e)(7) of this paragraph, which reads, "For those AMSs using sensors other than carbon monoxide sensors, an alternate detector and the alert and alarm levels associated with that detector must be specified and approved in the mine ventilation plan." For example, smoke sensors which malfunction will require monitoring with an alternate detector, perhaps a hand-held CO detector that can detect CO at the established alert and alarm levels as required by § 75.351(i)(2). No comments were received on this paragraph. The final language remains as proposed, except for the renumbering of the provision.

Like proposed § 75.352(e), final § 75.352(f) requires that if the 50-fpm minimum air velocity is not maintained in the belt entry as required in § 75.351(e)(3), immediate action must be taken to return the ventilation system to proper operation. It also requires that while the 50-fpm air velocity is not maintained, trained persons must patrol and continuously monitor for CO or smoke as set forth in §§ 75.352(e)(3) through 75.352(e)(7) so that the affected belt entry(ies) is traveled each hour in its entirety. As discussed previously, contaminants must reach the sensors in order to be detected. Less than a 50-fpm velocity with 1,000-foot sensor spacing is considered a system failure because air currents will not carry a sufficient amount of contaminants to the sensors for detection. This is considered a system failure since the system would not be able to provide adequate warning. A commenter requested clarification, "Does this section only apply to the requirement of a 50-foot per minute minimum or does it also apply to velocities below 50-foot per minute where sensors spacing has been reduced. Each scenario should be allowed as long as they comply with the requirements of hand monitoring." If the spacing of sensors is 1,000 feet and the velocity is less than 50 fpm, hand monitoring is required. If the spacing of sensors is 350 feet, hand monitoring is only required in the case of system or component failure. MSHA considers these provisions to be equivalent. Two minor editorial changes were made to the final language of the provision. The proposed rule stated "Trained persons," while the final provisions states, "A

trained person(s)." The proposed rule included the phrase "of this section" which has been deleted from the final language. Other than these editorial changes and renumbering of the section, the language of the final paragraph remains unchanged from that proposed.

Section 75.371 Mine Ventilation Plan, Contents

Section 75.371 sets forth the information that the mine operator must include in the mine ventilation plan. The mine ventilation plan is mine specific and is designed to permit safe and healthful operation of the mine by ensuring that ventilation is sufficient to dilute and render harmless hazardous components of mine air such as respirable dust and methane, and provide necessary levels of oxygen to the mine working environment.

We are adding eight (8) requirements to the mine ventilation plan. These new paragraphs, §§ 75.371(ii) through (pp), require certain information to be specified and approved. Under this final rule, the existing paragraphs (ii) through (nn) would be redesignated as (qq) through (xx).

Existing § 75.371(hh) requires that the mine ventilation plan specify the ambient level in parts per million of CO, and the method for determining the ambient level. Section 75.351(j) does not change this requirement.

Like the proposed rule, final paragraph (ii), in accordance with § 75.350(b)(3), requires the locations (designated areas) where dust measurements would be made in the belt entry when belt air is used to ventilate working sections and setup or removal areas. As discussed under § 75.350(b)(3), the Advisory Committee determined that multiple designated areas should be established for mines using belt air to ventilate working places. The mine operator is required to establish the DA in order to monitor the intake air for dust levels and to keep these levels within existing standards. This monitoring and control of dust levels ensures that miners' health is protected by keeping the dust levels within existing standards (§ 70.100). No comments were received on this provision. The final language remains as proposed, except the phrase "in accordance with" as been editorially added to refer to § 75.350(b)(3).

Final paragraph (jj), in accordance with § 75.350(a)(2), requires that the locations where velocities exceed 500 feet per minute in the belt entry, and the maximum approved velocity for each location, be included in the mine ventilation plan. This is a new provision under § 75.371 that corresponds to the inclusion of new § 75.350(a)(2). This requirement was added based on the comments received that are discussed in this preamble under the section-by-section discussion of § 75.350(a)(2). This information is necessary for MSHA to evaluate the capability of fire detection system to ensure that the fire detection components are compatible with the air velocity and the mining conditions.

Final paragraph (kk), in accordance with § 75.350(b)(6), requires the location where air quantities are measured. This provision corresponds to the new provision of § 75.350(b)(6). This requirement was added based on the comments received that are discussed in this preamble under the section-by-section discussion of § 75.350(b)(6).

Final paragraph (ll), formerly (jj) of the proposed rule, requires that the locations and use of all point feeds be approved in the mine ventilation plan. The term "use" was added and the term "regulators" was deleted to clarify MSHA's intent to clearly specify point feeding requirements in this final rule, as stated under §§ 75.350(c) and (d).

One commenter asked for clarification: "[m]ust the point feed locations be site specific and be identified and changed for every section or can a general statement be made as to their location and then be shown on the mine map? A general statement can be made and a sketch shown for the approximate location * * * Requiring individual site specific locations will cause additional paper work and time for approval that is not necessary." This provision requires that a specific location be identified in the ventilation plan. However, if the mine operator consistently point feeds at the same location and in the same manner in each panel then a general statement may be acceptable for approval of multiple locations. For example, a mine operator may point feed consistently in each panel at a specified crosscut inby the mouth of each panel in a specific manner. In other instances, where point feeding is used infrequently then specific locations may need to be identified in the ventilation plan. Regardless, these locations must be approved by the district manager. The provision remains unchanged from that proposed, except for the inclusion of the word, "use" and the phrase "in accordance with" has been editorially added to refer to § 75.350(d)(5).

Final paragraph (mm), formerly proposed paragraph (kk), in accordance with § 75.351(e)(5), requires the location of any additional CO or smoke sensor required by the district manager to be identified in the mine ventilation plan. Final §§ 75.351(e)(1) through (e)(4) specify the required locations where sensors monitor CO or smoke along belts. We recognize instances may occur when additional sensors are necessary to provide early-warning fire protection. In those cases, § 75.351(e)(5) requires that these locations be specified and approved in the mine ventilation plan. A commenter was not in favor of this requirement to have additional sensors approved in the mine ventilation plan. MSHA believes that it is important to identify the sensors required by § 75.351(e)(5) in order to adequately evaluate the effectiveness of the early-warning fire detection system. However, we do not intend that additional sensors installed by the mine operator that are not required by the district manager in § 75.351(e)(5), need to be identified in the mine ventilation plan. Only in those cases when additional sensors are necessary would the mine ventilation plan contain this information. The language of the final provision remains unchanged from that proposed except the phrase "in accordance with" has been editorially added to refer to § 75.350(e)(5).

Final paragraph (nn), formerly proposed paragraph (ll), in accordance with § 75.351(m), requires the length of time delays or other methods used to reduce the number of non-fire related alert and alarm signals from the AMS be stated in the ventilation plan. Other methods may include a sophisticated algorithm similar to that employed by the diesel-discriminating sensor, human intervention, controlling or limiting diesel-powered equipment operation. Section 75.351(m) requires that the length of the delays be specified and approved in the mine ventilation plan.

Documentation must be submitted to the Agency in support of the need for a time delay. This documentation should include the frequency of alert and alarm signals, contaminant levels reached, the duration of signals, and the expected benefit of using the time delay. This section also requires that computer techniques or administrative controls used to reduce the number of non-fire alert and alarm signals be approved in the mine ventilation plan. As discussed under § 75.351(m) the use of reasonable time delays and other computer techniques has reportedly been successful in reducing the number of non-fire alert and alarm signals. However, because these techniques should be used only when necessary (when non-fire alert and alarm signals are excessive) and should delay the activation of alert and alarm signals for the shortest time possible, they should be specified and approved in the mine ventilation plan. Time delays, when

used appropriately, increase safety by reducing the occurrence of alert and alarm signals caused by non-fire related events. This increases miner confidence in the AMS. No comments were received on this provision. The final language remains as proposed, except the phrase "in accordance with" has been editorially added to refer to § 75.351(m).

Final paragraph (oo), formerly proposed paragraph (mm), in accordance with § 75.351(i)(2), requires that when reduced alert and alarm settings for CO sensors are required by the district manager, they be specified in the mine ventilation plan. The only change from the proposed language was the replacement of the word "lower" with "reduced" to make our intention clear. These reduced alert and alarm levels that are incorporated into the mine ventilation plan allow for evaluation of the mine operator's proposed alert and alarm levels, thus maintaining miner safety. No comments were received on the specific language of this provision; it otherwise remains unchanged from that proposed, except the phrase "in accordance with" has been editorially added to refer to § 75.351(i)(2).

Final paragraph (pp), formerly proposed paragraph (nn), in accordance with § 75.352(e)(7), requires that alternate detectors be approved in the mine ventilation plan if they can be used to monitor the belt entry in the case of an inoperative or malfunctioning AMS. For example, this provision would permit the use of a CO detector to monitor a belt entry equipped with smoke sensors. Such a CO detector could be used if it meets the levels of detectability that would be expected if it were used in place of an AMS with CO sensors. Incorporating alternate detectors into the mine ventilation plan allows for evaluation of the mine operator's proposed use of such detectors, thus maintaining miner safety. No comments were received on the specific language of this provision. It remains unchanged from that proposed, except the phrase "in accordance with" has been editorially added to refer to § 75.352(e)(7).

Section 75.372 Mine Ventilation Map

Existing § 75.372(b)(16) requires that the location of all required AMS sensors be shown on the mine ventilation map. Like the proposed rule, final paragraph § 75.372(b)(16) requires that the type of sensor also be shown on the mine ventilation map. With the anticipated increased usage of sensors other than CO sensors, it is important that persons who may be called upon to respond to malfunction, alert, and alarm signals have information available that tells them both the type and location of these sensors. No comments were received on this provision. The final language remains as proposed, except we added "subpart D" to clarify which subpart of part 75 is affected by this change.

Section 75.380(g) Escapeway; Bituminous and Lignite Mines

Like the proposed rule, final paragraph (g) of § 75.380 requires that except where separation of belt and trolley haulage entries from designated escapeways did not exist before November 15, 1992, and except as provided in § 75.350(c) of this final rule, the primary escapeway must be separated from belt and trolley haulage entries for its entire length, to and including the first connecting crosscut out by each loading point except when a greater or lesser distance for this separation is specified and approved in the mine ventilation plan and does not pose a hazard to miners. This modification to existing § 75.380(g) allows point-feed regulators to be installed and monitored when additional intake air is needed in the belt air course as permitted by § 75.350(c) of this final rule. Exceptions to this provision include where separation of belt and trolley haulage entries from designated escapeways did not exist before November 15, 1992, and as provided in § 75.350(c) of this final rule. No comments were received on this provision. The final language remains as proposed.

In the proposed rule, MSHA did not require the use of lifelines but solicited information from the public concerning the use and maintainability of lifelines. In general, a lifeline is generally a rope extending from a working section through an escapeway to the surface that miners could grasp and use as a guide to help escape the mine during low-visibility emergency conditions. The Advisory Committee recommended the installation and maintenance of lifelines in all underground coal mines, regardless of the use of belt air. The recommendation specified that lifelines had to clearly designate the route of escape. Discussion in the Advisory Committee's report suggested the use of directional cones that indicate the direction of travel to the surface to increase the effectiveness of lifelines.

Numerous commenters suggested that lifelines should be required if belt air is used to ventilate working sections. Other commenters thought that lifelines should not be located in the primary escapeway because they would be subject to frequent damage from mobile equipment. Another commenter thought that this issue was best addressed through a different rulemaking.

NIOSH submitted to the record a study that ranked factors that affected survival during coal mine fires. A combination of factors, including installing lifelines, moderately decreasing air leakage, and decreasing the fire growth rate significantly decreased the amount of time required to escape a fire. A conclusion of the NIOSH research is that lifelines with directional cones can improve escape through smoke.

The Commonwealth of Kentucky's State Statute at Ky.Rev.Stat.Ann.§ 352.135 requires that "lifeline cords, with attached reflective material at not to exceed twenty-five (25) foot intervals, from the last open crosscut to the surface; provided, that in case of a shaft mine, such lifeline cords shall extend from the last open crosscut to the bottom of the designated escape shaft. Such lifeline cord shall be of durable construction sufficient to allow miners to see and to use effectively to guide themselves out of the mine in the event of an emergency."

West Virginia's State Statute at W.Va. Code § 22A–2–60(b) requires that "* * * lifeline cords, with reflective material at twenty-five foot intervals * * *" be installed "* * * from the last open crosscut to the surface along a designated escapeway ventilated by return air: Provided, that in the case of a shaft mine such lifeline cords shall extend from the last open crosscut to the bottom of the designated escape shaft. Such lifeline cord shall be of durable construction sufficient to allow miners to see and to use effectively to guide themselves out of the mine in the event of an emergency."

The Agency decided that on balance, directional lifelines could be practical as a safety enhancement in return entries when used as alternate escapeways. Based on the rulemaking record, granted petition requirements, an Advisory Committee recommendation, and the requirements of these state laws, MSHA developed provisions for the use of directional lifelines. The new provisions under § 75.380(n) require the use of directional lifelines in return entries when used as alternate escapeways when belt air is used to ventilate working sections or setup or removal areas, in accordance with § 75.350(b). The term "directional lifelines" refers to lifelines that contain directional cones or similar devices that face in the direction of escape to the surface.

The first provision, § 75.380(n)(1), requires that lifelines be installed in

alternate escapeways ventilated with return air from the working sections or areas where mechanized mining equipment is being installed or removed: continuous to the surface escape drift opening; or continuous to the escape shaft or slope facilities to the surface; or continuous to where this escapeway enters into intake air. This provision is based on language that describes escapeways in existing § 75.380(b)(1). However, the lifelines do not need to extend into an intake air course when the alternate escapeway passes into intake air from return air because the lifelines are required only in return entries designated as an alternate escapeway.

The second provision, § 75.380(n)(2) requires that lifelines be made of a durable material so that they are resistant to mechanical damage. This parallels the states' requirements as well as being consistent with testimony in the rulemaking record. Lifelines must be constructed of durable materials in order for them to survive normal mining conditions (*e.g.*, atmospheric conditions such as humidity) so that they are available in case miners need to use them to evacuate the mine.

The third provision, § 75.380(n)(3), is that the lifelines must be marked with a reflective material every 25 feet, so that miners can locate the lifeline in low-visibility conditions using their cap lamps. This requirement is also consistent with states' laws and with testimony in the rulemaking record.

The fourth provision, § 75.380(n)(4), is that lifelines be positioned in such a manner so that miners can use them effectively to escape. For example, the proper positioning of the lifeline as determined by the mining conditions increases the ability of miners to effectively use lifelines during emergency situations. This provision is also consistent with states' laws.

The fifth provision, § 75.380(n)(5), is that lifelines contain directional indicators, signifying the route of escape, placed at intervals not to exceed 100 feet. Existing § 75.380(d)(2) requires that "each escapeway shall be clearly marked to show the route and direction of travel to the surface." During escape when visibility is low, the directional indicators, such as cones, will enhance the ability of miners to escape by quickly indicating the proper direction of travel. Therefore, we are requiring these directional indicators. Currently, some mines place prefabricated directional lifelines in escapeways, using cones to show the direction of escape. NIOSH publications discuss the design of a particular lifeline construction (75-foot cone spacing) and NIOSH recommends installation of double-cones at obstructions to alert miners of personnel doors, overcasts, belt crossings, etc. However, NIOSH did not recommend an interval for directional cone spacing. MSHA experience in training miners at the Mine Simulation Laboratory in Beaver, West Virginia, indicates that the directional cone spacing interval needs to be variable, due to variation in conditions found in return entries, including overcasts and undercasts and turns. MSHA's intent is that the interval spacing will never exceed 100 feet, but may be shorter depending upon entry conditions, as determined by the mine operator as mine conditions warrant.

III. Paperwork Reduction Act

This final rule contains information collection requirements in various provisions. These paperwork requirements are under OMB Control Number 1219–0138. Our paperwork submission summarized below is explained in detail in the Regulatory Economic Analysis (REA) that accompanies the rule. The REA includes the estimated costs and assumptions for the paperwork requirements related to this final rule. A copy of the REA is available on our Web site at *http://www.msha.gov/regsinfo.htm* and can also be obtained in hardcopy from MSHA. These paperwork requirements have been submitted to the Office of Management and Budget for review under 44 U.S.C. § 3504(h) of the Paperwork Reduction Act of 1995, as amended. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This control number, 1219–0138, combines paperwork requirements from the following OMB control number packages: 1219–0065, 1219–0067, 1219–0073, and 1219–0088.

MSHA estimates that the final rule would create 22,042 burden hours for the first year, 22,100 burden hours for the second year, and 22,522 burden hours for the third year, for a total of 66,665 burden hours for Years 1 through 3 combined. This is equivalent to an annualized value of 22,465 hours per year and related annualized costs of $1,215,996 per year. These costs are more than offset by the $1.847 million in gross cost savings from this final rule.

On a per-mine basis, MSHA estimates the same paperwork burdens for both new and existing mines that use belt air. However, MSHA estimates that as time goes by a greater proportion of new coal mines using three or more entries will choose to use belt air. This means that the number of mines using belt air will increase over time. This greater number of mines using belt air will increase the total burden hours and paperwork cost over time. Hence, second year hours and costs are greater than first year hours and costs, and third year hours and costs are greater than second year hours and costs. MSHA also estimates paperwork costs for all mines that point feed. These estimates include the burden hours and costs for mines that point feed, but do not use belt air at the working places. The burden hours and cost for point-feeding-only mines are less than 0.1% of the total burden hours and costs. They are separately calculated because they affect a different set of mines.

The paperwork burden is summarized by total annualized burden hours by provision (Table 1) and by total annualized burden costs by provision (Table 2).

Numerous provisions require action to modify the mine ventilation plan. Paragraph 75.351(j) requires modification of the mine ventilation plan to include ambient CO levels and the means used to determine them. Paragraph 75.351(m) requires that the mine ventilation plan be modified to show the use and length of time-delays of any non-fire related CO sensor signals. Paragraphs 75.371(mm), 75.371(nn), and 75.371(oo) require modification of the mine ventilation plan to show the length of the time delay or any other method used for reducing the number of non-fire related alert and alarm signals from CO sensors, the lower alert and alarm setting for CO sensors, and the alternate instrument and the alert and alarm levels associated with the instrument, respectively. This final rule will also have an impact on existing paperwork requirements in 75.371(hh) on the ambient level in parts per million of CO, and the method for determining the ambient level, in all areas where CO sensors are installed.

Paragraph 75.351(n)(1) requires sensors used to detect CO or smoke be visually examined at least once each shift, when belts are operated as part of a production shift. If hazardous conditions are found during the visual exam, then a log of such conditions must be filed under existing § 75.363(b)—Hazardous conditions; posting, correcting and recording. Paragraphs 75.351(n)(2) and 75.351(n)(3) require that a log be kept of every seven-day alarm test and every 31-day CO, smoke, or methane sensor calibration, respectively.

Paragraph 75.351(o)(1)(i) requires that a record be made if the AMS emits an alert or alarm signal. The record must include the date, time, location and type

of sensor, and the reason for its activation. Paragraph (o)(1)(ii) requires that, if a malfunction in the system occurs, a record be made of the malfunction and the corrective action to return the system to proper operating condition. We (MSHA) believe that such records are useful to the miner, the mine operator, and the Agency in determining areas of recurring problems. This aids in ensuring proper operation of AMS.

Paragraph (o)(1)(iii) requires that the persons doing the weekly test of alert and alarm signals, the monthly calibration, and maintenance of the system make a record of these tests, calibrations, and maintenance. Paragraph 75.351(o)(3) requires that all records concerning the AMS be kept in a book or electronically in a computer system, that is secure and not susceptible to alteration. Paragraph 75.351(p) requires the mine operator keep these records for at least one year at a surface location and to make them available for inspection by miners and authorized representatives of the Secretary.

Paragraph 75.351(q) requires that AMS operators receive training annually and that a record of this training be kept. The record of training includes the content of training, the name of the person conducting the training, and the date the training was conducted. The record needs to be maintained at the mine site by the mine operator for at least one year.

Paragraphs 75.352(a), 75.352(b), and 75.352(c) require the designated AMS operator or other designated responsible person to take actions promptly when malfunction, alert, or alarm signals are received. These requirements are parallel to those of § 75.351(o).

TABLE 1.—TOTAL BURDEN HOURS OF FINAL RULE

[Summary of all burden hours, by mine size and by provision]

Provision	Annualized burden hours [1]				
	Mines with 1–19 employees	Mines with 20–99 employees	Mines with 100–500 employees	Mines with over 500 employees	Total annual burden hours
§ 75.350(b), implied impact on existing §§ 44.9, 44.10 and 44.11	(8.48)	(131.73)	(144.96)	(12.26)	(297.43)
§ 75.351(j)	2.87	37.00	35.64	3.14	78.65
§ 75.351(j), implied impact on existing § 75.371(hh)	0.09	1.16	1.11	0.10	2.46
§ 75.351(m)	0.07	4.65	16.71	1.47	22.90
§ 75.351(n)(1), implied impact on existing § 75.363(b)	0.47	4.03	10.80	2.25	17.55
§ 75.351(n)(2)	46.04	784.94	2,105.58	293.00	3,229.57
§ 75.351(n)(3)	56.66	1,932.16	10,365.95	1,803.11	14,157.88
§§ 75.351(o)(1)(i) & (ii)	1.34	67.45	778.89	121.94	969.61
§ 75.351(o)(1)(iii)	6.35	174.70	824.96	139.59	1,145.60
§ 75.351(q)	32.76	400.02	931.32	119.74	1,483.83
§§ 75.352(a),(b) & (c)	13.63	271.21	1,158.29	159.31	1,602.44
§ 75.371(kk)	0.77	7.34	11.23	1.14	20.47
§ 75.371(ll)	2.44	13.88	12.52	1.23	30.08
§ 75.371(nn)	0.00	0.15	0.52	0.05	0.72
§ 75.371(oo)	0.01	0.12	0.11	0.01	0.25
§ 75.371(pp)	0.02	0.23	0.22	0.02	0.49
Total	155.04	3,567.30	16,108.88	2,633.83	22,465.06

[1] Source: Chapter VII of the Regulatory Economic Analysis.

TABLE 2.—TOTAL BURDEN COSTS OF FINAL RULE

[Summary of all burden costs, by mine size and by provision]

Provision	Annualized burden costs [1]				
	Mines with 1–19 employees	Mines with 20–99 employees	Mines with 100–500 employees	Mines with over 500 employees	Total annual burden hours
§ 75.350(b), implied impact on existing §§ 44.9, 44.10, and 44.11	($500)	($7,767)	($8,547)	($723)	($17,537)
§ 75.351(j)	$169	$2,181	$2,101	$185	$4,637
§ 75.351(j), implied impact on existing § 75.371(hh)	5	68	66	6	145
§ 75.351(m)	4	274	985	87	1,350
§ 75.351(n)(1), implied impact on existing § 75.363(b)	14	115	309	65	503
§ 75.351(n)(2)	2,714	46,281	124,148	17,276	190,420
§ 75.351(n)(3)	3,341	113,923	611,190	106,313	834,767
§§ 75.351(o)(1)(i) & (ii)	38	1,933	22,324	3,495	27,791
§ 75.351(o)(1)(iii)	374	10,301	48,641	8,230	67,546
§ 75.351(q)	1,502	16,268	35,281	4,328	57,379
§§ 75.352(a), (b) & (c)	391	7,773	33,198	4,566	45,928
§ 75.371(kk)	45	433	662	67	1,207
§ 75.371(ll)	144	818	738	73	1,774
§ 75.371(nn)	0	9	31	3	42
§ 75.371(oo)	1	7	7	1	14

TABLE 2.—TOTAL BURDEN COSTS OF FINAL RULE—Continued

[Summary of all burden costs, by mine size and by provision]

Provision	Annualized burden costs [1]				
	Mines with 1–19 employees	Mines with 20–99 employees	Mines with 100–500 employees	Mines with over 500 employees	Total annual burden hours
§ 75.371(pp)	1	14	13	1	29
Total	8,244	192,631	871,148	143,973	1,215,996

[1] Source: Chapter VII of the Regulatory Economic Analysis.

IV. Executive Order 12866 (Regulatory Planning and Review) and Regulatory Flexibility Act

Executive Order (E.O.) 12866 (58 FR 51735) as amended by E.O. 13258 (67 FR 9385) requires that regulatory agencies assess both the costs and benefits of regulations. MSHA has determined that this final rule will not have an annual effect of $100 million or more on the economy and that, therefore, it is not an economically "significant regulatory action" pursuant to § 3(f) of E.O. 12866. However, this final rule has been determined to be significant under § 3(f) of E.O. 12866, which defines a significant regulatory action as one that may "* * * raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order." MSHA completed a Regulatory Economic Analysis (REA) in which the economic impact of the rule is estimated. The REA is available from MSHA at *http://www.msha.gov/REGSINFO.HTM* and is summarized as follows.

A. Population-at-Risk

MSHA estimates that this rulemaking will initially affect approximately 14,117 miners at 88 underground coal mines which choose to use belt air at the working places during the first year of the final rule. MSHA also estimates that this rulemaking will additionally affect approximately 5,535 miners at 71 underground coal mines which choose to point feed the belt air, but do not use belt air at the working places, during the first year of the final rule. Accordingly, MSHA estimates that this rulemaking will affect a total of approximately 19,652 miners at 159 underground coal mines during the first year of the final rule.

B. Benefits

MSHA has qualitatively determined that the final rule, to permit use of belt air at the working places, yields net health and safety benefits relative to the existing rule, which does not permit use of belt air at the working places. The final rule will not create any health or safety hazards relative to current petition practice, which also permits use of belt air at the working places.

The main requirement of the final rule is that the mine operator who chooses to use belt air must install an atmospheric monitoring system (AMS) in the belt entry for fire detection. The AMS, composed of CO, smoke, or methane sensors, provides early warning fire detection that is superior to that provided by point-type heat sensors. This added level of protection is beneficial to both workers and the mine owner.

The AMS is beneficial to the mine operator because early warning of a mine fire provides maximal opportunity for extinguishing the fire. An uncontrolled mine fire can damage or destroy a coal mine and can delay or prevent future mining of coal in the affected mine. The AMS is beneficial to workers, because the early warning of fire from an AMS permits more time for miners to escape. Early warning from the AMS also gives the firefighting crew more time to fight or extinguish a fire before it creates a serious mine fire accident or disaster.

The final rule utilizes the common interests of both workers and mine owners to avoid mine fires, and particularly to avoid fires that may result in a serious mine fire accident. By reducing regulatory hurdles to the use of belt air at the working places, the proposed rule would provide additional encouragement for mine operators to install an AMS. The installation of AMSs in additional mines will reduce the risk of mine fire accidents that may injure or kill miners or severely damage mine property.

In addition, MSHA's experience with belt air petitions indicates that, with proper precautions, allowing belt air to ventilate working places can achieve net health and safety benefits. Belt air usage can result in an increase in the quantity of air in the belt entry and other common entries (belt air course). This provides increased protection to miners against hazards created by elevated levels of methane, other harmful gases, and respirable dust.

Prevention of mine fires can also benefit local communities. In the event a mine fire is uncontrolled, persons living in the area of the mine may need to be evacuated for several days due to the smoke and toxic gases escaping to the surface from a mine fire. In addition, there can be long-term adverse economic impacts on a community when a mine fire shuts down a coal mine.

C. Compliance Costs

The final rule revises various sections of part 75, which regulates underground coal mines. These revised sections include § 75.301 Definitions, § 75.350 Air courses and belt haulage entries (title revised to Belt air course ventilation), § 75.351—Atmospheric monitoring systems, § 75.352—Return air courses (title revised to Actions in response to AMS alert and alarm signals or malfunctions), § 75.371 Mine ventilation plan, § 75.372 Mine ventilation map, and § 75.380 Escapeway; bituminous and lignite mines.

The main substantive changes of the final rule are for three-or-more-entry mines that voluntarily choose to use belt air as intake air to ventilate the working places of the coal mine. Three-or-more-entry mines that choose to ventilate the working places with belt air are required to use an atmospheric monitoring system (AMS) to assure worker safety. A secondary substantive change applies to three-or-more entry mines that voluntarily choose to point feed the belt air course.

There are no substantive changes in the final rule that apply to any mine that chooses not to use belt air at the working places, and that chooses not to point feed the belt air. Two-entry mines are also not impacted by the final rule.

The final rule will provide a net yearly cost savings of $707,804 to underground coal mine operators. Included are yearly gross cost savings of

$1,847,181 and yearly gross compliance costs of $1,139,377 for mines affected by the final rule. The yearly gross costs are composed of $1,138,642 for mines using belt air and $735 for mines that point feed the belt air without using the belt air at the working places.

D. Safety Benefits and Other Economic Impacts

The final rule will enhance safety in belt air mines while utilizing the common incentive of both workers and mine owners to avoid mine fires, and particularly to avoid fires that may result in a serious mine fire accident.

MSHA believes that the estimated cost savings of this final rule are conservative because contested petition costs were not included in the preliminary economic analysis. If a petition is contested, the costs to the petitioner could increase by as much as $100,000.

The final rule provides additional encouragement for mine operators to install an AMS by reducing regulatory hurdles to the use of belt air at the working places. The installation of AMSs in additional mines will reduce the risk of mine fire accidents that may injure or kill miners or severely damage mine property. Mine operators are inherently interested in avoiding these catastrophic incidents that could result in the lost of the mine. This final rule would mandate the proper installation and maintenance of AMSs that would serve to further protect mine property from these catastrophic incidents.

MSHA has concluded that the final rule will have only a small (but favorable) effect on coal output, price, and profitability.

E. Feasibility

MSHA has concluded that the requirements of the final rule are both technologically and economically feasible.

This final rule is not a technology-forcing standard and does not involve activities on the frontiers of scientific knowledge. The technology to monitor the mine atmosphere and to alert miners of hazards involve available, off-the-shelf technologies that are currently being used in many mines. Also, standard procedures used to safeguard the safety of miners are approved by the Agency through the mine's Emergency Evacuation and Firefighting Program of Instruction (§ 75.1502). Other provisions of the final rule will reduce petition requirements.

The final rule is clearly economically feasible insofar as it will reduce costs for the mining industry while increasing the use of AMSs to monitor the mine atmosphere. In total, the cost savings from the final rule are $708,000 per year.

The final rule provides for a safe mining environment and facilitates the use of technologically advanced fire-detection systems. In addition, there will no longer be a time delay for approval due to the petition process. Mine operators could use belt air to ventilate working sections as soon as they are in compliance with the rule.

F. Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The RFA, as amended by SBREFA, requires regulatory agencies to consider a rule's impact on small entities. For the purposes of the RFA and this final determination, MSHA has analyzed the impact of the final rule and determined that it will not have a significant economic impact on a substantial number of small entities that are affected by this rulemaking.

MSHA will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to all underground coal mine operators and miners' representatives. The final rule will also be placed on MSHA's Internet Homepage at *http://www.msha.gov,* under Statutory and Regulatory Information.

The RFA, as amended, at 5 U.S.C. 605(b) also requires MSHA to include in the final rule a factual basis for this determination. This information must be published in the **Federal Register.**

1. Factual Basis for Certification

The Agency compared the gross costs of the rule for small mines in each sector to the revenue for that sector for both size categories analyzed (MSHA and Small Business Administration "small entity" definitions). Given that the gross compliance costs for small mines is substantially less than 1 percent of revenue and that net costs are negative, MSHA concludes that there is no significant cost impact of the rule on small entities. For both definitions of a small mine, the net cost of the proposed rule is negative. Since the final rule results in net cost savings, there will not be any burden placed on small mine operators. Accordingly, MSHA certifies that there is no significant impact on a substantial number of small coal mining entities that are affected by this rule.

V. Other Regulatory Analyses

A. Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875 (58 FR 58093), this final rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million. MSHA is not aware of any State, local, or tribal government that either owns or operates underground coal mines.

B. Executive Order 13132 (Federalism)

MSHA has reviewed this final rule in accordance with Executive Order 13132 (64 FR 43255) regarding federalism, and has determined that it does not have "federalism implications." The final rule will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." There are no underground coal mines owned or operated by any State governments.

C. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, 62 FR 19885, MSHA has evaluated the environmental health and safety effect of the final rule on children. The Agency has determined that the final rule will have no adverse effect on children.

D. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

In accordance with Executive Order 13175 (63 FR 27655), MSHA certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments. MSHA is not aware of any Indian tribal governments which either own or operate underground coal mines.

E. Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights)

This final rule is not subject to Executive Order 12630, 53 FR 8859, because it does not involve implementation of a policy with takings implications.

F. Executive Order 12988 (Civil Justice Reform)

The Agency has reviewed Executive Order 12988 (61 FR 4729) and determined that this final rule will not unduly burden the Federal court system. The final rule is written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, 66 FR 28355, MSHA has reviewed this final rule for its energy impacts. MSHA has determined that this final rule will not have any adverse effects on energy supply, distribution, or use.

H. Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in Chapter V of the REA, MSHA has determined that the final rule will not have a significant economic impact on a substantial number of small entities.

VI. Petitions for Modification

On the effective date of the final rule, all existing granted petitions for modification for belt air used to ventilate working places and/or areas where mining equipment is being installed or removed under § 75.350 and former § 75.326 in mines with sections developed using three or more entries will be superseded. Mine operators will thereafter be required to comply with the provisions of the final rule. All existing granted petitions for modification for two-entry mines will remain in effect and will not be superseded by this rule. Future two-entry mines must continue to file petitions to use belt air, since § 75.350(a) prohibits placing the conveyor belt in the return air course.

List of Subjects in 30 CFR Part 75

Mandatory safety standards, Mine safety and health, Underground coal mines, Ventilation.

Dated: March 22, 2004.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

■ Chapter I of title 30, part 75 of the Code of Federal Regulations is amended as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C 811.

■ 2. Amend § 75.301 by adding the following definitions:

§ 75.301 Definitions.

* * * * *

AMS operator. The person(s), designated by the mine operator, who is located on the surface of the mine and monitors the malfunction, alert, and alarm signals of the AMS and notifies appropriate personnel of these signals.

Appropriate personnel. The person or persons designated by the operator to perform specific tasks in response to AMS signals. Appropriate personnel include the responsible person(s) required by § 75.1501 when an emergency evacuation is necessary.

Atmospheric Monitoring System (AMS). A network consisting of hardware and software meeting the requirements of §§ 75.351 and 75.1103–2 and capable of: measuring atmospheric parameters; transmitting the measurements to a designated surface location; providing alert and alarm signals; processing and cataloging atmospheric data; and, providing reports. Early-warning fire detection systems using newer technology that provides equal or greater protection, as determined by the Secretary, will be considered atmospheric monitoring systems for the purposes of this subpart.

Belt air course. The entry in which a belt is located and any adjacent entry(ies) not separated from the belt entry by permanent ventilation controls, including any entries in series with the belt entry, terminating at a return regulator, a section loading point, or the surface.

Carbon monoxide ambient level. The average concentration in parts per million (ppm) of carbon monoxide detected in an air course containing carbon monoxide sensors. This average concentration is representative of the composition of the mine atmosphere over a period of mining activity during non-fire conditions. Separate ambient levels may be established for different areas of the mine.

* * * * *

Point feeding. The process of providing additional intake air to the belt air course from another intake air course through a regulator.

* * * * *

■ 3. Revise § 75.350 to read as follows:

§ 75.350 Belt air course ventilation.

(a) The belt air course must not be used as a return air course; and except as provided in paragraph (b) of this section, the belt air course must not be used to provide air to working sections or to areas where mechanized mining equipment is being installed or removed.

(1) The belt air course must be separated with permanent ventilation controls from return air courses and from other intake air courses except as provided in paragraph (c) of this section.

(2) The maximum air velocity in the belt entry must be no greater than 500 feet per minute, unless otherwise approved in the mine ventilation plan.

(3) Air velocities must be compatible with all fire detection systems and fire suppression systems used in the belt entry.

(b) Air from a belt air course may be used to ventilate a working section or an area where mechanized mining equipment is being installed or removed, provided the following additional requirements are met:

(1) The belt entry must be equipped with an AMS that is installed, operated, examined, and maintained as specified in § 75.351.

(2) All miners must be trained annually in the basic operating principles of the AMS, including the actions required in the event of activation of any AMS alert or alarm signal. This training must be conducted prior to working underground in a mine that uses belt air to ventilate working sections or areas where mechanized mining equipment is installed or removed. It must be conducted as part of a miner's 30 CFR part 48 new miner training (§ 48.5), experienced miner training (§ 48.6), or annual refresher training (§ 48.8).

(3) The average concentration of respirable dust in the belt air course, an intake air course, must be maintained at or below 1.0 mg/m^3. A permanent designated area (DA) for dust measurements must be established at a point no greater than 50 feet upwind from the section loading point in the belt entry when the belt air flows over the loading point or no greater than 50

feet upwind from the point where belt air is mixed with air from another intake air course near the loading point. The DA must be specified and approved in the ventilation plan.

(4) The primary escapeway must be monitored for carbon monoxide or smoke as specified in § 75.351(f).

(5) The area of the mine with a belt air course must be developed with three or more entries.

(6) In areas of the mine developed after the effective date of this rule, unless approved by the district manager, no more than 50% of the total intake air, delivered to the working section or to areas where mechanized mining equipment is being installed or removed, can be supplied from the belt air course. The locations for measuring these air quantities must be approved in the mine ventilation plan.

(7) Lifelines that meet the requirements of § 75.380(n) must be provided if return entries are used as alternate escapeways.

(c) Notwithstanding the provisions of § 75.380(g), additional intake air may be added to the belt air course through a point-feed regulator. The location and use of point feeds must be approved in the mine ventilation plan.

(d) If the air through the point-feed regulator enters a belt air course which is used to ventilate a working section or an area where mechanized mining equipment is being installed or removed, the following conditions must be met:

(1) The air current that will pass through the point-feed regulator must be monitored for carbon monoxide or smoke at a point within 50 feet upwind of the point-feed regulator;

(2) The air in the belt air course must be monitored for carbon monoxide or smoke upwind of the point-feed regulator. This sensor must be in the belt air course within 50 feet of the mixing point where air flowing through the point-feed regulator mixes with the belt air;

(3) The point feed regulator must be provided with a means to close the regulator from the intake air course without requiring a person to enter the crosscut where the point-feed regulator is located. The point-feed regulator must also be provided with a means to close the regulator from a location in the belt air course immediately upwind of the crosscut containing the point-feed regulator;

(4) A minimum air velocity of 300 feet per minute must be maintained through the point-feed regulator;

(5) The location(s) and use of a point-feed regulator(s) must be approved in the mine ventilation plan and shown on the mine ventilation map; and

(6) An AMS must be installed, operated, examined, and maintained as specified in § 75.351.

■ 4. Revise § 75.351 to read as follows:

§ 75.351 Atmospheric monitoring systems.

(a) *AMS operation.* Whenever personnel are underground and an AMS is used to fulfill the requirements of §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f), the AMS must be operating and a designated AMS operator must be on duty at a location on the surface of the mine where audible and visual signals from the AMS must be seen or heard and the AMS operator can promptly respond to these signals.

(b) *Designated surface location and AMS operator.* When an AMS is used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii). 75.350(b), 75.350(d), or 75.362(f), the following requirements apply:

(1) The mine operator must designate a surface location at the mine where signals from the AMS will be received and two-way voice communication is maintained with each working section, with areas where mechanized mining equipment is being installed or removed, and with other areas designated in the approved emergency evacuation and firefighting program of instruction (§ 75.1502).

(2) The mine operator must designate an AMS operator to monitor and promptly respond to all AMS signals.

(3) A map or schematic must be provided at the designated surface location that shows the locations and type of AMS sensor at each location, and the intended air flow direction at these locations. This map or schematic must be updated within 24 hours of any change in this information.

(4) The names of the designated AMS operators and other appropriate personnel, including the designated person responsible for initiating an emergency mine evacuation under § 75.1501, and the method to contact these persons, must be provided at the designated surface location.

(c) *Minimum operating requirements.* AMSs used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f) must:

(1) Automatically provide visual and audible signals at the designated surface location for any interruption of circuit continuity and any electrical malfunction of the system. These signals must be of sufficient magnitude to be seen or heard by the AMS operator.

(2) Automatically provide visual and audible signals at the designated surface location when the carbon monoxide concentration or methane concentration at any sensor reaches the alert level as specified in § 75.351(i). These signals must be of sufficient magnitude to be seen or heard by the AMS operator.

(3) Automatically provide visual and audible signals at the designated surface location distinguishable from alert signals when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in § 75.351(i). These signals must be of sufficient magnitude to be seen or heard by the AMS operator.

(4) Automatically provide visual and audible signals at all affected working sections and at all affected areas where mechanized mining equipment is being installed or removed when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in § 75.351(i). These signals must be of sufficient magnitude to be seen or heard by miners working at these locations. Methane signals must be distinguishable from other signals.

(5) Automatically provide visual and audible signals at other locations as specified in Mine Emergency Evacuation and Firefighting Program of Instruction (§ 75.1502) when the carbon monoxide, smoke, or methane concentration at any sensor reaches the alarm level as specified in § 75.351(i). These signals must be seen or heard by miners working at these locations. Methane alarms must be distinguishable from other signals.

(6) Identify at the designated surface location the operational status of all sensors.

(7) Automatically provide visual and audible alarm signals at the designated surface location, at all affected working sections, and at all affected areas where mechanized mining equipment is being installed or removed when the carbon monoxide level at any two consecutive sensors alert at the same time. These signals must be seen or heard by the AMS operator and miners working at these locations.

(d) *Location and installation of AMS sensors.* (1) All AMS sensors, as specified in §§ 75.351(e) through 75.351(h), must be located such that measurements are representative of the mine atmosphere in these locations.

(2) Carbon monoxide or smoke sensors must be installed near the center in the upper third of the entry, in a location that does not expose personnel working on the system to unsafe conditions. Sensors must not be located in abnormally high areas or in other

locations where air flow patterns do not permit products of combustion to be carried to the sensors.

(3) Methane sensors must be installed near the center of the entry, at least 12 inches from the roof, ribs, and floor, in a location that would not expose personnel working on the system to unsafe conditions.

(e) *Location of sensors—belt air course.* In addition to the requirements of paragraph (d) of this section, any AMS used to monitor belt air courses under § 75.350(b) must have sensors to monitor for carbon monoxide or smoke at the following locations:

(1) At or near the working section belt tailpiece in the air stream ventilating the belt entry. In longwall mining systems the sensor must be located upwind in the belt entry at a distance no greater than 150 feet from the mixing point where intake air is mixed with the belt air at or near the tailpiece;

(2) Upwind, a distance no greater than 50 feet from the point where the belt air course is combined with another air course or splits into multiple air courses;

(3) At intervals not to exceed 1,000 feet along each belt entry in areas where air velocities are maintained at 50 feet per minute or higher. In areas along each belt entry where air velocities are less than 50 feet per minute, the sensor spacing must not exceed 350 feet. All sensors must be installed at the 1,000-foot spacing no later than August 2, 2004.

(4) Not more than 100 feet downwind of each belt drive unit, each tailpiece transfer point, and each belt take-up. If the belt drive, tailpiece, and/or take-up for a single transfer point are installed together in the same air course they may be monitored with one sensor located not more than 100 feet downwind of the last component; and

(5) At other locations in any entry that is part of the belt air course as required and specified in the mine ventilation plan.

(f) *Locations of sensors—the primary escapeway.* When used to monitor the primary escapeway under § 75.350(b)(4), carbon monoxide or smoke sensors must be located in the primary escapeway within 500 feet of the working section and areas where mechanized mining equipment is being installed or removed. In addition, another sensor must be located within 500 feet inby the beginning of the panel. The point-feed sensor required by § 75.350(d)(1) may be used as the sensor at the beginning of the panel if it is located within 500 feet inby the beginning of the panel.

(g) *Location of sensors—return air splits.* (1) If used to monitor return air splits under § 75.362(f), a methane sensor must be installed in the return air split between the last working place, longwall or shortwall face ventilated by that air split, and the junction of the return air split with another air split, seal, or worked out area.

(2) If used to monitor a return air split under § 75.323(d)(1)(ii), the methane sensors must be installed at the following locations:

(i) In the return air course opposite the section loading point, or, if exhausting auxiliary fan(s) are used, in the return air course no closer than 300 feet downwind from the fan exhaust and at a point opposite or immediately outby the section loading point; and

(ii) Immediately upwind from the location where the return air split meets another air split or immediately upwind of the location where an air split is used to ventilate seals or worked-out areas.

(h) *Location of sensors—electrical installations.* When monitoring the intake air ventilating underground transformer stations, battery charging stations, substations, rectifiers, or water pumps under § 75.340(a)(1)(ii) or § 75.340(a)(2)(ii), at least one sensor must be installed to monitor the mine atmosphere for carbon monoxide or smoke, located downwind and not greater than 50 feet from the electrical installation being monitored.

(i) *Establishing alert and alarm levels.* An AMS installed in accordance with the following paragraphs must initiate alert and alarm signals at the specified levels, as indicated:

(1) For § 75.323(d)(1)(ii) alarm at 1.5% methane.

(2) For §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), and 75.350(d), alert at 5 ppm carbon monoxide above the ambient level and alarm at 10 ppm carbon monoxide above the ambient level when carbon monoxide sensors are used; and alarm at a smoke optical density of 0.022 per meter when smoke sensors are used. Reduced alert and alarm settings approved by the district manager may be required for carbon monoxide sensors identified in the mine ventilation plan, § 75.371(nn).

(3) For § 75.362(f), alert at 1.0% methane and alarm at 1.5% methane.

(j) *Establishing carbon monoxide ambient levels.* Carbon monoxide ambient levels and the means to determine these levels must be approved in the mine ventilation plan (§ 75.371(hh)) for monitors installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), and 75.350(d).

(k) *Installation and maintenance.* An AMS installed in accordance with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f) must be installed and maintained by personnel trained in the installation and maintenance of the system. The system must be maintained in proper operating condition.

(l) *Sensors.* Sensors used to monitor for carbon monoxide, methane, and smoke must be either of a type listed and installed in accordance with the recommendations of a nationally recognized testing laboratory approved by the Secretary; or these sensors must be of a type, and installed in a manner, approved by the Secretary.

(m) *Time delays.* When a demonstrated need exists, time delays may be incorporated into the AMS. These time delays must only be used to account for non-fire related carbon monoxide alert and alarm sensor signals. These time delays are limited to no more than three minutes. The use and length of any time delays, or other techniques or methods which eliminate or reduce the need for time delays, must be specified and approved in the mine ventilation plan.

(n) *Examination, testing, and calibration.* (1) At least once each shift when belts are operated as part of a production shift, sensors used to detect carbon monoxide or smoke in accordance with §§ 75.350(b), and 75.350(d), and alarms installed in accordance with § 75.350(b) must be visually examined.

(2) At least once every seven days, alarms for AMS installed in accordance with §§ 75.350(b), and 75.350(d) must be functionally tested for proper operation.

(3) At intervals not to exceed 31 days—

(i) Each carbon monoxide sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(d) must be calibrated in accordance with the manufacturer's calibration specifications. Calibration must be done with a known concentration of carbon monoxide in air sufficient to activate the alarm;

(ii) Each smoke sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(d) must be functionally tested in accordance with the manufacturer's calibration specifications;

(iii) Each methane sensor installed in accordance with §§ 75.323(d)(1)(ii) or 75.362(f) must be calibrated in accordance with the manufacturer's calibration specifications. Calibration must be done with a known concentration of methane in air sufficient to activate an alarm.

(iv) If the alert or alarm signals will be activated during calibration of sensors, the AMS operator must be notified prior to and upon completion of calibration. The AMS operator must notify miners on affected working sections, areas where mechanized mining equipment is being installed or removed, or other areas designated in the approved emergency evacuation and firefighting program of instruction (§ 75.1502) when calibration will activate alarms and when calibration is completed.

(4) Gases used for the testing and calibration of AMS sensors must be traceable to the National Institute of Standards and Technology reference standard for the specific gas. When these reference standards are not available for a specific gas, calibration gases must be traceable to an analytical standard which is prepared using a method traceable to the National Institute of Standards and Technology. Calibration gases must be within ±2.0 percent of the indicated gas concentration.

(o) *Recordkeeping.* (1) When an AMS is used to comply with §§ 75.323(d)(1)(ii), 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), 75.350(d), or 75.362(f), individuals designated by the operator must make the following records by the end of the shift in which the following event(s) occur:

(i) If an alert or alarm signal occurs, a record of the date, time, location and type of sensor, and the cause for the activation.

(ii) If an AMS malfunctions, a record of the date, the extent and cause of the malfunction, and the corrective action taken to return the system to proper operation.

(iii) A record of the seven-day tests of alert and alarm signals; calibrations; and maintenance of the AMS must be made by the person(s) performing these actions.

(2) The person entering the record must include their name, date, and signature in the record.

(3) The records required by this section must be kept either in a secure book that is not susceptible to alteration, or electronically in a computer system that is secure and not susceptible to alteration. These records must be maintained separately from other records and identifiable by a title, such as the 'AMS log.'

(p) *Retention period.* Records must be retained for at least one year at a surface location at the mine and made available for inspection by miners and authorized representatives of the Secretary.

(q) *Training.* All AMS operators must be trained annually in the proper operation of the AMS. A record of the content of training, the person conducting the training, and the date the training was conducted, must be maintained at the mine for at least one year by the mine operator.

(r) *Communications.* When an AMS is used to comply with § 75.350(b), a two-way voice communication system required by § 75.1600 must be installed in an entry that is separate from the entry in which the AMS is installed no later than August 2, 2004. The two-way voice communication system may be installed in the entry where the intake sensors required by §§ 75.350(b)(4) or 75.350(d)(1) are installed.

■ 5. Revise § 75.352 to read as follows:

§ 75.352 Actions in response to AMS malfunction, alert, or alarm signals.

(a) When a malfunction, alert, or alarm signal is received at the designated surface location, the sensor(s) that are activated must be identified and the AMS operator must promptly notify appropriate personnel.

(b) Upon notification of a malfunction, alert, or alarm signal, appropriate personnel must promptly initiate an investigation to determine the cause of the signal and take the required actions set forth in paragraphs (c), (d), or (e) of this section.

(c) If any sensor installed in accordance with §§ 75.340(a)(1)(ii), 75.340(a)(2)(ii), 75.350(b), or 75.350(d) indicates an alarm or if any two consecutive sensors indicate alert at the same time, the following procedures must be followed unless the cause of the signal(s) is known not to be a hazard to miners:

(1) Appropriate personnel must notify miners in affected working sections, in affected areas where mechanized mining equipment is being installed or removed, and at other locations specified in the § 75.1502 approved mine emergency evacuation and firefighting program of instruction; and

(2) All personnel in the affected areas, unless assigned other duties under § 75.1502, must be withdrawn promptly to a safe location identified in the mine emergency evacuation and firefighting program of instruction.

(d) If there is an alert or alarm signal from a methane sensor installed in accordance with §§ 75.323(d)(1)(ii) and 75.362(f), an investigation must be initiated to determine the cause of the signal, and the actions required under § 75.323 must be taken.

(e) If any fire detection components of the AMS malfunction or are inoperative, immediate action must be taken to return the system to proper operation. While the AMS component repairs are being made, operation of the belt may continue if the following conditions are met:

(1) If one AMS sensor malfunctions or becomes inoperative, a trained person must continuously monitor for carbon monoxide or smoke at the inoperative sensor.

(2) If two or more adjacent AMS sensors malfunction or become inoperative, a trained person(s) must patrol and continuously monitor for carbon monoxide or smoke so that the affected areas will be traveled each hour in their entirety, or a trained person must be stationed to monitor at each inoperative sensor.

(3) If the complete AMS malfunctions or becomes inoperative, trained persons must patrol and continuously monitor for carbon monoxide or smoke so that the affected areas will be traveled each hour in their entirety.

(4) The trained person(s) monitoring under this section must, at a minimum, have two-way voice communication capabilities with the AMS operator at intervals not to exceed 2,000 feet and report contaminant levels to the AMS operator at intervals not to exceed 60 minutes.

(5) The trained person(s) monitoring under this section must report immediately to the AMS operator any concentration of the contaminant that reaches either the alert or alarm level specified in § 75.351(i), or the alternate alert and alarm levels specified in paragraph (e)(7) of this section, unless the source of the contaminant is known not to present a hazard.

(6) Detectors used to monitor under this section must have a level of detectability equal to that required of the sensors in § 75.351(l).

(7) For those AMSs using sensors other than carbon monoxide sensors, an alternate detector and the alert and alarm levels associated with that detector must be specified in the approved mine ventilation plan.

(f) If the 50-foot per minute minimum air velocity is not maintained when required under § 75.351(e)(3), immediate action must be taken to return the ventilation system to proper operation. While the ventilation system is being corrected, operation of the belt may continue only while a trained person(s) patrols and continuously monitors for carbon monoxide or smoke as set forth in §§ 75.352(e)(3) through (7), so that the affected areas will be traveled each hour in their entirety.

■ 6. Redesignate § 75.371 paragraphs (ii) through (pp) to be paragraphs (qq) through (xx) and add new paragraphs (ii) through (pp) to read as follows:

§ 75.371 Mine ventilation plan; contents.

* * * * *

(ii) The locations (designated areas) where dust measurements would be made in the belt entry when belt air is used to ventilate working sections or areas where mechanized mining equipment is being installed or removed, in accordance with § 75.350(b)(3).

(jj) The locations where velocities in the belt entry exceed limits set forth in § 75.350(a)(2), and the maximum approved velocity for each location.

(kk) The locations where air quantities are measured as set forth in § 75.350(b)(6).

(ll) The locations and use of point-feed regulators, in accordance with §§ 75.350(c) and 75.350(d)(5).

(mm) The location of any additional carbon monoxide or smoke sensor installed in the belt air course, in accordance with § 75.351(e)(5).

(nn) The length of the time delay or any other method used to reduce the number of non-fire related alert and alarm signals from carbon monoxide sensors, in accordance with § 75.351(m).

(oo) The reduced alert and alarm settings for carbon monoxide sensors, in accordance with § 75.351(i)(2).

(pp) The alternate detector and the alert and alarm levels associated with the detector, in accordance with § 75.352(e)(7).

* * * * *

■ 7. Amend § 75.372 by revising paragraph (b)(16) to read as follows:

§ 75.372 Mine ventilation map.

* * * * *

(b) * * *

(16) The locations and type of all AMS sensors required by subpart D of this part.

* * * * *

■ 8. Amend § 75.380, by revising paragraph (g) and adding paragraph (n) to read as follows:

§ 75.380 Escapeway; bituminous and lignite mines.

* * * * *

(g) Except where separation of belt and trolley haulage entries from designated escapeways did not exist before November 15, 1992, and except as provided in § 75.350(c), the primary escapeway must be separated from belt and trolley haulage entries for its entire length, to and including the first connecting crosscut outby each loading point except when a greater or lesser distance for this separation is specified and approved in the mine ventilation plan and does not pose a hazard to miners.

* * * * *

(n) Alternate escapeways that are ventilated with return air from working sections or areas where mechanized mining equipment is being installed or removed that are ventilated with belt air in accordance with § 75.350(b) must be provided with a directional lifeline that must be:

(1) Installed from the working sections or areas where mechanized mining equipment is being installed or removed continuous to the surface escape drift opening or continuous to the escape shaft or slope facilities to the surface or to where this escapeway enters into intake air.

(2) Made of durable material.

(3) Marked with a reflective material every 25 feet.

(4) Located in such a manner for miners to use effectively to escape.

(5) Have directional indicators, signifying the route of escape, placed at intervals not exceeding 100 feet.

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Part III

Environmental Protection Agency

40 CFR Part 86

Emission Durability Procedures for New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Vehicles; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–7638–8]

RIN 2060–AK76

Emission Durability Procedures for New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking contains procedures to be used by manufacturers of light-duty vehicles, light-duty trucks, and some heavy-duty vehicles to demonstrate, for purposes of emission certification, that new motor vehicles will comply with EPA emission standards throughout their useful lives. Today's action proposes procedures to be used by manufacturers to demonstrate the expected rate of deterioration of the emission levels of their vehicles.

DATES: Written comments on this NPRM must be submitted on or before May 17, 2004. A public hearing will be held on April 19, 2004. Requests to present oral testimony must be received on or before April 12, 2004. If EPA receives no requests to present oral testimony by this date, the hearing will be canceled.

ADDRESSES: *Comments:* Comments may be submitted by mail to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0079. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. For more information submitting comments and on the comment procedure and public hearings, follow the detailed instructions as provided in Section V, "Public Participation" section. We must receive them by the date indicated under **DATES** above. Paper copies of written comments (in duplicate if possible) should also be sent to the general contact person listed below.

FOR FURTHER INFORMATION CONTACT: General Contact: Linda Hormes, Vehicle Programs and Compliance Division, U.S. EPA, 2000 Traverwood, Ann Arbor, Michigan 48105, telephone (734) 214–4502, E-mail: *hormes.linda@epa.gov.*

Technical Contact: Eldert Bontekoe, Vehicle Programs and Compliance Division, U.S. EPA, 2000 Traverwood, Ann Arbor, Michigan 48105, telephone: (734) 214–4442, E-mail: *bontekoe.eldert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of Certification Process, CAP 2000 History

Before a manufacturer may introduce a new motor vehicle into commerce, the manufacturer must obtain an EPA certificate of conformity indicating compliance with all applicable emission standards over the vehicle's useful life period. The useful life for cars and light trucks is currently 100,000 miles or 10 years, whichever occurs first; for heavy light trucks, medium duty passenger vehicles (MDPV) and complete heavy duty vehicles the useful life period is 120,000 miles or 11 years, whichever occurs first. [Section 202(d) of the Clean Air Act and 40 CFR 86.1805–04]

To receive a certificate, the manufacturer submits an application to EPA containing various information specified in the regulations, including emissions test data. EPA reviews the submitted information as well as any other relevant information, and issues a Certificate upon a determination that the manufacturer has demonstrated that its new motor vehicle will meet the requirements of the Clean Air Act (Act) and the regulations. [40 CFR 86.1848–01] A certificate of conformity is effective for only one model year, therefore, new vehicle certification must occur annually.

EPA's regulations detail the process motor vehicle manufacturers must follow to obtain EPA emissions certification. In 2000, EPA issued a comprehensive update to the certification regulations for light-duty vehicles and light-duty trucks.[1] These

[1] Separate certification regulations exist for heavy-duty highway vehicles and engines, which

certification regulations are known as "CAP 2000" (Compliance Assurance Program).[2] They include detailed procedures on the selection of vehicles for testing and testing procedure, specifications on the information that must be submitted to EPA, and other requirements pertaining to reporting and testing.

Issuance of a certificate is based on a determination by EPA that the vehicles at issue will conform with the applicable emissions standards. Compliance with the emissions standards requires that the vehicles meet the standards for the specified useful life period. A determination of compliance, therefore, must be based on an evaluation of both the performance of the vehicles' emissions control system when new, as well as performance over the entire time period of the vehicles' useful life.[3]

The process of predicting how and to what degree a vehicle's emission levels will change over its useful life period [emissions deterioration] as well as the robustness of the vehicle's emission-related components [component durability] is known as an emission durability demonstration.[4] Today's action specifies the methods that manufacturers must use to determine emissions deterioration for the purpose of certification. EPA is not proposing to change the existing regulations for determining emissions-related component durability.

Over the years, EPA has promulgated regulations prescribing several different emissions durability demonstration methods to fulfill EPA's need to determine compliance with emission standards over the vehicle's full useful life. The following is a short summary of this prior regulatory history, to put today's proposal in context.

B. Durability Demonstration Process History

1. Durability Demonstration Methods Used Prior to the CAP 2000 Regulations

Prior to CAP 2000, EPA's regulations (ref. 40 CFR part 86) specified the method to demonstrate a vehicle's emission durability. The method used a whole vehicle mileage accumulation cycle, commonly referred to as the Approved Mileage Accumulation (AMA) cycle. It required manufacturers to accumulate mileage on a pre-production vehicle, known as a durability data vehicle (DDV), by driving it over the prescribed AMA driving cycle for the full useful life mileage.[5] This was to simulate the real-world aging of the vehicle's emissions control systems over the useful life.

The DDV was tested in a laboratory for emissions at periodic intervals during AMA mileage accumulation, and a linear regression of the test data was performed to calculate a multiplicative deterioration factor (DF) for each exhaust constituent. Then, low mileage vehicles more representative of those intended to go into production (referred to as "emission data vehicles," or EDVs) were emission-tested. The emission results from these tests were multiplied by the DFs[6] to project the emissions levels at full useful life (referred to as the "certification levels"). The certification levels had to be at or below the applicable emission standards in order to obtain a certificate of conformity.

EPA was concerned about the ability of any fixed cycle—including the AMA cycle—to produce emission durability data that accurately predicted in-use deterioration for all vehicles. EPA had particular concerns that the AMA did not represent current driving patterns and did not appropriately age current design vehicles. In addition, manufacturers have long identified the durability process based on mileage accumulation using the AMA cycle as very costly and requiring extensive lead time for completion. As a result, EPA came to believe that the AMA had become outdated.[7]

The AMA cycle was developed before vehicles were equipped with catalytic converters. It contains a substantial portion of low speed driving, designed to address concerns about engine deposits. While engine deposits were a major source of emissions deterioration in pre-catalyst vehicles, the advent of catalytic converters, better fuel control, and the use of unleaded fuel shifted the causes of deterioration from low speed driving to driving modes which include higher speed/load regimes that cause elevated catalyst temperatures. The AMA driving cycle does not adequately focus on these higher catalyst temperature driving modes. It also contains numerous driving modes which do not significantly contribute to deterioration. This makes the process longer but adds little benefit in predicting emission deterioration.

In response to these concerns, EPA began a voluntary emission durability program in the 1994 model year for light-duty vehicles. This program allowed manufacturers to develop their own procedures to evaluate durability and deterioration subject to prior Agency approval.[8] EPA's approval criteria required the manufacturer to demonstrate that the durability procedures would cover a significant majority of in-use vehicle's emission deterioration.[9] One additional condition for approval was that the manufacturer conduct or fund an in-use test program to evaluate the effectiveness of its predictions. The initial program was referred to as revised durability program I (RDP I). It was an interim program scheduled to expire after the 1995 model year and was intended to serve as a bridge to an anticipated complete revision to the durability process. The provisions of RDP I were extended in a

refer to the light-duty certification procedures. Today's proposal will apply to those subsets of heavy-duty vehicles which use the same certification procedures as light-duty trucks. For convenience, the term "vehicle" or "motor vehicle" will be used in this preamble to mean those light-duty and heavy-duty motor vehicles subject to the proposed regulations.

[2] 63 FR 39654 (July 23, 1998).

[3] Since a certificate must be issued before the new vehicles may be introduced into commerce, the emissions testing and other relevant data and information used to support an application for a certificate are usually developed on pre-production prototypes.

[4] The durability demonstration program consists of two elements: Emission deterioration and component durability. Emission deterioration prediction is a process of predicting to what degree emissions will increase during the vehicles useful life. The deterioration factor (DF) is a measure of the deterioration. Component durability is a demonstration that the emission control components will not break and will continue to operate as described in the Application for Certification during the minimum maintenance interval proscribed in 40 CFR 1834–01. The component durability demonstration is conducted by the manufacturer using good engineering judgement.

[5] At the time this durability procedure was effective, the useful life mileage for light-duty vehicles was 100,000 miles. Refer to 40 CFR 86.1805–04 for current useful life mileage values.

[6] A multiplicative DF is calculated by performing a least-squares regression of the emission versus mileage data for each exhaust emission constituent and dividing the emission level at full useful life (historically, 100,000 miles) by the emission level at the 4,000 mile point.

[7] Reference: 63 FR 39653, 39659 (July 23, 1998) (CAP 2000 NPRM).

[8] EPA approved three types of emission durability programs under these procedures: whole vehicle, full mileage; whole vehicle, accelerated mileage; and bench aging procedures which involved thermal aging of the catalyst-plus-oxygen-sensor system.

[9] Reference EPA Guidance Letter No. CD–94–13, "Alternative Durability Guidance for MY94 through MY98", dated July 29,1994. This letter explained that as-received, un-screened in-use data should be compared to vehicles run on the alternative durability program (ASADP). A "significant majority" of the in-use data should be covered by the durability program. We defined the acceptance criteria in that letter as follows: "EPA does not require ASADPs to meet a specific minimum severity level (or confidence level) because different methods may be used to estimate the degree of severity. * * * However, an ASADP would be acceptable to EPA if EPA believes that it were designed to match the in-use deterioration of 90–95 percent of vehicles in the engine family."

series of regulatory actions.[10] Ultimately, the Agency instituted a comprehensive revision to the durability process as part of the CAP 2000 rulemaking.

For evaporative and refueling emissions deterioration, EPA allowed manufacturers to develop their own process to either bench age components or do whole vehicle aging, also subject to Agency review and approval. The evaporative and refueling deterioration factor is required to be additive.[11]

2. Emission Durability Procedures Under CAP 2000

The CAP 2000 rulemaking was a comprehensive update to the entire light-duty vehicle certification process. One part of this involved the manufacturer's required demonstration of emission durability. The Agency eliminated the use of AMA for new durability demonstrations. In CAP 2000, the Agency replaced the AMA-based durability program with a durability process similar to the optional RDP–I program. Each manufacturer, except small volume manufacturers, was required to develop an emission durability process which would accurately predict the in-use deterioration of the vehicles they produce. The manufacturer had the flexibility to design an efficient program that met that objective.

The manufacturer's plan was then reviewed by EPA for approval.[12] Approval from the Agency required a demonstration that the durability process was designed to generate DFs representative of in-use deterioration. This demonstration was more than simply matching the average in-use deterioration with DFs. Manufacturers needed to demonstrate to EPA's satisfaction that their durability process would result in the same or more deterioration than is reflected by the in-use data for a significant majority of their vehicles. Manufacturers were required to provide evidence that their durability process resulted in predicted emission deterioration that were equal to or more severe than the deterioration rates experienced by a significant majority (approximately 90%) of candidate in-use vehicles.[13] Furthermore, this demonstration was required to cover the breadth of the vehicles covered by the durability procedure.

This evaluation concerning coverage of a significant majority of the in-use data was usually made independently on several potential worst-case vehicles which bound the envelope of vehicles covered by the durability procedure. Manufacturers typically demonstrated that emission deterioration predicted by their durability program would cover approximately 90 percent of the in-use population using one (or more) of the following sources of data: in-use emission tests, in-use driving characteristics, or in-use catalyst temperature measurements. At that time EPA had not developed a specific required method to make this demonstration.

Two major types of durability processes emerged from the CAP 2000 experience: whole vehicle and bench aging processes.

The whole vehicle aging procedures involve driving vehicles on a track or dynamometer on an aggressive driving cycle of the manufacturer's design. In general, the speed, acceleration rates, and/or vehicle load are significantly increased compared to the AMA cycle or normal in-use driving patterns. The vehicle can be driven either for full useful-life mileage, or, for a higher stress cycle, the vehicle can be driven for a reduced number of miles (*e.g.*, 1 mile on the high speed cycle equals 2 miles in use). In either case, the vehicle is tested periodically and a DF is calculated.

The bench aging procedures involve the removal of critical emission components, such as the catalyst and oxygen sensor, and the accelerated aging of those components on an engine dynamometer bench.[14] During the bench aging process important engine/catalyst parameters are controlled to assure proper aging. Usually, elevated catalyst temperatures are maintained while fuel is controlled to include lean, rich, and stoichiometric control. Through a series of tests, manufacturers determine the amount of time needed to bench-age a catalyst so it is aged to the equivalent of 100,000 miles. In some cases the manufacturer developed the amount of aging time using catalyst temperature data measured on a road cycle. In other cases, the manufacturer developed the aging time through a trial and error process. Typical bench aging periods are 100–300 hours, although these can vary from manufacturer to manufacturer. Sources of deterioration other than thermal aging can be accounted for by aging the catalyst for an additional amount of time.

The CAP 2000 regulations allow manufacturers to choose from three different methods to demonstrate emissions durability. Manufacturers could calculate additive DFs, multiplicative DFs, or test EDVs with aged hardware[15] installed on them.

Regardless of whether manufacturers used whole vehicle or bench aging durability procedures, CAP 2000 also required the manufacturer to later collect emission data on candidate in-use vehicles selected under the provisions of the in-use verification program (IUVP).[16] Among other uses of the data, the IUVP data must be used by the manufacturer to check on and improve its durability program. The data also is available to assist the Agency to target vehicle testing for its recall program. The Agency may intercede[17] when the in-use data indicate the durability process underestimates in-use emission levels.

The CAP 2000 regulations did not change the previous procedures used to obtain DFs for evaporative/refueling families.

C. Ethyl Petition To Reconsider the CAP 2000 Rules

On August 17, 1999, Ethyl Corporation petitioned EPA to

[10] Ref. 59 FR 36368 (July 18, 1994), 62 FR 11082 (March 11, 1997), 62 FR 11138 (March 11, 1997) and 62 FR 44872 (August 22, 1997).

[11] An additive DF is calculated by performing a least-squares regression of the emission versus mileage data for each exhaust emission constituent and subtracting the 4,000-mile emission level from the full useful life emission level (historically, 100,000 miles). The DF is then used with emission data from the emission data vehicle to demonstrate compliance with the standards for the purpose of certification. The sum of the emissions from the EDV plus the additive DF is referred to as the certification level and must be less than or equal to the emission standard to receive a certificate of conformity.

[12] The CAP 2000 regulations "grand-fathered" procedures which had been already approved under the RDP provisions. Consequently, these grand-fathered procedures were not approved again under the CAP 2000 provisions. [63 FR.39661]

[13] Candidate in-use vehicles are vehicles selected under the provisions of the in-use verification program (IUVP). This includes mileage restrictions, procurement requirements, and screening requirements designed to eliminate only tampered, mis-used or unsafe vehicles. [Reference: 40 CFR 86.1845–01 and 40 CFR 86.1845–04]

[14] An engine dynamometer bench generally consists of an engine dynamometer, a "slave" engine, and required controllers and sensors to achieve the desired operation of the engine on the dynamometer.

[15] Under this alternative, emission components aged to the equivalent of full useful life would be installed on EDVs. The test data from the EDV would then serve to establish the certification level and show compliance with the full useful life emission standards.

[16] Reference: 40 CFR 86.1845–01 and 40 CFR 86.1845–04.

[17] The Agency may withdraw approval for a durability process if the Administrator determines, based on IUVP or other data, that the durability process does not accurately predict emission levels or compliance with the standards. [Ref. 40 CFR 86.1923–01 (h)]. In addition, where the average in-use verification data for a test group (or several test groups) exceeds 1.3 times the applicable emission standard and at least 50% of the test vehicles fail the standard in use, manufacturers are required to supply additional "recall quality" in-use data. [Ref. 40 CFR 86.1846–01]

reconsider the CAP 2000 regulations. EPA requested public comment on the petition, 64 FR 60,401 (November 5, 1999 and 64 FR 70,665 (December 17, 1999), and received comments from various interested parties. After consideration of the petition and of all comments, EPA denied the petition for reconsideration. 66 FR 45,777 (August 30, 2001).

Ethyl Corporation also petitioned the Agency to reconsider the final rule entitled "Emissions Control, Air Pollution From 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Light-Duty On-Board Diagnostics Requirements, Revision; Final Rule," 65 FR 59896–59978 (referred to here as the "Heavy Duty Rule"). After consideration of the petition and all of the comments, EPA denied the petition for reconsideration. 66 FR 45,777 (August 30, 2001).

D. Judicial Review of the CAP 2000 Rules

Ethyl Corporation petitioned for review of the CAP 2000 rulemaking, claiming among other things that the CAP 2000 durability provisions were unlawful as EPA had not promulgated methods and procedures for making tests by regulation as required by § 206. [*Ethyl Corp.* v. *EPA*, 306 F.3d 1144 (D.C. Cir. Oct. 22, 2002).]

In an opinion issued on October 22, 2002, the Court found that the CAP 2000 regulations did not satisfy the requirements of Section 206(d) of the CAA to establish methods and procedures for making tests through regulation.

The Court recognized that there was an important distinction between an EPA regulation that established general or vaguely articulated test procedures, with more specific details provided in a later proceeding, and a regulation which failed to establish any test procedures at all and only adopted procedures for the later development of tests. The former situation would receive deferential judicial review under the applicable case law. The latter case, however, would fail to meet the requirements of section 206(d). The Court held that the CAP 2000 regulations fell into this latter group, and were improper because EPA itself failed to establish any test procedures at all in the regulation, vaguely articulated or not. EPA's regulation provided only for the manufacturer to develop its own test procedure and submit it for later EPA approval. This was inconsistent with the scope of section 206(d), [*Ethyl* at 1149–50.]

The Court also said that "nothing in our opinion requires that EPA use only a 'one-size-fits-all' test method. All that is required is that it establish its procedures, no matter how variegated, 'by regulation.'" [*Ethyl* at 1150.]

The Court's decision stated that "CAP 2000, rather than constituting an EPA establishment 'by regulation' of 'methods and procedures for making tests,' as required by section 206(d), is instead a promulgation of criteria for the later establishment of such methods and procedures by private negotiation between the EPA and each regulated auto maker. So it is 'not in accordance with law.'" The Court vacated "the CAP 2000 program" and remanded the case to the EPA with instructions to establish test methods and procedures by regulation. [*Id.*]

Since the issue before the Court was the legality of EPA's adoption of the CAP 2000 durability provisions, the court's vacature of "the CAP 2000 program" is limited to vacating the CAP 2000 durability provisions.

The Court also remanded the case to EPA with instructions to establish test methods and procedures by regulation. Today's proposal is the result of the court's decision, and is limited to emission durability procedures.

II. How Did EPA Develop the Proposed Durability Procedures?

The process and data used to develop the proposed durability procedures is discussed below. Additional data and analysis used by EPA in the regulation development process are contained in the Agency's Draft Technical Support Document (TSD).

A. What Is the Purpose of the Durability Program?

EPA issues certificates of conformity based on testing and other information submitted by manufacturers which verifies compliance with the applicable emission standards over the vehicles' useful life. The durability program is the tool used to adjust low mileage test results from emission data vehicles (EDV's) to predict emission results at full useful life mileage.

The purpose of the durability program is to provide EPA with reasonable assurance that vehicles covered by a certificate of conformity will, in actual use, comply with the applicable emission standards over their useful life. We believe that the durability process used to support an application for certification should cover a significant majority of in-use vehicles that will be covered by that certificate. In the CAP 2000 rulemaking, EPA established the requirement that manufacturers demonstrate the "adequacy of [their] durability processes to effectively predict emission compliance for candidate in-use vehicles.[18]" This objective remains in today's proposal.

Production variability or other reasons can lead to differences in actual emission levels among vehicles of the same nominal design. In the CAP 2000 rulemaking, EPA required that a durability program adequately predict emission deterioration for a significant majority of in-use vehicles. This was typically approximately 90 percent coverage of the distribution.[19] In today's proposal we are taking the same approach, such that a durability program is expected to effectively predict a "significant majority", meaning coverage of approximately 90 percent of the distribution of in-use emission levels and deterioration.

In summary, the objective of the durability program is to effectively predict in-use emission deterioration rates and emission levels by covering the significant majority, meaning approximately 90 percent, of the distribution of emission deterioration of candidate in-use vehicles of each vehicle design which uses the durability program.

A durability group[20] can include several different vehicle designs which may have different emission levels and deterioration rates. In the CAP 2000 rulemaking, EPA required that the durability data vehicle (DDV) be the vehicle with the highest expected emission deterioration of the vehicles within the durability group [ref. 86.1820–01]. (We are not proposing to change the DDV selection criteria in this rulemaking.)

The durability program is used to calculate certification levels either by applying DFs to EDV low-mileage test data or by testing EDVs with aged emission control hardware installed. EPA issues a certificate when the certification levels of the EDV comply with the emission standards. Manufacturers normally design with an additional compliance margin between the standard and the certification level, to address various uncertainties. Especially for EDVs with certification levels at or just under the standards, we believe it is important to have some level of assurance that those levels are indeed predicting the full useful life emission levels of the significant

[18] Ref. 40 CFR 86.1823–01(b)(1). The term "candidate in-use vehicles" means vehicles which would meet the selection criteria of the in-use verification program (IUVP)).

[19] Ref. 63 FR 39660 (July 23, 1998).

[20] A durability group is the basic classification unit of a manufacturer's product line as defined in § 86.1822–01.

majority of in-use vehicles covered by the certificate.

B. What Are the Factors That Affect Exhaust Emission Deterioration?

The first step in developing an exhaust durability program is identifying the significant sources of emission deterioration. Emission levels will increase over mileage if either (1) the engine-out emissions [21] of the engine increase or (2) the effectiveness of the exhaust after-treatment devices decreases.

For all current-design light- and heavy-duty vehicles (excluding diesel-fueled vehicles) the catalytic converter is the only exhaust after-treatment device in use.[22] EPA presented evidence in its draft technical support document for the CAP 2000 proposal [23] that engine-out emissions exhibit no significant deterioration for these current technology vehicles. This conclusion is also supported by an Society of Automotive Engineers (SAE) paper.[24] Consequently, the Agency believes that engine-out emission increase is not a significant source of emission deterioration. Whatever minor level of deterioration may occur as a result of engine-out emission increases, it can be represented by an additional amount of catalyst aging.

The major source of emission deterioration in current technology vehicles today is the loss of catalyst efficiency. The two major sources of this efficiency loss are accumulated thermal exposure and poisoning. Minor sources of deterioration include coating of the catalyst substrate with fuel impurities, and physical deterioration of the catalysts such as the loss of catalytic material. Loss of effective fuel control due to deterioration of the oxygen sensor can also lead to lower catalyst efficiency as the vehicle ages and, therefore, to increased emission deterioration.

The sources of catalyst poisoning are compounds contained in the fuel and in the lubricating oil (chiefly lead (Pb), phosphorus (P), and sulfur (S)). EPA has made significant strides to reduce poisons in fuels by fuel regulation, including regulations that have eliminated lead and significantly reduced sulfur levels in automobile fuels. The Alliance of Automobile Manufacturers (the "Alliance") has conducted periodic surveys of fuel used across the United States which have documented the extent of these reductions. Manufacturers generally use representative commercially-available fuel for testing and mileage accumulation on durability data vehicles. They are required to do so [25] for mileage accumulation on EDVs. Lubrication oils have also improved over the years. While EPA does not regulate the oils, the American Petroleum Institute (API) together with the International Lubrication and Standardization and Approval Committee (ILSAC) have developed voluntary oil certification levels and evaluation procedures. Only oils with the best certification levels are allowed to use the API "star-burst" certification mark in packaging and advertisement. Over the years, API and ILSAC have established lower levels of phosphorous with new levels of oil certification. Today the most advanced oils are designated as GF3. Market forces have proven sufficient to encourage manufacturers to market oils that meet the latest API/ILSAC requirements. Today, almost all of oil used in automobile applications meet the GF3 oil specifications. The advances in oil and fuel formulation have reduced poisoning of the catalyst but have not eliminated it.

Exposure to high temperatures leads to three major deterioration mechanisms in catalysts. First, high temperatures cause the coalescence of active material, called sintering. Sintering reduces the surface area available to perform catalytic reactions. This then reduces the effectiveness of the catalyst. Second, loss of wash-coat surface area is also accelerated at high temperatures. The loss of wash-coat surface area is an indirect cause of active material sintering. Finally, high temperatures can promote chemical reaction of one type of active material with another type of active material (such as the formation of Pt Pd alloy) and with other compounds in the catalyst (such as the formation of Pt Ni alloy). In their new chemical state the active material is less effective at reducing emissions. It has been widely reported in the technical literature that the effects of high catalyst temperature are cumulative and generally increase exponentially with increased temperature.[26]

It is also reported in the technical literature that the air/fuel (A/F) ratio in the catalyst can affect the rate of thermal deterioration.[27] The same temperature exposure experienced during lean catalyst A/F ratio causes significantly more deterioration than at rich or stoichiometric operation.

Three-way catalysts are only simultaneously effective at oxidizing hydrocarbons (HC) and carbon monoxide (CO) and reducing oxides of nitrogen (NO_X) in a very narrow window of catalyst A/F ratio near stoichiometry.[28] To maintain the A/F ratio control needed to assure high catalyst efficiency, all modern gasoline vehicles use feed-back fuel control. The feed-back control system uses an oxygen sensor located just in front of the first catalyst to monitor whether the instantaneous A/F ratio is rich or lean and a computer engine controller to adjust the fuel system (in the opposite direction) to move towards stoichiometry. Although the A/F ratio may be sightly rich or lean at any given second, on a time-averaged basis the feed-back fuel system is able to control the fuel to very near stoichiometric levels. The oxygen sensor is the critical part of this system and is subject to the same sources of deterioration as the catalyst—thermal exposure, poisoning, physical deterioration, and coating.

Physical deterioration of the catalyst or oxygen sensor such as cracking or loss of the catalyst substrate, are rare events that typically occur because of a faulty design. These concerns are addressed by the component durability feature of the durability program. Under the component durability provisions, manufacturers are responsible to demonstrate using good engineering judgement that all emission related components are durable in the operating environment they will experience throughout the vehicle's useful life.

[21] Engine-out emissions are the engine's emissions before they are treated by the catalytic converter or other after-treatment emission control devices.

[22] Issues related to emissions deterioration for diesel-fueled vehicles are discussed in section II E.

[23] The technical support document for CAP 2000 proposal can be viewed in docket number A–96–50. The data that supports stable engine-out emissions is contained in Appendix I of that document.

[24] Reference: "In-Use Emissions with Today's Closed-Loop Systems" by H. Haskew and T. Liberty of General Motors, SAE No. 910339.

[25] Reference: 40 CFR 86.113–04(a)(3) or 40 CFR 86.113–94(a)(2).

[26] References: "Thermal Effect on Three-Way Catalyst Deactivation and Improvement" by K. Ihara, K. Ohkubo, and Y. Niura of Mazda, SAE No. 871192 and "High Temperature Deactivation of Three-Way Catalyst" by L. Carol, N. Newman, and G. Mann of General Motors, SAE No. 892040.

[27] References: "Effect of High Temperatures on Three-Way Automobile Catalysts" by R. H. Hammerle and C. H. Wu of Ford, SAE No. 840549; "Thermal Effect on Three-Way Catalyst Deactivation and Improvement" by K. Ihara, K. Ohkubo, and Y. Niura of Mazda, SAE No. 871192, and "Thermal Deterioration Mechanism of Pt/Rh Three-Way Catalysts" by S. Matsunaga, K. Yokota, D. Hyodo, T.Suzuki, and H. Sobukawa of Toyota, SAE No. 982706.

[28] Reference: "Operational Criteria Affecting the design of Thermally Stable Single-Bed Three-Way Catalysts" by B. Cooper and T. Truex of Johnson Matthey, SAE No. 850128.

Coating of the catalyst substrate or the oxygen sensor generally occurs due to contaminants in the fuel. These contaminants are not part of the fuel formulation, but occur by accident due to mishandling of fuel in the distribution process. Coating caused by contaminants in the fuel is beyond the scope of the durability program. On-the-other hand, coating of the oxygen sensor may also occur due to installation of the oxygen sensor with an improper anti-seize compound that contains material that coats the oxygen sensor in actual use. Coating of the oxygen senor in this case should be addressed during the component durability portion of the durability process.

C. The Strawman Durability Procedures

In preparing this proposal, EPA initially developed "strawman" durability procedures. The strawman durability procedures contained both whole-vehicle and bench aging procedures. A copy of the strawman durability procedure is contained in the TSD. The following discussion summarizes the strawman durability procedures and the development rationale for those procedures.

The strawman proposal was used to solicit feedback from key stakeholders. Today's proposal is based on the strawman durability procedures with adjustment reflecting our response to the comments we received from vehicle manufacturers, emission control equipment manufacturers, and Ethyl Corporation.

1. The Whole-Vehicle Aging Procedure

Sources of emission deterioration on a road cycle.

Whole-vehicle aging consists of running the entire vehicle on a track or engine dynamometer. The vehicle is driven on a road cycle which usually consists of a speed-versus-time trace with specified acceleration rates, fuel properties, and vehicle load. Vehicles aged using whole-vehicle aging procedures experience: (1) Catalyst thermal deterioration due to the heat generated in the catalyst during vehicle operation, (2) poisoning of the catalyst due to the consumption of fuel and lubrication oil, (3) degradation of the accuracy of fuel control, and (4) engine-out emission deterioration. Of these four sources of deterioration, catalyst temperature exposure is the predominant source and the easiest to control. Consequently, once a road cycle has been established that has a reasonable amount of poisoning, fuel control deterioration (typically from the oxygen sensor), and engine-out emissions deterioration, catalyst temperature exposure can be used to adjust the severity of the driving cycle to meet the desired objective.

Poisoning is basically a function of number of miles run and the type and amount of the fuel and lubricating oil which is consumed. Engine-out emission deterioration is largely a function of miles run, but as discussed previously, engine-out emission deterioration is thought to be near zero. If the road cycle incorporates the full number of useful life miles and the fuel and oil used are representative of in-use, poisoning and engine-out deterioration should be appropriately accounted for.

As previously discussed, oxygen sensor deterioration is a function of thermal exposure, poisoning, physical deterioration and coating. As discussed above, coating and physical deterioration are rare and more properly addressed by the component durability provisions than the emission deterioration procedures that are the subject of this proposal. Poisoning is caused from ingested oil and compounds in the fuel burned in the engine, the same sources of poisons experienced by catalysts. Addressing the poisoning issues for catalysts will address the same poisoning concerns for oxygen sensors because the sensors are in the same exhaust stream as the catalyst and will experience the same poisons as the catalyst. The remaining source of deterioration of oxygen sensors is thermal exposure. Since oxygen sensors are installed near the catalyst in the exhaust stream they experience the same heat transfer effect from the hot exhaust stream as the catalyst. Consequently, appropriate control of catalyst temperature during the road cycle will lead to appropriate oxygen sensor deterioration.

Higher catalyst temperatures occur at higher engine speed and engine load. Engine speed and load are higher when vehicle speed, acceleration rates, and vehicle loading are higher. Consequently the speed and acceleration distribution of a road cycle will determine the amount of catalyst temperature and oxygen sensor deterioration.

Developing a standard road (SRC) cycle to achieve the durability objective.

An appropriate road cycle is one that meets the severity objective for the mileage accumulation cycle. As discussed previously, the objective of EPA's proposed durability program is to effectively cover a significant majority (approximately 90 percent) of the distribution of in-use emission deterioration of candidate in-use vehicles across the entire fleet of vehicles covered by the durability program. In developing a standard road cycle applicable to all manufacturers, the objective encompasses the entire fleet of vehicles.

Once the test vehicle is selected and the vehicle load and fuel specifications are fixed, the only variable remaining that can influence the severity of a road cycle is the speed-versus-time distribution of the cycle. Simply matching the speed and acceleration distribution of typical or average in-use driving is not appropriate, because our objective is ninety percent coverage of the in-use emission deterioration. Average in-use driving speeds and accelerations represent only fifty percent coverage. Matching the driving speed and acceleration of the ninetieth percentile driver would not automatically accomplish that objective by itself, because there are additional variables in actual driving that influence the work performed by the engine and, consequently, the rate of emission deterioration. In-use driving includes operating the vehicle on various road surfaces (such as gravel and rough roads), over various road grades (up or down hills), in various weather conditions (cold, hot, raining, snowing, and winds), and with various accessories in operation (such as air conditioning, defroster, and headlights). Directionally, all of these additional variables result in additional engine work, and consequently lead to higher catalyst temperatures and more emission deterioration than operating the vehicle at the same speed-versus-time trace on a smooth, level track or on a dynamometer.

Strawman road cycle.

EPA developed a strawman version of a standard road cycle based the data available at that time. EPA reviewed speeds and acceleration rates that are typically encountered in-use[29] and extrapolated what speeds and acceleration might be typical for the ninetieth-percentile driver. As discussed previously, EPA believed that the appropriate speed and accelerations should be higher than the ninetieth-percentile driver due to additional variables seen in actual driving that affect deterioration. EPA also reviewed the speeds and acceleration rates used by manufacturers' road cycles previously approved by EPA under the CAP 2000 regulations (or approved under the RDP process and subsequently grand-fathered into the

[29] Reference: "Federal Test Procedure Review Project: Preliminary Technical Report", EPA publication no. 420–R–33–007.

CAP 2000 program) [30]. To be approved under CAP 2000 or the RDP program, as applicable, the manufacturers provided information that EPA believed showed that these cycles covered the significant majority, approximately 90 percent, of the distribution of emission deterioration rates seen in-use on their vehicles. This would cover deterioration from in-use speeds, accelerations, other driving conditions, vehicle load, fuel, and the like. EPA developed speeds and acceleration rates for the strawman standard road cycle in the high range of severity compared to the manufacturer-specific cycles, because the standard EPA cycle was to cover the entire fleet of vehicles while the individual manufacturer's cycle was targeted to only cover the breadth of their specific product line. Consequently, the strawman standard road cycle was conservative and targeted at a higher degree of severity than most manufacturer cycles.

The road cycle developed for the strawman durability procedures is described in the technical support document for this rule.

At the time the strawman road cycle was being developed EPA did not have any catalyst time-at-temperature data measured on this cycle. This data became available as part of the comments received on the durability strawman proposal. As we will discuss in section II.D., we ultimately revised the strawman road cycle to better achieve our durability target based on this catalyst time-at-temperature data. That revised cycle became the standard road cycle that we are proposing today.

Early termination of mileage accumulation.

One concern with performing mileage accumulation on a whole vehicle over its full useful life period is the amount of time it takes. In the strawman road cycle, running a vehicle for 100,000 miles was estimated to take about 103 days.[31] For Tier 2 vehicles with full useful life periods of 120,000 or 150,000 miles the time would be even higher (120 and 147 days, respectively).

The strawman whole-vehicle procedure contained a provision allowing manufacturers to terminate mileage accumulation early at a minimum of 75% of full useful life, and to project the full useful life deterioration factors using the upper 80% statistical confidence limit. This provision is similar to one contained in the RPD I regulations with the added limitation of using the upper 80th% confidence limit. [Ref. § 40 CFR 86.094–26(a)(4)(i)(B)] It allows manufacturers to reduce the time and money associated with full useful life mileage accumulation. At the same time, it protects the integrity of the deterioration factor by requiring that a higher than average (upper 80% statistical confidence limit [32]) DF be projected.

Customization of strawman road cycle.

We did not include provisions allowing customization of the strawman road cycle, other than to allow for early termination, as discussed above. Before considering customization, EPA needed more information, including data, on whether or not the strawman road cycle would achieve the durability objective discussed in II B.1 below. In the strawman proposal, we requested manufacturers to provide catalyst time-at-temperature data on the road cycle and the manufacturer's approved CAP 2000 durability cycle. We did receive some comparative catalyst data and other comments on the strawman proposal, discussed below, which led us to conclude that it would be appropriate to propose approval criteria allowing customization of the standard road cycle or alternative road cycles.

2. The Bench Aging Procedures

Background.

Bench aging procedures generally involve removing critical emission components, such as the catalyst and oxygen sensor, from the DDV and aging those components in an accelerated manner on an aging bench. The aged components are then either reinstalled on the DDV and emission tests are conducted to calculate a DF, or the EDV is tested with aged components which are directly installed on the test vehicle. In the latter case, the results of EDV testing are used to represent the certification levels without the need to calculate a DF. The objective of the bench aging procedure is to produce the desired target level of deterioration in a much shorter period of time than running a vehicle on a road cycle. If the bench aging is properly conducted then it will yield equivalent results to whole-vehicle aging.

Sources of emission deterioration on the aging bench.

As previously discussed, catalyst thermal exposure is the predominant source of emission deterioration. Temperature exposure of the catalyst can be more conveniently controlled on an aging bench than other sources of deterioration. On the catalyst aging bench, other sources of deterioration can be accounted for by increasing the amount of thermal aging of the catalyst.

Degradation of the fuel control systems is one additional source of deterioration. It can lead to reduced efficiency of the catalyst and, therefore, to increased emission deterioration. In the modern feed-back fuel system the oxygen sensor is the critical emission control component. The oxygen sensor deteriorates due to accumulated thermal exposure as well as other reasons. As with the catalyst, thermal aging of the oxygen sensor can be used to represent all the sources of deterioration of the oxygen sensor.

Using the bench procedures to replicate the emission deterioration seen on the road cycle.

In summary, a bench aging procedure can use thermal aging of the catalyst-plus-oxygen-sensor [the "catalyst system"] as a surrogate for whole-vehicle aging. By selecting the proper temperatures, amount of aging time, and mix of A/F ratios, the bench aging procedure can be designed to match the rate of deterioration predicted by a whole-vehicle aging cycle, and meet the in-use emission performance design objectives expected of the durability program.

The effects of temperature exposure on the catalyst are cumulative and increase exponentially with the temperature. Consequently, it is possible to replace a long period of catalyst exposure at a certain temperature with a shorter period of time at a higher temperature. By applying this principle over the entire range of catalyst temperature exposure, it is possible to represent the entire lifetime of catalyst temperature exposure as a much shorter period of time at a single elevated reference temperature.

Determining the aging time on the bench.

In 1889, the Swedish scientist Svent Arrehenius developed a theoretical formula, which came to be known as the Arrehenius equation, which relates chemical reaction rates with temperature. The Arrehenius equation is widely cited in chemical technical literature and it is noted that "most chemical reactions closely follow" [33] the equation. For our strawman procedure, we developed a version of the Arrehenius equation, called the Bench

[30] Several approved manufacturer road cycles are discussed in the TSD.

[31] Assuming a 22 hour workday, it would take 89 days to drive the full useful life miles and 14 days to perform the needed emission tests, for a total of 103 days.

[32] The 80% statistical confidence limit means that 80% of the time the real deterioration rate would be lower than the extrapolated value.

[33] Reference: *General Chemistry*, by D. Ebbing and M. Wrighton, published in 1990 by Houghton Mifflin Co., Boston.

Aging Time (BAT) equation. The BAT equation compares the deterioration rates that occur at two different temperatures. The BAT equation allows us to convert a given amount of aging time at one temperature to a lesser time at a higher temperature while maintaining the same degree of emission deterioration.

Since the implementation of the RDP I regulations, beginning in the 1993 model year, EPA has been evaluating the applicability of the BAT equation to durability demonstrations and experimenting with different coefficients for the equation. EPA also has been approving manufacturer-designed durability procedures under the RDP I and CAP 2000 procedures. As part of the approval process, EPA required catalyst temperature histograms [34] of both the manufacturer's procedures and the 70-mph AMA.[35] EPA used this data to compare the severity of the AMA and the manufacturer's cycles. In general, we found that the BAT equation predicted a similar ratio of severity (the manufacturer's cycle divided by the AMA) for different manufacturers. Also, EPA noted that some manufacturers were also basing their bench cycle aging time calculations on similar principles as the Arrehenius equation and that they had developed coefficients similar to the ones we were using with the BAT equation. The BAT equation that EPA developed for the strawman durability process is discussed in the Technical Support Document for this rule.

To use the BAT equation to select the bench aging time for a given temperature, it is necessary to start with a known distribution of time-at-temperatures for the catalyst. The strawman version of the standard road cycle was designed to replicate the appropriate level of aging and it specifically targeted catalyst temperature as a method to accomplish the aging. Consequently, the distribution of catalyst time at temperature data on the standard road cycle is an appropriate target for a standard bench aging procedure. Therefore, the strawman durability program used catalyst temperature histograms run on the standard road cycle on the DDV configuration as input to the BAT equation to determine the bench aging time and temperature.

The BAT equation and the Arrehenius equation upon which it is based assume that deterioration is determined strictly based on time-at-temperature. However, as discussed previously, the A/F ratio in the catalyst can significantly affect the rate of deterioration that occurs for the same temperature exposure. Catalyst deterioration is highest when the A/F ratio of the catalyst is lean.

One approach to address the effect of A/F ratio on aging is to separate the aging time into the three A/F ratio regimes; rich, stoichiometry, and lean; and consider each sub-set separately. Another approach would be to control the proportion of rich/stoichmetric/lean operation during bench aging and use a composite value of the catalyst thermal reactivity coefficient [36] (R–value) based on that distribution in the BAT equation. Since EPA developed the R–value using this composite approach, this is the option we chose for the strawman durability program.

Another variable that effects deterioration is poisoning. Little poisoning occurs on the bench cycle because the duration of the test is short (typically 100 to 300 hours). Consequently, only a limited amount of fuel is used and little lubrication oil is consumed by the engine. Nevertheless, although the effect is small, it is important to specify the fuel used. The strawman procedure specified the fuel as normal mileage accumulation fuel, which is representative of commercially available fuel. The strawman procedures did not discuss specifications for the oil to be used on the bench engine. Today's proposal requires that the oil used in the bench engine is to be selected using good engineering judgement.

Controlling the A/F ratio on the bench [the strawman bench cycle].

For the BAT equation to work properly, it is necessary to have an appropriate and fixed mix of A/F ratios experienced in the catalyst. This pre-determined mix of A/F ratios in the catalyst on the aging bench is called the "bench cycle". The technical literature [37] discusses one bench cycle, called RAT A, that has been used to age catalysts on an aging bench. This bench cycle is also used by several manufacturers in their own procedures to conduct bench aging.

The proportion of rich/stoichiometric/lean A/F ratios on the RAT A cycle follows the general trend of A/F ratios seen in the catalyst in use.[38] The RAT A cycle has mostly stoichiometric A/F ratios with a small amount of lean and an even smaller amount of rich operation. The bench cycle does not need to exactly replicate what happens in use, in fact the RAT A cycle does not replicate typical in-use A/F ratios. The BAT equation, with the proper coefficients, will adjust aging time on that bench cycle to assure that the correct amount of aging occurs. EPA developed the proposed BAT coefficients using catalyst time-at-temperature data measured on the RAT A cycle. The purpose of the bench cycle is to establish a fixed cycle of A/F ratios on the bench to eliminate A/F ratio as an uncontrolled variable. By developing a fixed bench cycle, the reference temperature of the cycle and catalyst time-at-temperature data are the remaining independent variables to determine aging time on the bench. The bench cycle established in the strawman durability program is a slightly modified version of this RAT A cycle where the time at rich and lean operation was rounded to an even number of seconds.

The strawman durability program bench cycle consists of a 60–second cycle which is defined as follows based on the A/F ratio of the engine (which is part of the aging bench) and the rate of secondary air injection (shop air which is added to the exhaust stream in front of the first catalyst):

01 to 40 secs:
  14.7 A/F, no secondary air injection
41 to 45 secs:
  13.0 A/F ratio, no secondary air injection
46 to 55 secs:
  13.0 A/F ratio, 4% secondary air injection
56 to 60 secs:
  14.7 A/F ratio, 4% secondary air injection

Strawman bench aging procedures and equipment

The BAT equation uses a specific reference temperature to perform the bench aging time calculation. Because

[34] Ref. Advisory Circular No. 17–F (November 16, 1982).

[35] The 70 mph AMA is the original AMA promulgated in Appendix IV to Part 86 in 1977. It has a high speed on lap 11 of 70 mph. By policy, EPA had allowed manufacturers to use lower speeds (as low as 55 mph) on lap 11 of the AMA in response to the 55 mph National Speed Limit which was enacted after promulgation of the AMA cycle in the appendix.

[36] The catalyst thermal reactivity is the "R–Factor" in EPA's proposed BAT equation to calculate the bench aging time. It is a measure, determined experimentally, of how sensitive the catalyst is to high temperature exposure. The BAT equation is discussed in more detail in section III of the preamble.

[37] The RAT A cycle is referenced in "Application of Accelerated Rapid Aging Test (RAT) schedules with Poisons" by D. Ball, A Mohammed, and W. Schmidt of Delphi, SAE No. 972846; "A Survey of Automotive Catalyst Technologies using Rapid Aging Test Schedules which Incorporate Engine Oil Derived Poisons" by D. Ball, and C. Kirby of Delphi, SAE No. 973050; and "The Effects of Oil Derived Poisons on Three-Way Catalyst Performance" by D. Lafyatis, R. Petrow, and C. Bennet of Johnson Matthey, SAE No. 2002–01–1093.

[38] The TSD presents a study of rich/stoichiometry/lean A/F percentages provided by a manufacturer on one of their vehicles.

the catalyst temperature varies during the bench cycle, the strawman durability program included experimental procedures to determine the effective reference temperature for the bench cycle. The effective temperature was calculated using the BAT equation and catalyst temperature histogram data measured on the aging bench following the bench cycle. The BAT equation is used to calculate the effective reference temperature by trial-and-error changes to the reference temperature (T_r) until the calculated aging time equals the actual time represented in the catalyst temperature histogram.

As previously discussed, the BAT equation is used to take the time-at-temperature data measured during an approved road cycle and determine the amount of time to age a catalyst system following the bench cycle on the aging bench that is necessary to recreate the deterioration effect of the road cycle's catalyst temperature exposure. The effects of A/F ratio on the severity of temperature exposure are addressed by the bench cycle's use of an appropriate mix of A/F ratios on the bench.

There are additional sources of deterioration that occur on the road cycle that are not directly replicated on the bench. Engine-out deterioration is one source, but as previously discussed, engine-out deterioration is near zero. Of more significance, a road cycle accounts for more poisoning than the bench aging cycle. To account for the additional poisoning seen on the road cycle, and any engine-out deterioration that may exist, the aging time on the bench is increased to replace these shortfalls with additional thermal aging. In the strawman durability bench procedures we addressed the potential shortfall by the use of an "A-factor" in the BAT equation. The A-factor increases the amount of thermal aging to account for all sources of non-thermal deterioration. The strawman procedure specified an A-factor of 1.1, which increases aging time by 10 percent. We believe that there is very little deterioration left unaccounted by the BAT equation, Consequently, we selected an A-factor value of 1.1 (a 10% adjustment).

The strawman durability procedures contain a description of equipment for an aging bench. Briefly, this includes a slave engine mounted to an engine dynamometer with an engine controller and provisions for secondary air injection. This bench aging configuration has been used by several manufacturers to conduct bench aging. It was also the method of aging that was used with the RAT A bench aging cycle which serves as the basis of the bench aging cycle developed for the strawman.

The strawman bench aging procedures are discussed in more detail in the TSD. Briefly, the bench aging procedures begin by measuring catalyst time-at-temperature data on the standard road cycle for at least 100 miles. The data collected on the road is proportionally increased to represent the full useful life of the vehicle. The time-at-temperature data and the effective temperature of the bench cycle (determined experimentally using a procedure being proposed today) are entered into the BAT equation to calculate how long to age the catalyst system on the bench. The catalyst-plus-oxygen-sensor system is installed on the aging bench. An engine controller controls the A/F ratio, speed, and spark timing of the engine and adds secondary air in front of the first catalyst according to the bench cycle. The bench cycle is repeated as necessary to conduct aging for the amount of time calculated from the BAT equation. Using this method, the bench aging procedures can reproduce the emission deterioration seen on any road cycle.

3. Allowable Customization of the Bench Aging Procedures

The strawman bench procedure allowed the following bench aging variables to be customized by individual manufacturers in order to better achieve the durability program objective.

a. *The control temperature of EPA's rapid aging bench cycle.* The BAT equation can be used to determine the appropriate aging time for any reasonable temperature experienced on the bench cycle and still provide equivalent aging to the strawman bench aging procedure. Choosing a higher temperature will shorten the aging time, while a lower temperature will lengthen the time. Because the relationship between deterioration and aging temperature is exponential, a small change in temperature will lead to a dramatic change in aging time. For example, changing the effective bench temperature from 800 to 850° C will cut the aging time by more than 50 percent. However, care needs to be taken so that the maximum temperature seen on the bench does not exceed the temperature limit that leads to catalyst damage, generally in the range of 1000 to 1050° C. EPA selected 800° C as approximately the lowest reasonable control temperature which results in a relatively short aging time for many applications and which should keep the catalyst below the damage limit. Manufacturers would be allowed to use 800° C without prior approval. Selection of another value for the control temperature on the bench cycle would allow manufacturers to complete the aging in a shorter period of time, but would have no effect on the amount of deterioration produced by the bench aging when calculating aging time with the BAT equation.

b. *The R-factor.* The R-factor represents the catalyst sensitivity to temperature exposure. The catalyst design will affect the R-factor. In Appendix IX to the proposed regulations, we discuss how an R-factor may be determined for a catalyst. The R-factors developed by EPA are based on experience with historical catalysts. An appropriately calculated R-factor (determined using the procedures of Appendix IX on the specific catalyst in question) will improve the accuracy of bench aging to meet the ninety percent deterioration objective.

c. *The A-factor.* The A-factor represents how much extra catalyst thermal aging is necessary to reflect the additional catalyst deterioration experienced in use, from causes other than thermal exposure. Manufacturers can determine an appropriate A-factor based on IUVP or other in-use data. The use of a more appropriate A-factor will improve the accuracy of bench aging.

d. *Use fuel with additional poisons.* Catalyst poisoning is a real-world source of catalyst deterioration. The strawman bench aging procedures replace some the deterioration due to poisoning with additional thermal aging of the catalyst, reflected by the A-factor. Changing the bench aging to include more poisoning deactivation, *e.g.* by using fuel with lead, sulfur or phosphorus, would reduce the A factor.

D. Development of Today's Proposal From the Strawman Durability Procedures

EPA provided the strawman durability procedures to many interested parties and received comments from a number of them. EPA also met individually with many automobile manufacturers and other parties. EPA refined and changed elements of the strawman durability procedures based on comments that we received from stakeholders on the strawman procedures and our improved understanding of how to accomplish our original objectives for the durability program. The principal comments [39] that we received were:

(1) The strawman standard road cycle is too severe. It does not match in-use

[39] A full text of the comments (to the extent that they are releasable and not claimed as CBI) is contained in the TSD.

distributions of speed and acceleration rates.

(2) The road cycle does not have enough fuel cuts to match in-use driving experience.

(3) Manufacturers should be allowed to use their own durability procedures.

(4) The strawman bench aging cycle has a temperature spike occurring at a lean catalyst A/F ratio, which is not representative of in-use driving.

(5) The BAT equation generates results that very nearly equal General Motors' own internal calculations.

(6) The strawman bench aging cycle should have a defined high temperature value rather than defining the A/F ratio and secondary air injection rates

(7) A defined approach of when and how to use IUVP data to adjust durability procedures is not appropriate.

(8) If the IUVP data shows that a manufacturer meets emission standards in use (because, for example, the manufacturer certified with a sufficient compliance margin, known as "headroom"), the Agency should not be concerned and should not make decisions based on the accuracy of the certification emission deterioration projection seen in isolation.

(9) The public should be provided with sufficient information to duplicate the deterioration results of any manufacturer-specific procedures that are CBI.

(10) The Agency should mandate the public release of all information provided by manufacturers (required or voluntarily submitted) to obtain approval for an alternative cycle.

1. The Durability Objective

EPA continues to believe that the objective established for the strawman durability program is appropriate. It is the same objective that EPA had stated in the CAP 2000 rulemaking for durability procedures. EPA received no adverse comments on the durability objective when it was presented as part of the strawman durability discussion.

EPA is proposing that the objective of the durability program is to predict an expected in-use emission deterioration rate and emission level that effectively represents a significant majority (approximately 90 percent) of the distribution of emission levels and deterioration in actual use over the full and intermediate useful life of candidate in-use vehicles of each vehicle design which uses the durability program. A significant majority means approximately 90% of the distribution.

2. Cycle Severity for the SRC (Comments 1 and 2)

Several manufacturers commented that the strawman road cycle was too severe, *i.e.*, that the strawman road cycle produced more emission deterioration than necessary to meet the durability objective of 90 percent effective coverage. Several manufacturers supplied data that compared the thermal severity of their cycle, or a publically available cycle, to the strawman road cycle. The manufacturer cycles used in this comparison, with one exception, have been approved under the CAP 2000 durability regulations. During that approval process, the manufacturers provided information[40] that EPA believed showed that the cycles effectively covered approximately 90 percent of the in-use distribution of emission deterioration for their vehicles. The in-use data supplied by those manufacturers as part of the RDP I [IUVP in-use data is not yet available] process over several years have demonstrated good compliance with emission standards in use. For the durability programs used in the analysis discussed later in this section, all the in-use data demonstrated at least 90 percent compliance with the standards. Furthermore, the DFs used during certification were, for the most part, significantly larger than average deterioration represented by the in-use data. We also evaluated several of these durability processes using the available RDP in-use emission data and, although the amount of data does not meet our minimum data requirement of 20 test vehicles, we have concluded that these processes appear to meet the approval criteria and durability objective being proposed today. Based on these screening criteria, we believe that these durability processes generally meet the durability objective which is being proposed today.[41]

Therefore, we would expect that EPA's standard road cycle, if properly targeted to achieve the durability objective, should result in similar catalyst temperature exposure as the manufacturers cycles. The fact that the strawman road cycle proved more severe than the manufacturers' cycles indicated it was also more severe than necessary to meet EPA's durability objective.

The relative severity data supplied[42] in the manufacturers' comments showed that the strawman road cycle was about 50 percent more severe than the average manufacturer road cycle. That is, the amount of deterioration from the strawman road cycle was approximately 50 percent more than that of the average manufacturer's road cycle. The data ranged from approximately equal severity, to the strawman being about twice as severe as the manufacturer's cycle. The results depended on the type of vehicle that was used to make the comparison and the cycle to which it was compared.

This catalyst time-at-temperature data was not available when the strawman road cycle was being developed. Prior to the availability of this data our estimate of how closely the strawman road cycle achieved the durability objective was based mainly on driving characteristics and extrapolated expected effects on catalyst temperature. Based on this new data, EPA now believes that the strawman road cycle is too severe compared to the stated objective for the durability program. The Standard Road Cycle (SRC) that EPA is proposing today has been modified from the strawman version to reduce its severity and to more accurately achieve EPA's durability objective for the entire fleet of vehicles.

Since the objective of the durability program is to effectively cover a significant majority of emission deterioration, we did not attempt to match average in-use speed or acceleration rate distributions. Matching average in-use driving experience on the SRC would lead to a cycle that only covered 50 percent of the distribution of in-use emission deterioration. Consequently, EPA rejected the suggestion that the SRC merely match the in-use distributions of speed and acceleration rates. The speeds and acceleration rates of the SRC are generally somewhat higher than average in-use data to fulfill our target of effectively covering 90 percent of the population's in-use emission levels.

To develop the SRC that EPA is proposing, EPA reviewed those manufacturer cycles which used a speed-versus-time trace run for the vehicle's full useful life to see how they developed their road cycle to reach an appropriate target level of severity. We reviewed speed and acceleration rates

[40] In-use emissions information supplied by manufacturers is contained in the technical support document and docket to the CAP 2000 rule.

[41] EPA has pursued remedies whenever a manufacturer's in-use data demonstrates that the objective of the durability process was not achieved in actual use.

[42] Refer to the TSD for a full presentation of the comparative severity between the strawman road cycle and various manufacturer cycles.

used on the Ford HSC and Toyota's U02 and 9-Lap cycles.[43]

Each of these cycles contained a high-speed driving mode which accounted for over one-third of the driving time; speeds in the high-speed mode varied between 60 and 75 mph. The balance of the cycle time was spent in four lower speed laps which consisted of 30, 40, 50, and 55 mph for the U02 and 9-Lap cycle and 35, 45, 55, and 45 mph [again] for the HSC cycle.

EPA received catalyst temperature histogram data from General Motors (GM) which showed that the strawman road cycle produced three temperature peaks with little time at temperatures between these peaks. This contrasted with GM's own cycle which resulted in a more filled-out distribution resembling a typical skewed-normal distribution. GM commented that the strawman's unrealistic tri-modal temperature distribution was caused by the use of a few discrete-speed laps rather than a richer mixture of driving speeds and loads that occur in normal driving. EPA agrees with GM's observation that a more filled-out distribution of catalyst temperatures is a desirable outcome of a road cycle because it more closely matches a normal in-use distribution of catalyst temperatures.

Toyota commented that the strawman does not contain enough fuel cuts.[44] Toyota notes that fuel cuts lead to lean catalyst A/F ratios which in turn lead to more deterioration than the same temperature exposure at stoichiometric operation. EPA agrees with Toyota that a inclusion of a realistic number of fuel cuts in the SRC is desirable for the reasons discussed above.

Toyota recently re-designed their 9-Lap cycle to more closely match in-use levels of fuel-cuts. They call their new cycle the U02 cycle. To add more fuel cuts to their 9-Lap cycle, Toyota added three to five speed "dips" (of 5 to 15 mph) to each of the constant-speed laps in their cycle. The U02 also added an over-acceleration, coast-down event to each of their higher-speed modes, such as could occur when merging on to a limited-access highway. This event causes high temperature exposure to occur at a lean A/F in the catalyst.

Ford suggested that EPA use a cycle they recently developed called MOD1. The MOD1 cycle was based on EPA's strawman road cycle but Ford reduced the maximum cruise speed to 80 mph and reduced the high-speed acceleration rates to 3 or 4 mph/second. Based on relative severity data supplied by Honda, the MOD1 cycle is about one-third less severe than the strawman cycle. The MOD1 cycle was slightly higher than midway in severity between the HSC and U02 cycles, less severe than Ford's HSC cycle, and more severe than Toyota's U02 cycle. Based on this data, the MOD1 cycle sits among the manufacturer's approved cycles which have been demonstrated to effectively meet the 90 percent durability target. Consequently, the MOD1 cycle seems to be a well-measured step in the right direction for overall severity. However, it did not address Toyota's comments that more fuel cuts were needed, nor GM's comments that a richer mix of speed distribution was desirable.

Although there is a fair amount of variability in the manufacturers' relative severity data, about half of the severity data lie within a close band.[45] That band of severity included the MOD1 cycle. Consequently, because our target for the standard bench cycle is the same target (effective coverage of 90 percent) as the manufacturers' programs, it is appropriate to target near this consensus level of severity.

EPA used all this information to develop the standard road cycle (SRC) proposed today. The SRC is targeted to effectively cover 90 percent of the distribution of emission deterioration rates that occur on candidate vehicles in use, across the entire fleet. The speeds and acceleration rates on the SRC are reduced from the strawman proposal. The average speed has been lowered from 51.3 to 46.3 mph, the maximum cruise speed was lowered from 85 to 75 mph, and the acceleration rates for higher speed operation were lowered from 5 to 3 mph/second.

The SRC also includes more fuel-cuts and a broader range of speed operation than seen on the strawman cycle to more closely match in-use experience. The number of fuel-cut events were increased from 14 to 24 events during the seven laps (25.9 miles) of the cycle. The duration of each fuel-cut was also increased by employing slower rates of deceleration (deceleration rates varied between 5 and 8 mph/s in the strawman cycle and from 1 to 5 mph/s in the SRC). To expand the speed-diversity of the road cycle, the number of different cruise speeds was increased from 6 speeds in the strawman cycle to 11 speeds in the SRC.

3. Alternative and Customized Cycles (Comment 3)

Manufacturers suggested that they should be allowed to use their own durability procedures.

Background.

The CAP 2000 durability procedures required manufacturers to develop their own durability process subject to EPA approval. In the CAP 2000 rulemaking EPA established an objective for the durability process to "predict the deterioration of a significant majority of in-use vehicles."[46] In addition to being effective at predicting emission deterioration rates and compliance of candidate in-use vehicles, these processes also reduced manufacturers' compliance costs by using methods that were already part of their development process.

Although EPA is proposing standard whole-vehicle and bench-aging durability procedures, EPA is aware that the standard procedures may not achieve the durability objective, discussed in section II.D.1., for all manufacturers or for certain vehicle models. Because EPA's standard procedures are targeted to achieve the objective for the overall fleet of vehicles, they may over- or under-achieve the durability objective for some particular manufacturers or vehicles. For example, certain vehicles may have more available power than the vehicles EPA considered when designing the standard procedures. Such vehicles may be operated more aggressively in use than on the SRC. Similarly, vehicles which have less power may be operated less aggressively than on the SRC. When the standard procedures fail to achieve the durability objective, EPA believes that it is appropriate to allow an alternative process when it is necessary to achieve that objective.

In addition, where the manufacturer durability procedure results in approximately equivalent levels of emission deterioration to those of the SRC being proposed today, the use of those procedures may represent a significant time and/or cost savings to the manufacturer because they may already be conducted as part of the manufacturer's development process. If a manufacturer can demonstrate that their alternative process is essentially equivalent to EPA's proposed standard road cycle, use of that process would have no effect on the emission

[43] Refer to the TSD for a description of Toyota's U02 and 9–Lap cycles and Ford's HSC cycle. The GM road cycle was not included in the analysis because it does not involve mileage accumulation based on a speed-versus-time trace.

[44] For most current technology vehicles the engine controller stops fueling the engine when the vehicle is stopping or experiencing a significant deceleration. These events are referred to as fuel cuts.

[45] The manufacturer supplied data showed a range of relative thermal severity (manufacturer/strawman) from 105% to 45%, 5 of the 11 data points were in the range of 65% to 60%. The TSD contains the data and has an expanded discussion of our review of the data.

[46] Ref. 63 FR 39661 (July 23, 1998).

compliance determination made during certification.

For these reasons, EPA is proposing that manufacturers may customize the standard EPA whole vehicle and certain aspects of bench aging durability processes. The proposed customization provisions include the ability to use either a "customized SRC" (the SRC cycle run for a different number of miles) or an alternative road cycle. EPA believes that these options will effectively address some manufacturers' desire to use the manufacturer-specific procedures in the future durability program.

Customization of the SRC includes running the SRC for a shorter or longer period of time than specified and/or changing the fuel to include poisons such as lead or phosphorus combined with running the SRC for a shorter period of time. Alternatives to the SRC involve road cycles that employ time/speed traces different than the SRC.

EPA is proposing approval criteria for these customized/alternative procedures. Any existing durability procedures approved under CAP 2000 would have to be re-evaluated and approved under the requirements of the proposed regulations.

Customized/Alternative Road Cycles. To obtain approval of a customized/alternative road cycle the manufacturer must demonstrate that the durability program will likely achieve the durability objective. As previously discussed, the proposed objective of the durability program is to predict an expected in-use emission deterioration rate and emission level that effectively represents a significant majority (approximately 90 percent) of the distribution of emission levels and deterioration in actual use over the full and intermediate useful life of candidate in-use vehicles of each vehicle design which uses the durability program.

To make the initial demonstration necessary for the Agency to approve a customized/alternative cycle, EPA is proposing that the manufacturer supply high mileage in-use emission data on applicable candidate in-use vehicles. The vehicles would be randomly procured from actual customer use, generally with an age of 4 to 5 years and with a minimum of approximately 50,000 miles. They would cover the breadth of the vehicles that the manufacturer intends to certify using the customized/alternative cycle. Vehicles would be procured and FTP tested as received under the provisions of the IUVP program (ref: 40 CFR 86.1845–04). Manufacturers could use previously generated in-use data from the CAP 2000 high mileage IUVP program or the fourth-year-of-service RDP "reality check" in-use program as well as other sources of in-use emissions data for this purpose. EPA will also consider additional emissions data or analyses that the manufacturer may choose to provide, including data from vehicles which have been screened for proper maintenance and use.

Because historical in-use data would be used to approve the manufacturer's durability process for current and future vehicles, it is necessary to limit that data to those that are applicable to the vehicle designs the manufacturer intends to cover with the durability process. Manufacturers must remove from the sample the following types of unrepresentative data: (1) Data which was collected on an engine/emission control system which is not comparable to the current production designs, (2) data collected on a vehicle design which has been recalled due to a defective emission related part (unless the recall repair was performed on the test vehicle), or (3) data from vehicles that have been operated in an abnormal fashion that has impaired the effectiveness of the emission control system. In addition, manufacturers may also replace data from previously tested vehicles under the following conditions: (1) for in-use vehicles which have been primarily operated on high sulfur fuel (fuel with more than 80 ppm sulfur), if EPA has approved sulfur-removal preconditioning the manufacturer may replace the as-received testing with a second test conducted after sulfur-removal preconditioning has been performed, and (2) on a case-by-case basis, EPA may approve replacing the as-received testing performed on a vehicle which displays a MIL light that affects emission results with a second test performed after restorative maintenance has been performed. EPA would consider other exclusions or replacements of data on a case-by-case basis.

The amount of in-use emission data required is based on whether the customized/alternative cycle is more or less severe than the SRC. In most cases, EPA will accept a minimum of 20 candidate in-use vehicles. There is less risk of underestimating actual in-use emission levels when the customized/alternative cycle is more severe than the SRC. EPA is reasonably confident that the SRC will achieve the durability objective for the general population of vehicles. Consequently, if the customized/alternative cycle is significantly more severe than the SRC, EPA may accept less data. Conversely, if the customized/alternative cycle is significantly less severe than the SRC, EPA may require more data up to a maximum of 30 vehicles. EPA encourages the manufacturer to submit more data than these minimum levels.

The relative stringency of the customized/alternative cycle compared to the SRC must also be demonstrated. This could be accomplished by an evaluation of the two cycles using catalyst time-at-temperature data from both cycles and using the BAT equation to calculate the required bench aging time of each cycle. For example, if the BAT equation calculates that 170 hours of aging on the SBC would be necessary to reproduce the thermal exposure of full useful life mileage on the SRC and 200 hours of aging to reproduce the thermal exposure on the customized SRC or alternative cycle, the manufacturer's cycle would be 85% as severe as the SRC (SRC/MFR × 100% = (170/200) × 100%= 85%). This value (85%) is the equivalency factor. The 85% equivalency factor means that running a vehicle on the SRC for 85% of the required mileage would result in the same emission deterioration as conducting full mileage on the alternative/customized cycle.

If emissions data is available from the SRC, as well as catalyst time-at-temperature data, then that emissions information should be included in the evaluation of the relative stringency of the two cycles and the development of the equivalency factor. For example, if the manufacturer has calculated DFs using both cycles then these values may be compared directly. If the manufacturer cycle generates an additive DF for CO of 0.25 using the SRC and 0.20 using the manufacturer cycle, the manufacturers cycle would be 80% as severe as the SRC (Mfr/SRC × 100% = (.20/.25) × 100% = 80%). The equivalency factor is the highest value calculated for the FTP emission constituents. In this example, assuming that the CO value is the highest of HC, CO, and NO_X emission constituents, then the equivalency factor is 80%.

This analysis would demonstrate the relative stringency between the customized SRC or alternative cycle and the SRC. It would also demonstrate the level of stringency of the SRC and the effectiveness of the SRC in meeting the durability objective. In many cases, especially before experience is gained in using the SRC to develop emissions data or certification levels, the same analysis will be used for demonstrating the relative stringency of the SRC noted above and developing the equivalency factor.

In summary, approval of a customized/alternative road cycle requires an analysis of whether the

cycle will achieve the durability program objective using in-use emissions data and an evaluation of the relative stringency of the SRC and the manufacturer's program.

Once the customized/alternative durability process is approved, EPA is proposing that for each test group the manufacturer must determine, using good engineering judgement, whether to apply the durability procedure to that particular test group. Manufacturers should only apply a durability process to a test group when they determine that the durability objective will be achieved for that test group in actual use on candidate in-use vehicles.

Furthermore, EPA is proposing that the manufacturer may make modifications to an approved customized/alternative road cycle and apply them to a test group, to ensure that the modified cycle will effectively achieve the durability objective for future candidate in-use vehicles. The manufacturer would be required to identify such modifications in its certification application and explain the basis for them. Manufacturers must use good engineering judgement in making these decisions. Significant, major, or fundamental changes to a customized/alternative cycle would be considered new cycles and would require advance approval by EPA.

EPA considered a more objective criteria for approval which would have required manufacturers to demonstrate that the customized/alternative road cycle resulted in (1) a specified percent of the in-use emission results that were less than or equal to the certification levels, and (2) at least 90 percent of the in-use emission data passing the applicable emission standards. However, EPA is not proposing such criteria because of concerns that the restrictions of such objective criteria are not needed to determine whether an alternative/customized cycle would meet the durability objective, and given the wide variety of circumstances and relevant data that might be employed in making a decision, it could lead to disapproval of a cycle that would achieve the durability objective.

Alternative Bench Procedures

EPA believes that every bench aging procedure should be based upon measured vehicle performance on either the SRC or an EPA-approved road cycle. It is through the connection to the road cycle that EPA is assured that the alternative bench procedures will result in emission deterioration that achieves our durability objective. The BAT equation will calculate how much aging time is necessary on the bench to result in the same amount of emission deterioration experienced on the road cycle. As previously discussed, manufacturers must demonstrate that all customized/alternative road cycles meet the durability objective prior to Agency approval.

EPA believes that customizing certain aspects of the standard bench aging procedure is appropriate if the modified procedure continues to produce the same amount of emission deterioration as the SRC or approved road cycle. Specifically, EPA believes that customization of the following aspects are appropriate for the reasons discussed below.

a. Increasing the control temperature will reduce the time necessary to age the catalyst system on the bench, but it will not affect the severity of the aging because the BAT equation assures that the thermal aging seen on the road cycle is reproduced on the bench regardless of the effective temperature of the bench cycle.

b. EPA believes that an experimentally-determined R-factor using the actual catalyst to be produced is expected to be more accurate than using the standard R-factor specified by EPA which was developed to apply to the industry as a whole. EPA is proposing a standard experimental procedure which manufacturers can use to develop a R-factor that specifically applies their products. EPA believes that a R-factor developed using this standard process will be more accurate than the standard R-factor because its development is based on data generated on the catalyst in question. The procedures for experimentally developing a R-factor are presented in Appendix IX of the proposed regulation.

EPA will also consider the use of alternative methods to determine the R-factor. To have an alternative method approved by EPA, the manufacturer must demonstrate that the R-factor determined by this alternative process results in the same (or more) emission deterioration than the applicable approved road cycle.

One method to make this demonstration is to determine FTP emission levels from a sufficient number of vehicles to meet the 80% statistical confidence criteria (discussed below) which have completed whole vehicle aging on the applicable road cycle. These vehicles must represent the breadth of the vehicles to be covered by this alternative method. These results are compared with results from the same (or a similar) vehicle which was tested with a catalyst system aged on the bench for the amount of time calculated from the BAT equation using the experimentally determined R-factor. To be approved, the emission results from the vehicle with the bench-aged catalyst system should be greater than or equal to the emission results for the vehicle aged on the road cycle with a minimum of 80% statistical confidence.

c. The A-factor used in the BAT equation is designed to account for sources of deterioration other than thermal aging of the catalyst that occur in actual use but are not represented by the bench aging process. Determining the A-factor by actual in-use data is generally superior to the standard A-factor of 1.1.

d. Conducting bench aging using fuel with additional poisons is worst case, consequently it is appropriate to do so without further evaluation by EPA. EPA expects when a manufacturer uses fuel with additional poisons during bench aging, they would also adjust the bench aging time by either calculating a new R-factor or a new A-factor. In that case, the approval procedures applicable to changing those factors would also apply.

e. Generally, the SRC is used for generating the catalyst aging temperature histogram data used in the BAT. Using another road cycle is appropriate if the cycle has been approved as discussed above. The approval process assures that the alternative road cycle is expected to achieve the durability objective. Consequently, using an approved cycle to generate catalyst temperature histogram data is appropriate without further evaluation by EPA.

f. EPA's standard bench cycle was developed to include an appropriate amount of rich, lean, and stoichiometric A/F operation on the bench for the typical vehicle. However, some vehicles have a fuel control strategy that controls fuel within a narrower band than typically occurs. In those cases, use of the SBC may over- or under-predict actual emission deterioration in use. It is also possible that the SBC may result in a proper prediction of in-use emission deterioration, but a manufacturer may wish to use another bench cycle for reasons of cost and/or time savings, because that cycle is performed as part of the manufacturer's development process.

If the manufacturer can demonstrate that bench aging following an alternative bench cycle results in the same (or more) emission deterioration than the SRC or an approved road cycle (whichever cycle is applicable), then the use of the alternative bench cycle will maintain or improve the ability to achieve the durability objective. In these cases, it is appropriate to allow the use

of a different bench cycle because the alternative bench cycle will accurately reproduce the emission deterioration seen on a road cycle which meets the durability objective. If a manufacturer uses a different bench cycle, they must also experimentally determine a R-factor for the BAT equation. The manufacturer may use EPA's experimental process or another approved method to determine an R-factor. [See paragraph b., above, for approval criteria to determine a customized R-factor]

g. There may be some vehicles for which the BAT equation does not calculate appropriate aging times on the bench, although EPA is not aware of such vehicles at this time. In those cases, it would be appropriate to allow a manufacturer to use an alternative to the BAT equation provided it can demonstrate that bench aging time calculated by this alternative process results in the same (or more) emission deterioration than the road cycle upon which it is based.

This demonstration can be made by determining FTP emission levels from a sufficient number of vehicles to meet the 80% statistical confidence criteria (discussed below) which have completed whole vehicle aging on the applicable road cycle. These vehicles must represent the breadth of the vehicles to be covered by the alternative cycle. The results are compared with results from the same (or a similar) vehicle which was tested with a catalyst system aged on the bench for the amount of time calculated from the alternative BAT equation. To be approved, the emission results from the vehicle with the bench-aged catalyst system should be greater than or equal to the emission results for the vehicle aged on the road cycle with a minimum of 80% statistical confidence.

4. The Standard Bench Cycle (Comment 4)

The standard bench cycle (SBC) consists of a plot of catalyst temperature and A/F ratio versus time which is followed during bench aging. As discussed previously, the catalyst temperature and A/F ratio in the catalyst are the most important variables that affect the thermal aging rate of the catalyst. EPA is using its strawman bench aging cycle as the SBC in today's proposal. As discussed above, the SBC was developed based on methods reported in the literature which were also used effectively by automobile and catalyst manufacturers in the past.

We received comments that the SBC may not represent the mixture of A/F ratios seen on certain vehicles during in-use operation. Furthermore, there was concern that lean catalyst A/F ratios occur during the higher catalyst temperatures experienced on the SBC. EPA agrees that the use of certain fuel control technologies, such as A/F ratio sensors rather than traditional oxygen sensors to control fuel metering and the use of algorithms to predict A/F ratio so that less switching between rich and lean A/F ratios is required for effective fuel control, could lead to less variation in A/F ratios in use. Such vehicles may see less time at lean A/F ratios in the catalyst. Consequently, those vehicles may be over-aged using the SBC. To address this concern, EPA is proposing to allow manufacturers to use a different bench cycle and/or bench aging time equation than the standard procedure, subject to EPA approval, as discussed above.

5. Bench Aging Time (Comment 5)

EPA received a comment that the bench aging time (BAT) equation used in the strawman produced results nearly equal to those produced by General Motors' internal calculation. EPA also received confidential information from a manufacturer that the BAT equation resulted in nearly equal results as their confidential procedures. Based on this positive input, EPA has not changed the BAT equation for today's proposal from the equation used in the strawman durability procedures.

6. Bench Aging Specifications (Comment 6)

In the strawman durability procedures, EPA defined the high temperature seen on the bench cycle indirectly by specifying the A/F ratio and the amount of secondary air injection. General Motors (GM) commented that it would be better to define high temperature directly because the high temperature has a significant impact on the aging that occurs on the aging bench. We agree that directly controlling the high temperature spike is a better procedure.

Based on data from GM, the high temperature is usually about 90° C higher than the lower control temperature. We believe that there will be a similar temperature change on the SBC because it was developed from the RAT A cycle which GM used to generate this temperature data. Based on this data, EPA is proposing that the high temperature control point be 90° C (± 10° C) higher than the low temperature control point. In the SBC the lower control temperature is proposed to be 800° C (± 10° C) and the higher temperature to be 890° C (± 10° C). The specification for the A/F ratio is now defined as "rich" with the exact A/F ratio to be selected to achieve the desired high temperature of 890° C.

We also changed the secondary air injection rate from 4% to 3% to match the RAT A cycle which was the basis of the strawman proposal. The higher rate of air injection prompted concerns about the ability to deliver that much air homogeneously across the exhaust flow. The original purpose of the secondary air injections was to assure a lean catalyst A/F ratio (how lean was not the issue) and to determine the amount of temperature rise that occurred in the exhaust stream. Now that we are specifying the temperature rise of the exhaust stream directly, it is not necessary to require a particularity high rate of air injection. Consequently we harmonized the amount of secondary air injection with the established RAT A procedure.

7. Adjusting Durability Procedures Based on IUVP Data (Comments 7 and 8)

Manufacturers commented that a defined approach of when and how to use IUVP data to adjust durability procedures is not appropriate. Furthermore they commented that EPA should not be concerned whether the durability process accurately predicts in-use emission deterioration if the manufacturer is complying with the standards in use.

The CAP 2000 regulations specified that the in-use data collected under the in-use verification program (IUVP) testing provisions would be used to determine if the manufacturer's durability process was adequately predicting in-use emission levels (ref. 86.1823–01((g), and (h)). EPA continues to believe it is very important to compare actual in-use emission levels to the emission levels predicted at the time of certification and that this in-use information should be used to improve the durability process used to make those predictions.

In the strawman procedures, EPA proposed calculating a least-squares best-fit in-use DF for each durability group using the emission data from the IUVP. EPA suggested in the strawman process that its proposed durability regulation should contain a requirement that the manufacturer correct its durability prediction if the certification DF developed by the process for a specific durability group was significantly different from the in-use DF, or if there was a statistically significant general offset trend shown. The strawman proposal did not fully develop the procedures to be used to conduct this analysis. These offsets were to be corrected by either

mathematically adjusting the DFs by at least half the difference or increasing the number of miles/hours run during durability mileage accumulation/catalyst aging.

The automotive industry commented that it would be very difficult to determine statistical significance, given the limited amount of in-use verification data, and that this provision could place an unnecessary burden on those manufacturers who were over-predicting, rather than under-predicting emission deterioration. They also commented that as long as the in-use data was indicating that their vehicles were meeting the emission standards in use, that it should not be a concern to the Agency if the rate of deterioration calculated at the time of certification does not match that of in-use vehicles. They recommended that EPA retain the CAP 2000 regulations whereby the in-use verification data must be taken into consideration when deciding if the durability process is adequately predicting emission deterioration.

EPA agrees that the approach taken in the CAP 2000 rulemaking is appropriate, because it provides a reasoned framework for when to require analysis and review by manufacturers, and provides the needed discretion for deciding when approval for a program should be withdrawn or modifications required. EPA still has the same concerns about durability accuracy expressed during the CAP 2000 rulemaking: "An accurate durability process facilitates a more meaningful certification process which identifies noncompliance before the vehicles are produced and avoids excess in-use emissions. The in-use verification program is a tool which can be used by the Agency and the manufacturers to improve the durability process and avoid excessive emissions in use and costly recalls." [47] It is the Agency's expectation when it issues an approval that a durability program will achieve the durability objective in use. EPA expects manufacturers to use the results of the IUVP testing to improve their durability projections when necessary to better achieve the durability objective.

As in the CAP 2000 program, EPA is proposing to require manufacturers to conduct an analysis of their durability program if certain objective criteria discussed below are met. In addition EPA may require such an analysis on a case by case basis even if the criteria are not met. EPA also reserves the authority to withdraw approval of a durability program or require its modification if it determines that the manufacturer's program does not meet the objectives for a durability program.

The Agency is proposing to continue the requirement established in the CAP 2000 rule for the manufacturer to reevaluate the validity of a durability process in achieving the durability objective by performing an analysis when the average IUVP data exceeds 1.3 times the applicable emission standard and at least 50% of the test vehicles fail the standard in use (evaluated independently for all applicable emission constituents). These proposed analysis trigger criteria are intentionally loose enough to require an analysis only in cases where it is highly likely that durability programs that were failing to meet the durability objective. The Agency is also proposing that it may, at its discretion, require manufacturers to analyze available IUVP data, or other information, when it appears that the durability objective is not being achieved for some portion of the fleet of vehicles covered by a durability procedure regardless of whether the analysis trigger criteria have been met.

As part of the analysis, the manufacturer should address the applicability of the data to current vehicle designs and to the current durability procedures used by the manufacturer. Manufacturers may remove from the sample the following types of unrepresentative data: (1) Data which was collected on an engine/emission control system which is not comparable to the current production designs, (2) data collected on a vehicle design which has been recalled (voluntarily or otherwise) due to a defective emission related part (unless the recall repair was performed on the test vehicle), or (3) data from vehicles that have been operated in an abnormal fashion that has impaired the effectiveness of the emission control system. In addition, manufacturers may also replace data from previously tested vehicles under the following conditions: (1) For in-use vehicles which have been primarily operated on high sulfur fuel (fuel with more than 80 ppm sulfur), if EPA has approved sulfur-removal preconditioning the manufacturer may replace the as-received testing with a second test conducted after sulfur-removal preconditioning has been performed, and (2) on a case-by-case basis, EPA may approve replacing the as-received testing performed on a vehicle which displays a MIL light that affects emission results with a second test performed after restorative maintenance has been performed. EPA would consider other exclusions or replacements of data on a case-by-case basis. The manufacturer may also provide additional in-use data with the analysis.

As in the CAP 2000 program, EPA is proposing that it may withdraw approval of a durability program or require its modification if it determines that the program does not meet the objectives for a durability program. In those cases, the Agency is proposing to give the manufacturer a preliminary notice at least 60 days prior to rendering a final decision to withdraw approval for or require modifications to a durability procedure. EPA may extend the 60-day period upon request by a manufacturer when it is necessary to complete a thorough analysis. During this period the manufacturer may submit technical discussion, statistical analyses, additional data, or other information that is relevant to the decision. This may include an analysis to determine whether factors other than the durability program, such as part defects, are the source of the problem. The Administrator will consider all information submitted by the deadline before reaching a final decision. A final decision to withdraw approval or require modification to a durability procedure would apply to future applications for certification and to the portion of the manufacturer's product line (or the entire product line) that the Administrator determines to be affected.

These proposed requirements would apply to the EPA standard road and bench durability procedures as well as customized/alternative durability procedures.

If the manufacturer was using the standard road cycle or standard bench cycle, EPA would require the manufacturer to adjust the durability process so it would achieve the durability objective. The Agency is proposing two options in this situation: (1) Increasing future DFs by the average percent-difference between certification levels and IUVP data, or (2) increasing the whole vehicle miles driven or catalyst aging time by the average percent-difference between certification levels and IUVP data. Additionally the manufacturer may obtain approval for a new alternative durability process that has been demonstrated to meet the durability objective. If the data set used in the analysis contains less than 20 pieces of data, the Administrator may reduce the degree of adjustment required to account for uncertainty in the data.

If EPA determines that the SRC or the standard durability bench procedures generally do not meet the durability objective for a large number of manufacturers, EPA will adjust the standard procedures by rulemaking.

[47] Ref. 63 FR 39663.

As with the criteria for original approval of an alternative durability program, EPA considered a more stringent objective criteria for using IUVP data to evaluate durability procedures which would have required manufacturers to demonstrate that the durability procure resulted in (1) in-use emission results that are at least a specified percent less than or equal to the certification levels, and (2) at least 90 percent of the in-use emission data that pass the applicable emission standards. EPA is not proposing such criteria for the reasons described above regarding approval criteria.

8. Reproducibility by Outside Parties (Comment 9)

We received comments supporting the goal that the public should be provided sufficient information to duplicate the deterioration results of any manufacturer-specified procedures that are CBI.

In some cases, manufacturers have claimed that certain aspects of their manufacturer-specific durability procedures are confidential business information (CBI). As discussed above, the approval process for all alternative cycles includes a determination of the relative severity of the alternative cycles compared to the SRC by means of the calculation of an equivalency factor.[48]

EPA believes that a manufacturer's equivalency factor should not be considered confidential business information. The equivalency factor is developed using EPA-prescribed methods so there is no manufacturer practice to be protected. The factor relates to how much driving on the SRC is required to meet the durability objective. The SRC is a publicly available cycle developed by EPA. Furthermore, knowing that a certain amount of driving on the SRC produces the same amount of in-use emission deterioration as on the manufacturer cycle would not reveal any potentially confidential aspects of the manufacturers in-house durability procedures. For example, there would be many different road cycles that would result in the same equivalency factor to the SRC. EPA invites comment on whether the equivalency factor should be eligible for CBI treatment, including any justification for treating it as confidential. In the absence of a compelling justification to treat this equivalency factor as CBI, EPA intends to determine that a manufacturer's equivalency factor would not be considered CBI. Furthermore, EPA intends to publish a list of manufacturers which have obtained approval to use alternative cycles together with a manufacturer's equivalency factor for each test group which uses those cycles.

The equivalency factor will provide the public with sufficient information to duplicate the amount of deterioration produced by a manufacturer-specific procedure. Even if a manufacturer asserts that their cycle is CBI, the public will have a pre-determined amount of mileage accumulation on the SRC that will result in an equivalent amount of emission deterioration. Consequently, any interested party could run the SRC for the appropriate number of miles and get the same results that the manufacturer developed during certification.

To reproduce the deterioration generated by a manufacturer which certified using a customized road cycle, standard bench procedure, or alternative bench procedure, an outside party may run a vehicle using the SRC for the number of miles indicated by the equivalency factor.

Similarly, an outside party will be able to perform bench aging using the SBC. The aging time may be calculated using the BAT equation and measured catalyst temperature on the SRC (with full-useful-life-mileage adjusted by the equivalency factor).

9. Confidentiality of Emission Test Results Submitted Under the Durability Program

Under the durability regulations, a variety of provisions require manufacturers to submit to EPA the results of emissions testing. For example, emissions test results are submitted as part of the approval process for alternative driving cycles. They may also be submitted subsequent to approval as part of an analysis of whether an alternative durability program continues to meet the objective of the durability program. The results of emissions testing are also submitted to EPA as part of the IUVP and confirmatory testing programs. Emissions test results would be submitted to EPA under 40 CFR 86.1823(e)(1)(A), 86.1847(b)(1), and (f)(1). Emissions test results may also be submitted to EPA under other provisions of the durability regulation.

EPA believes that the results of this emissions testing would be emissions data as defined by 40 CFR 2.301. Emissions data are not eligible for confidential treatment. 40 CFR 2.301(e). EPA invites comment on why these data should be eligible for CBI treatment. In the absence of a compelling justification received during the comment period, EPA intends to release emissions test results submitted to EPA as noted above. EPA is not attempting at this time to decide what other data, if any, would be emissions data under 40 CFR 2.301.

E. Diesel Vehicle Exhaust Deterioration

EPA expects that diesel-fueled vehicles will be largely driven in the same fashion as gasoline-fueled vehicles. The SRC was developed to include sufficient amount of high catalyst temperature to age the catalyst on an Otto cycle engine. However, the same operation that causes high temperatures in catalysts also causes high engine load and high in-cylinder temperatures which increase engine wear in diesel vehicles and lead to emission deterioration. The SRC also contains a reasonable amount of slower speed operation and coast-downs followed by deep accelerations which increase lubricating oil consumption, fuel injection deterioration, and increase particulate formation. For these reasons, the SRC is considered to be fuel-neutral, that is, appropriate for any motor vehicle, regardless of the fuel used. Thus, the SRC may be used to evaluate exhaust emission deterioration of vehicles using any fuel. Furthermore, the provisions to customize the SRC or develop an alternative road cycle would for the same reason apply equally to vehicles, regardless of the fuel used.

The same is not true for bench aging procedures, however. The bench procedures are only applicable to vehicles which use a catalyst as the principal exhaust emission control strategy. The proposed bench procedures accelerate the normal vehicle aging process by increasing the thermal aging of the catalyst. This strategy will not work acceptably for vehicles that do not have a catalyst, rely significantly less on the catalyst to provide emission reduction, or use after-treatment devices that are significantly different from catalysts used on gasoline-fueled vehicles, *e.g.* NO_X adsorbers or catalyzed particulate filters. For that reason the bench procedures proposed today are not applicable to diesel vehicles.

As of the date of this proposal, EPA is not aware of any effective bench aging process for diesel vehicles. At a later date, EPA may choose to propose regulations providing bench aging procedures applicable to diesel-fueled vehicles. In the meantime, diesel-fueled vehicles must use the proposed whole vehicle exhaust durability provisions.

[48] Refer to section II D 2 for a discussion of how to calculate the equivalency factor.

F. Evaporative and Refueling Durability Procedures

The CAP 2000 regulations for evaporative and refueling emission deterioration procedures are similar to the exhaust durability regulations, in that manufacturers had to propose a durability process for EPA approval. Our proposal incorporates procedures for determining evaporative and refueling emission deterioration levels.

The proposed objective for the evaporative and refueling deterioration programs is the same one proposed for exhaust durability: to predict the expected evaporative and refueling emission deterioration of candidate in-use vehicles over their full useful life, covering a significant majority of deterioration. [Ref 40 CFR 86.1824–01 for evaporative emissions and 40 CFR 86.1825–01 for refueling emissions].

Unlike durability procedures to determine exhaust emission deterioration, EPA has never specified a standard procedure to determine evaporative emission deterioration. Instead, manufacturers were required to report to EPA evaporative deterioration factors that were "designed and conducted in accordance with good engineering practice." [ref. 86.091–23(b)(2)]

Since evaporative and refueling emissions are controlled by a similar vapor control system, the deterioration rates for evaporative and refueling emissions are generally determined using the same methods. Most vehicles use integrated refueling systems where a single charcoal canister handles both evaporative and refueling emission control.

The factors affecting deterioration of evaporative control systems are different from those of exhaust emission systems. Evaporative and refueling emissions are controlled primarily by an activated-carbon canister. The canister stores the hydrocarbon (HC) fumes coming from the vehicle's fuel tank and fuel system. While the engine is running, the HC is purged from the canister and ingested by the engine. Other components which control evaporative emissions include fuel hoses and lines and the gas tank cap.

To predict evaporative emissions deterioration, it is necessary to assess the useful-life performance of these vapor control components. Sources of potential deterioration are deactivation of the carbon in the canister, loss of carbon from the canister, degradation of hoses and lines due to environmental conditions (such as temperature extremes and exposure to ozone, ultraviolet light, and vibration), and fuel cap deterioration due to wear.

Vehicle operating events that may lead to deterioration of the vapor control system include, (1) cycling of canister loading due to diurnal and refueling events, (2) vibration of components, (3) deterioration of hoses due to environmental conditions, and (4) deterioration of fuel cap due to wear.

In addition, hosing used in fuel lines are subject to "permeation"—fuel vapors which seep out of microscopic pores in the material. Emissions due to permeation through the hoses generally stabilize after about a month of use and hence do not generally affect the long-term deterioration of the evaporative system.[49] Beginning with the 2004 model year, EPA's "Tier 2" regulations include new, more stringent evaporative emission standards. Concern about the permeability effect of alcohol fuels on hoses and other evaporative components led EPA to require that manufacturers account for this effect in developing their evaporative durability processes [ref. 86.1824–01(a)(iii), (iv) and (v)].[50]

Most of the potential causes of vapor control system deterioration are based on time rather than miles driven. Canister loading is caused mainly by diurnal events, the heating/cooling cycle that occurs over a 24-hour day. For that reason, it is difficult to compress a full lifetime of diurnal events into a reasonable period of time on a whole vehicle.

It is also desirable for cost reasons to combine a whole vehicle based evaporative/refueling deterioration evaluation with the whole vehicle exhaust durability program to save the expense of running two separate programs. For exhaust deterioration the important parameter is miles traveled following the SRC, for vapor control deterioration canister loading and purge events are more important. The whole vehicle exhaust durability program is generally completed in about 100 days. During that time, the vehicle would experience about 100 diurnals (one per day), which is much less than experienced during the vehicle's full useful life.[51] A vehicle aged on the SRC would experience approximately the correct number of refueling events. While this shortfall in diurnal events could theoretically affect projections of deterioration, in actuality, the overall vapor control deterioration is so small that it does not significantly impact the deterioration rate calculation.

Manufacturers have stated that evaporative emissions over the life of a vehicle do not generally increase. An EPA study of evaporative and refueling certification deterioration factors for the 2002 and 2003 model years shows that these DFs are zero or close to zero for many vehicles.[52] When there are evaporative or refueling failures in use, these failures can generally be attributed to failed parts or improper design rather than gradual increases in emissions due to deterioration.

EPA is proposing that manufacturers may determine their evaporative/refueling deterioration by adding evaporative and refueling tests to the SRC or an approved whole vehicle exhaust durability program. EPA is making this proposal knowing that the road cycle will not include a full lifetime of diurnal events. In making this decision, EPA is relying on the fact that the deterioration rates of current-design evaporative system is very small and a more comprehensive procedure would not significantly improve the accuracy of predicting deterioration, but could significantly increase costs.

EPA is also proposing that the evaporative/refueling deterioration may also be measured using a bench procedure. EPA is proposing that manufacturers evaluate the effects of certain sources of deterioration in the bench procedure. The manufacturer should establish an evaporative/refueling durability program that effectively covers a significant majority (approximately 90 percent) of in-use emission deterioration. A manufacturer may determine certification levels using a bench procedure when it determines (using good engineering judgement) that the bench procedure is more accurate than the SRC to achieve the durability objective. While the manufacturer does not need to submit their bench durability procedures for approval, EPA may review any certification level submitted during certification for its appropriateness. EPA is not promulgating specific methods to perform these evaluations. The emission deterioration sources that are proposed to be evaluated in the bench durability procedure are:

[49] Refer to "Fuel Permeation Rates of Elastomers after Changing Fuel" by R. Stevens and R. Fuller of Dupont Dow, SAE No. 970307.

[50] Numerous SAE papers examine the permeability of fuel and evaporative system materials as well as the influence of alcohols on permeability. See, for example SAE Paper Nos. 910104, 920163, 930992, 970307, 970309, 930992, and 981360.

[51] Based on 7 to 10 years of use the number of lifetime diurnals would range from 2000 to 3500 events.

[52] Refer to the TSD for a study of DFs for evaporative emissions. Most DFs were zero, the 70-percentile DF was 5% of the standard.

1. Cycling of canister loading due to diurnal and refueling events;
2. Use of various commercially available fuels, including the Tier 2 requirement to include alcohol fuel;
3. Vibration of components;
4. Deterioration of hoses, *etc.* due to environmental conditions;
5. Deterioration of fuel cap due to wear.

Finally, EPA is proposing that it will allow manufacturers to determine evaporative and refueling DFs based on good engineering judgement without prior EPA approval.

III. What Is EPA Proposing Today?

Today's proposal includes two well-defined test methods for determining the exhaust emissions durability of vehicles from which manufacturers may choose: the standard whole vehicle aging process and the standard bench aging process. It also includes well-defined criteria allowing EPA to approve customization of or alternatives to these test methods, based upon a demonstration to EPA of the level of stringency needed to meet the durability objective, and the level of stringency demonstrated for the SCR and the customization or alternative. The rationale for how the proposals in this section were developed is discussed in more detail in Section II. above.

A. Standard Whole Vehicle Exhaust Durability Procedure

EPA is proposing a standard road cycle (SRC) which is targeted to effectively cover a significant majority of the distribution of exhaust emission deterioration rates that occur on candidate in-use vehicles. The SRC is fuel-neutral. It applies to all vehicles, regardless of fuel used. The SRC consists of seven laps of 3.7 miles each. The average speed on the SRC is 46.3 mph, the maximum cruise speed is 75 mph, and the acceleration rates range from light to hard accelerations. Most accelerations are moderate and there are no wide-open-throttle accelerations. The SRC contains 24 fuel-cut decelerations. The deceleration rates range from coast-down (no brake force applied) to moderate.

EPA is proposing a standard whole vehicle durability procedure which consists of running a vehicle (the durability data vehicle (DDV)) on the SRC for the full useful life mileage of the vehicle. We are also proposing that manufacturers may terminate mileage accumulation at 75% of full useful life and project DFs based upon the upper 80% statistical confidence limit.

The weight of the vehicle during SRC mileage accumulation is proposed to be the loaded vehicle weight (curb plus 300 pounds) for light-duty vehicles and adjusted loaded vehicle weight ((curb + gross vehicle weight)/2) for all other vehicles covered by this rule. The fuel used on the SRC is proposed to be representative of commercially available gasoline (with a provision that extra poisoning may be added, such as phosphorus, sulfur or lead).

EPA is proposing to retain the CAP 2000 options of determining emission compliance levels by either (1) calculating deterioration factors (DF) and applying the DF to the emission data vehicle (EDV) emission results or (2) testing the EDV with emission control components aged using the SRC and installed prior to testing. If DF's are to be calculated, emission testing would be conducted at periodic intervals during mileage accumulation. A minimum of one test at each of five different mileage points (total of five tests) are proposed.

B. Standard Bench Aging Exhaust Durability Procedure

Bench aging is a different way to achieve the same emission deterioration as whole-vehicle aging using a road cycle. EPA is proposing a standard bench aging procedure that uses the BAT equation and the standard bench cycle (SBC) to reproduce emission deterioration from a road cycle. EPA's proposed standard bench procedure specifies that the SRC be used to generate the catalyst temperature histogram needed to determine bench aging time. Because the proposed standard bench aging procedure relies on increasing catalyst thermal aging to account for all sources of emission deterioration, this procedure is not applicable to diesel fueled vehicles or vehicles which do not use a catalyst as the principal after-treatment emission control device.

The standard bench aging durability procedure has been designed to reproduce the exhaust emission deterioration that occurs on the standard whole vehicle durability procedure. The standard bench aging procedure is as follows:

a. Catalyst temperature data is measured at the rate of one hertz (one measurement per second) during at least two replicates of the standard road cycle (SRC). The temperature results are tabulated into a histogram with temperature bins of no larger than 25° C.

b. The effective reference temperature of the standard bench cycle (SBC), described below, is determined for the catalyst system and the aging bench which is to be used for the bench aging.

c. The bench aging time is calculated using the bench aging time (BAT) equation, described below, using the effective reference temperature of the SBC and the catalyst temperature histogram measured on the SRC.

d. The exhaust system (including the catalyst and oxygen sensors) is installed on the aging bench. The aging bench follows the SBC for the amount of time calculated from the BAT equation.

e. Catalyst temperatures and A/F ratios are measured during the bench aging process to assure that the proper amount of aging has actually occurred. Aging on the bench is extended if the aging targets are not properly achieved.

1. The Standard Bench Cycle (SBC)

EPA is proposing a standard bench cycle (SBC) which contains a mix of rich, lean and stoichiometric A/F ratios designed to achieve appropriate emission deterioration on the aging bench when operated for the period of time calculated from the BAT equation.

The standard bench cycle consists of a 60-second cycle which is defined as follows based on the A/F ratio of the engine (which is part of the aging bench) and the amount of secondary air injection (shop air which is added to the exhaust stream in front of the first catalyst):

01 to 40 secs:
  14.7 A/F, no secondary air injection
41 to 45 secs:
  Rich A/F ratio, no secondary air injection
46 to 55 secs:
  Rich A/F ratio, 3% (± 0.1%) secondary air injection
56 to 60 secs:
  14.7 A/F ratio, 3% (± 0.1%) secondary air injection

The catalyst temperature (called the low control temperature) is controlled during the period of stoichiometric operation (Seconds 1 to 40 of the cycle) to be 800° C (± 10° C). The A/F ratio during the "rich" phase of operation is selected [53] to achieve a maximun catalyst temperature [54] (called the high control temperature) over the cycle of 890° C (± 10° C). If an alternative low control temperature is utilized (as allowed in the customization options, discussed below), the high control temperature is 90° C (± 10° C) higher than the low control temperature.

2. The Bench Aging Time (BAT) Calculation

EPA is proposing a bench aging time (BAT) equation to calculate the

[53] A typical value of the "rich" A/F ratio is approximately 13.5.

[54] The highest temperature generally occurs close to the 55-second point in the cycle.

appropriate length of time to age a catalyst system on an aging bench to yield equivalent emission deterioration as running a vehicle on an approved road cycle. The standard bench aging durability procedure uses catalyst temperatures measured on the SRC to calculate the bench aging time necessary to reproduce the thermal exposure seen on the SRC. As discussed in Section II, the BAT equation is based on the Arrehenius equation which relates chemical reaction rates with temperature. EPA is proposing the following BAT equation:

t_e for a temperature bin = $t_h\, e^{((R/Tr)-(R/Tv))}$

Total t_e = Sum of t_e over all the temperature bins

Bench Aging Time = A (Total t_e)

Where:

A = 1.1 or a value determined by the manufacturer using in-use data and good engineering judgement to adjust the catalyst aging to include deterioration that may come from sources other than thermal aging of the catalyst

R = Catalyst thermal reactivity coefficient. For the SBC, R=17500 for Tier 2 vehicles and R=18500 for all other vehicles. For cycles other than the SBC, the R factor must be determined experimentally using good engineering judgement. The manufacturer may also determine the R-factor experimentally for the SBC.

t_h = The time (in hours) measured within the prescribed temperature bin of the vehicle's temperature histogram adjusted to be on a full useful life basis (if the histogram represented 400 miles, and full useful life was 100,000 miles; all histogram time entries would be multiplied by 250 (100000/400))

Total t_e = The equivalent time (in hours) to age the catalyst at the temperature of T_r on the catalyst aging bench using the catalyst aging cycle to produce the same amount of deterioration experienced by the catalyst due to thermal deactivation over the vehicle's full useful life.

t_e for a bin = The equivalent time (in hours) to age the catalyst at the temperature of T_r on the catalyst aging bench using the catalyst aging cycle to produce the same amount of deterioration experienced by the catalyst due to thermal deactivation at the temperature bin of T_v over the vehicle's full useful life.

T_r = The effective reference temperature (in °K) of the catalyst on the catalyst bench

T_v = The mid-point temperature (in °K) of the temperature bin of the vehicle on-road catalyst temperature histogram

3. The Effective Reference Temperature for the SBC

The BAT equation uses a single temperature value called the effective reference temperature to represent the entire temperature-history experienced during the SBC on the catalyst aging bench. EPA is proposing to calculate the effective reference temperature using catalyst temperature histogram data measured in the catalyst on the aging bench following the SBC. The BAT equation would then be used to calculate the effective reference temperature by iterative changes to the reference temperature (T_r) until the calculated aging time equaled the actual time representing in the catalyst temperature histogram. The resulting temperature is the effective reference temperature for the SBC.

C. Customization of the Standard Procedures

1. Customization of the Standard Road Cycle

EPA is proposing that to obtain approval for a customized/alternative road cycle the manufacturer would demonstrate that the objective of the durability program will be achieved for the breadth of the vehicles which are covered by the cycle. Approval of a customized/alternative road cycle requires a thorough analysis of whether the cycle will achieve the durability program objective using in-use emissions data, including a demonstration of the relative stringency of the SRC and the manufacturer's program.

To make the initial demonstration necessary for the Agency to approve a customized/alternative cycle, EPA is proposing that the manufacturer supply high mileage in-use emission data on applicable candidate in-use vehicles. The vehicles would be randomly procured from actual customer use, generally with an age of 4 to 5 years and with a minimum of approximately 50,000 miles. They would cover the breadth of the vehicles that the manufacturer intends to certify using the customized/alternative cycle. Vehicles would be procured and FTP tested as received under the provisions of the IUVP program (ref: 40 CFR 86.1845–04). Manufacturers could use previously generated in-use data from the CAP 2000 high mileage IUVP program or the fourth-year-of-service RDP "reality check" in-use program as well as other sources of in-use emissions data for this purpose. EPA will also consider additional emissions data or analyses that the manufacturer may choose to provide, including data from vehicles which have been screened for proper maintenance and use.

The amount of in-use emission data required for this analysis is based on whether the customized/alternative cycle is more or less severe than the SRC. In most cases, EPA will accept a minimum of 20 candidate in-use vehicles. There is less risk of underestimating actual in-use emission levels when the customized/alternative cycle is more severe than the SRC. However, if the customized/alternative cycle is significantly more severe than the SRC, EPA may accept less data. Conversely, if the customized/alternative cycle is significantly less severe than the SRC, EPA may require more data up to a maximum of 30 vehicles.

EPA will also consider the equivalency factor of the customized/alternative cycle (discussed in section III.C.3) when evaluating the cycle for approval.

Once the durability process is approved, EPA is proposing that for each test group the manufacturer must determine, using good engineering judgement, whether to apply the durability procedure to that particular test group. Furthermore, EPA is proposing that the manufacturer may make modifications to an approved customized/alternative road cycle and apply them to a test group to ensure that the modified process will effectively achieve the durability objective for future candidate in-use vehicles. The manufacturer would be required to identify such changes in its certification application and explain the basis for the changes. Manufacturers must use good engineering judgement in making these decisions. Significant, major, or fundamental changes to a customized/alternative cycle would be considered new cycles and would require advance approval by EPA.

2. Customization of Standard Bench Procedures

EPA is also proposing to allow, subject to Agency approval, a limited degree of manufacturer customization of the standard bench procedures. However, in all cases EPA is proposing that alternative bench aging procedures be based upon measured vehicle performance (such as catalyst temperature) on an approved road cycle.

Specifically EPA is proposing to allow customization of any or all of the following parameters when the accompanying conditions for approval are met:

a. The lower control temperature on the SBC may be modified without prior EPA approval provided that the high control temperature is set 90° C (± 10° C) above the lower control temperature and an approved BAT equation is used to calculate bench aging time.

b. The R-factor used in EPA's BAT equation may be determined experimentally using EPA's standard procedures (specified in the appendix to the regulations) without prior EPA approval. Other experimental techniques to calculate the R-factor require advance EPA approval. To obtain approval, the manufacturer must demonstrate that the calculated bench aging time results in the same (or larger) amount of emission deterioration as the associated approved road cycle.

c. The A-factor used in EPA's BAT equation may be modified, using good engineering judgement without prior EPA approval, to ensure that the modified durability process will effectively predict (or overstate) emission deterioration of a significant majority (approximately 90%) of future candidate in-use vehicles.

d. Bench aging may be conducted using fuel with additional poisons (such as phosphorus, sulfur and lead) without prior EPA approval. Using fuel with additional poisons is worst case for emissions deterioration. Normally a manufacturer using fuel with additional poisons will either calculate a new R-factor or A-factor to assure that the durability objective (effective coverage of 90 percent of in-use emission deterioration) is not overstated by the worst-case fuel usage.

e. An approved alternative road cycle or customized SRC may be used to develop catalyst temperature histograms for use in the BAT equation without additional EPA approval beyond the original approval necessary to use the road cycle for mileage accumulation.

f. A different bench cycle may be used during bench aging with prior EPA approval. To obtain approval the manufacturer must demonstrate that bench aging with the new bench cycle provides the same (or larger) amount of emission deterioration as the associated approved road cycle.

g. A different method to calculate bench aging time may be used with prior EPA approval. To obtain approval the manufacturer must demonstrate that bench aging for the time calculated by the alternative method results in the same (or larger) amount of emission deterioration as the associated approved road cycle.

3. Reproducibility by Outside Parties

As discussed in the preceding sections, EPA is proposing that an alternative road cycle must be designed to achieve the durability objective proposed in this rule (effectively predicts a significant majority of the distribution of in-use emission deterioration on candidate in-use vehicles). As part of this evaluation, EPA is requiring in this proposal that all alternative road cycles are equated to the SRC by means of an equivalency factor that determines the amount of SRC-driving that results in the same emission deterioration as the alternative cycle. EPA is requiring in this proposal that every alternative bench aging procedure be based upon measured vehicle performance on a road cycle. Lastly, EPA is proposing to require that any alternative bench cycle be designed to result in the same levels of emission deterioration as the road cycle upon which it was based.

An important element of the proposal is that, regardless of whether a manufacturer use the EPA standard procedures or customized procedures, any interested party will be able to use the equivalency factor to reproduce the amount of emission deterioration produced by any manufacturer's customized/alternative durability process used during vehicle certification. In the proposal, any alternative road or bench procedure is equated to a given number of miles on the SRC.

To reproduce the deterioration generated by a customized/alternative road cycle, standard bench procedure, or alternative bench procedure, an outside party may run a vehicle using the SRC for the number of miles indicated by the equivalency factor.

Similarly, an outside party will be able to perform bench aging using the SBC. The aging time may be calculated using the BAT equation and measured catalyst temperature on the SRC (with full-useful-life-mileage adjusted by the equivalency factor).

D. Using IUVP Data To Improve Durability Predictions

EPA is proposing to require a manufacturer to review its durability program and prepare an analysis for EPA evaluation when: (1) The IUVP emission levels exceed the applicable certification emission standard 50% or more of the test vehicles and (2) the average emission level is at least 1.3 times the applicable emission standard. These criteria would be evaluated independently for all applicable FTP emission constituents. Each constituent should be considered separately in this analysis.

The Agency is also proposing that it may, from time to time, require manufacturers to analyze available IUVP data, or other information, when it indicates that the durability objective is not being achieved for some portion of the fleet of vehicles covered by a durability procedure. This provision would apply whether or not the screening criteria are exceeded.

As in the CAP 2000 program, EPA is proposing that it may withdraw approval of a durability program or require its modification if it determines that the program does not meet the objectives for a durability program. The Agency is proposing to give the manufacturer a preliminary notice at least 60 days prior to rendering a final decision to withdraw approval for or require modifications to a durability procedure. During this period the manufacturer may submit technical discussion, statistical analyses, additional data, or other information that is relevant to the decision. This may include an analysis to determine whether factors other than the durability program, such as part defects, are the source of the problem. The Administrator will consider all information submitted by the deadline before reaching a final decision. A final decision to withdraw approval or require modification to a durability procedure would apply to future applications for certification and to the portion of the manufacturers product line (or the entire product line) that the Administrator determines to be affected.

If the manufacturer was using the standard road cycle or standard bench cycle, EPA would require the manufacturer to adjust the durability process so it would achieve the durability objective. The Agency is proposing two options in this situation: (1) increasing future DFs by the average percent-difference between certification levels and IUVP data, or (2) increasing the whole vehicle miles driven or catalyst aging time by the average percent-difference between certification levels and IUVP data. Additionally the manufacturer may obtain approval for a new alternative durability process that has been demonstrated to meet the durability objective. If the data set used in the analysis contains less than 20 pieces of data, the Administrator may reduce the degree of adjustment required to account for uncertainty in the data.

E. Evaporative and Refueling Durability

For reasons described in section II. above, EPA is proposing that

manufacturers determine the evaporative/refueling deterioration using either whole vehicle durability or bench aging methods or a combination of the two methods.

Whole Vehicle Evaporative/Refueling Durability

EPA is proposing that manufacturers may conduct evaporative and/or refueling durability program by running the DDV on the SRC or an approved alternative road cycle and conducting the applicable test at each testing point. Manufacturers may combine exhaust and evaporative/refueling whole vehicle durability demonstrations.

Bench Aging Evaporative/Refueling Durability

EPA is proposing that manufacturers may use bench procedures designed, using good engineering judgement, to evaluate the following potential causes of evaporative emission deterioration and achieve the durability objective:

(1) Cycling of canister loading due to diurnal and refueling events,

(2) Use of various commercially available fuels, including the Tier 2 requirement to include alcohol fuel;

(3) Vibration of components;

(4) Deterioration of hoses, etc. due to environmental conditions; and

(5) Deterioration of fuel cap due to wear.

EPA is also proposing that it will allow manufacturers to determine evaporative and refueling DF's based on good engineering judgement without prior EPA approval.

F. Effective Date and Carryover of Existing Durability Data

1. Effective Date

Today's action is proposed to become effective with the 2006 model year. Because this is a Court-ordered action, we believe that the rule should take effect in the shortest amount of time possible that provides manufacturers with enough lead time to comply with the new regulations. We considered proposing a 2005 model year effective date, but we anticipate that the final rule will not be promulgated until March, 2004. By that time, many, if not all manufacturers will have completed the durability demonstration phase of their certification process for the 2005 model year (which traditionally is launched in Fall of the previous calendar year). Thus, a 2005 model year effective date would not provide manufacturers with enough lead time to complete their durability demonstrations. Therefore, we are proposing the 2006 model year effective date which we believe provides adequate lead time for manufacturers to comply with today's proposed regulations.

2. Carrying-over Durability Data

EPA is not proposing any changes to the carryover provisions in the current regulations (ref. 40 CFR 86.1839–01). These provisions allow manufacturers to use durability data that was previously generated and used to support certification provided that the data "represent a worst case or equivalent rate of deterioration". After the 2005 model year, if a manufacturer can meet these requirements, it may use existing durability data (*i.e.*, DFs or aged hardware) that were approved prior to the vacature of the CAP 2000 regulations. Approved carry-over durability data may be used to support certification under the proposed rules.

EPA is proposing that the manufacturer may not, however, continue to use CAP 2000 durability processes to generate new data starting with the 2006 model year. When the proposed rule becomes effective in the 2006 model year, manufacturers must use durability procedures that have been approved under the new rules to generate new durability demonstrations.

G. Miscellaneous Regulatory Amendments and Corrections

1. With the addition of the new durability regulations (sections 86.1823–06, 86.1824–06, and 86.1825–06), the regulatory references in a number of other sections of Subpart S of Part 86 have been updated accordingly.

2. Section 1864 of Subpart S is being moved to section 1801. This section describes the applicability of Subpart S to heavy-duty vehicles, and is more appropriately located in the Applicability section of the regulations.

3. An outdated address in section 1817–05 has been corrected.

4. A typographical error in section 1830–01(c) has been corrected.

5. Section 86.1824–07 was originally promulgated to add the applicability to 2007 model year and later MDPVs and HDVs. To improve readability, this applicability has been incorporated into 86.1824–06, and the original section is reserved.

6. Two corrections are being made to Section 86.1806–05, on-board diagnostics. First, in a previous regulatory action, this section was amended to add provisions for diesel vehicles and HDVs and MDPVs. In doing this, an inadvertent error was made in paragraph (a)(3). The provision allowing compliance with 86.004–17, in lieu of 1806–05, should be limited to apply only to MDPVs and HDVs. The language has been revised accordingly. Second, in the original CAP 2000 regulation, there is an incorrect reference to section 86.094–17(e) and (f). The correct reference is 1806–05(e) and (f).

IV. What Are the Economic and Environmental Impacts?

A. Economic Impacts

1. Comparison to CAP 2000 Economic Impacts

In considering the economic and environmental impacts of today's proposal, we used the CAP 2000 regulations as a comparison benchmark. In those regulations, EPA estimated that there would be an average annual net savings to the automotive industry of about $55 million. The analysis performed to reach that conclusion was part of the record for the CAP 2000 regulation, and was not contested.

As we drafted today's proposal, one of our goals was to retain those savings. In the CAP 2000 cost analysis, about half of the total estimated annual savings was attributed to the durability component of the regulations. The elements of CAP 2000 durability which provided the most significant savings are:

a. *Reduced number of durability data vehicles (DDVs).* The creation of the "durability group" under CAP 2000 allowed manufacturers to significantly reduce the number of required durability demonstrations. The savings that are claimed in the CAP 2000 rule resulting from the "durability group" provision come from requiring physically fewer DDVs, fewer durability tests, and less reporting (*e.g.* instead of having to report 912 durability tests, there would only be 620 tests). The "durability group" concept was not part of the Ethyl v. EPA litigation, nor was it mentioned in the Court's opinion on this case. Thus EPA is not modifying the "durability group" regulations in today's proposal.

In fact, it is possible that today's proposal could actually slightly reduce some costs to the industry, in that manufacturers using one of the EPA-prescribed durability processes (either whole-vehicle or bench) would no longer have to provide a description of their durability process (which was required under CAP 2000, and would continue to be required for manufacturers using customized procedures under today's proposal).

b. *Reduced burden-hours per DDV.* In addition to fewer DDVs, EPA also slightly reduced the estimated number of burden-hours required per DDV. As

above, this element was not affected by the Court mandate, and is not impacted by today's proposal.

2. Economic Impact of Today's Rule

Today's proposal prescribes two methods for determining the emission deterioration of vehicles over their useful life periods—the whole-vehicle procedure or the bench-aging procedure. Details of how to perform these procedures are prescribed in the proposed regulations. Because these procedures are similar in nature to those approved by EPA under the CAP 2000 regulations, the added burden for manufacturers utilizing them will be minimal.[55] The costs involved with either of these processes (equipment costs, vehicle costs, testing costs, labor costs, etc.) are fairly fixed. Manufacturers using one of the prescribed methods will not be required to make major changes to or add any new equipment, test any additional vehicles with any additional frequency, or to increase the amount of labor. We expect that manufacturers who, under the old CAP 2000 regulations, used a bench aging (or whole-vehicle) process will continue to use a bench aging (or whole-vehicle) process—the only difference is that now that process is codified.

Our proposed regulations also include the option for manufacturers to use customized or alternative procedures, with EPA approval. The approval requires the manufacturer to submit an analysis of about 20 in-use emission tests. Most manufacturers will be able to utilize in-use data and analyses that they have previously collected from other sources (such as the CAP 2000 in-use verification data). Some manufacturers may need to augment this data by running a few additional tests, but this would be a small, one-time cost. EPA estimates that this small added cost is more than offset by fact that once approved, manufacturers will be able to use their existing durability programs without the need to make any changes to those programs.

B. Environmental Impacts

In the CAP 2000 rule, no quantifiable environmental benefits were projected. Intangible benefits were possible due to the In-Use Verification Program (IUVP) element of the CAP 2000 rule—manufacturers would be able to use the in-use data from this program to identify and fix in-use compliance problems and to make improvements upon their certification durability processes. This intangible benefit is not changed in today's proposal—the in-use verification program is not affected by the Court mandate, and no changes to this program are being proposed. EPA is proposing to modify an existing CAP 2000 provision whereby manufacturers utilize the IUVP data to assess the ability of the durability program to predict in-use compliance. The modification includes more explicit instructions as to what the manufacturer is required to assess and when corrective action is required (*see* section III C.). This proposed provision will have the effect of improving the predictive qualities of the durability process, but again, with intangible environmental benefits.

[55] Added burden will be in the form of the one-time reprogramming of automated driving or bench-aging devices with the new driving/aging cycle, and other minor equipment adjustments.

V. What Are the Opportunities for Public Participation?

A. Copies of This Proposal and Other Related Information

1. Docket

EPA has established an official public docket for this action under Docket ID No. OAR–2002–0079. 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 by referencing Docket No. OAR–2002–0079 at the EPA Air Docket Section,(see **ADDRESSES** section above). You may submit comments electronically, by mail, or through hand delivery/courier as described below. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section V.B.3 Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. 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.

B. Submitting Comments on This Proposal

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

1. Electronically

If you submit an electronic comment, 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.

a. EPA Dockets.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "Quick Search," and then key in Docket ID No. OAR–2002–0079. 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.

b. E-mail.

Comments may be sent by electronic mail to *hormes.linda@epa.gov,* Attention Docket ID No. OAR–2002–0079. 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.

c. Disk or CD ROM.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 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: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR–2002–0079.

3. By Hand Delivery or Courier

Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC., Attention Docket ID No. OAR–2002–0079. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

4. By Facsimile

Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2002–0079.

5. Submitting Comments With Proprietary Information

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (*see* **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This helps insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a non-confidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

C. Areas Where EPA Specifically Requests Public Comment

As discussed in the previous section, the public is invited to comment on any aspect of this proposed rule. The following are areas where EPA is specifically requesting comments:

1. Whether the "equivalency factor" is properly classified by EPA as not CBI.

2. What data provided by a manufacturer to obtain approval for an alternative cycle should or should not be classified as CBI.

3. The appropriateness of the proposed durability objective (effective coverage of approximately 90 percent of the distribution of emission deterioration rate on in-use candidate vehicles). EPA would appreciate any data showing the degree of coverage for durability programs approved under CAP 2000.

4. Whether the Standard Road Cycle (SRC) achieves EPA's durability objective. EPA would appreciate any emission and/or catalyst temperature data that demonstrates how the SRC compares to other cycles.

5. EPA is interested in receiving any catalyst temperature or emission data that exists on the SRC or other mileage accumulation road cycles.

6. The appropriateness of the Standard Bench Cycle (SBC). EPA would appreciate any catalyst temperature data and percent breakdown of rich-lean-stoichiometric A/F ratios that support the comments.

7. The appropriateness of the Bench Aging Time (BAT) equation (and its coefficients) for a manufacturers product line. EPA would appreciate catalyst temperature data paired with calculated aging times that support the comments.

8. The appropriateness of the customization options and the approval process proposed.

9. The ability of outside parties to use the equivalency factor to replicate the durability rates used by manufacturers during certification.

10. The appropriateness of the IUVP data feedback provision of the proposal to accomplish the Agency's objective to assure accurate durability processes. EPA would appreciate any analysis of

in-use data under the proposed procedures that supports the comments.

D. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing (*see* **DATES**) should notify the general contact person (*see* **FOR FURTHER INFORMATION CONTACT**)no later than five days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first serve basis. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first come, first serve basis to follow the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advanced copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advanced copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submissions should be directed to the Air Docket Section, Docket No. OAR–2002–0079 (*see* **ADDRESSES**). The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

If no one indicates to EPA that they wish to present oral testimony by the date given, the public hearing will be canceled.

VI. What Are the Statutory and Executive Order Reviews for This Proposed Rule?

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (64 FR 23906) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0104, EPA ICR number 0783.44. A copy of the OMB approved Information Collection Requests (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that manufacturers automobiles as defined by NAIC code 336111. Based on Small Business Administration size standards, a small business for this NAIC code is defined as a manufacturer having less than 1000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The requirements are only applicable to manufacturers of motor vehicles, a group which does not contain a substantial number of small entities. Out of a total of approximately 80 automotive manufacturers subject to today's proposal, EPA estimates that approximately 15–20 of these could be classified as small entities based on SBA size standards. EPA's CAP 2000 compliance regulations include numerous regulatory relief provisions for such small entities. Those provisions remain in effect and are not impacted by today's proposal. Thus, we have determined that small entities will not experience any economic impact as a result of this proposal. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory action 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 proposed rules with "Federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgation 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 proposed rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA believes this proposed rule contains no federal mandates for state, local, or tribal governments. Nor does this rule have federal mandates that may result in the expenditures of $100 million or more in any year by the private sector as defined by the provisions of Title II of the UMRA. Nothing in the proposed rule would significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule will impose no direct compliance costs on states. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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 proposed 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. The requirements proposed by this action impact private sector businesses, particularly the automotive and engine manufacturing industries. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Children's Health Protection

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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA believes this proposed rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by E.O. 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve consideration of any new technical standards. The durability test procedures that EPA is proposing are unique and have not been previously published in the public domain.

List of Subjects in 40 CFR Part 86

Environmental protection, Air pollution control, Motor vehicle pollution, Confidential business information, Reporting and recordkeeping requirements.

Dated: March 16, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, The Environmental

Protection Agency title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles, Light-Duty Trucks, and Complete Otto-Cycle Heavy-Duty Vehicles

2. Amend § 86.1801–01 to add a new paragraph (i) to read as follows:

§ 86.1801–01 Applicability.

* * * * *

(i) Optional chassis certification for diesel vehicles.

(1) A manufacturer may optionally certify 2007 and later model year heavy-duty diesel vehicles under 14,000 pounds GVWR to the standards specified in § 86.1816–08. Such vehicles must meet all requirements of Subpart S that are applicable to Otto-cycle vehicles, except for evaporative, refueling, and OBD requirements.

(2) Diesel vehicles optionally certified under this section are subject to the OBD requirements of § 86.005–17.

(3) Diesel vehicles optionally certified under this section may be tested using the test fuels, sampling systems, or analytical systems specified for diesel engines in Subpart N of this part.

(4) Diesel vehicles optionally certified under this section may not be included in any averaging, banking, or trading program.

(5) The provisions of § 86.004–40 apply to the engines in vehicles certified under this section.

(6) Diesel vehicles may be certified under this section to the standards applicable to model year 2008 prior to model year 2008.

(7) Diesel vehicles optionally certified under this section in model years 2007, 2008, or 2009 shall be included in phase-in calculations specified in § 86.007–11(g).

3. Amend § 86.1803–01 by adding a new definition in alphabetical order, to read as follows:

§ 86.1803–01 Definitions.

* * * * *

Secondary air injection means a system whereby air (not ingested by the engine) is introduced into the exhaust system in front of a catalyst.

* * * * *

4. Amend § 86.1804–01 by adding new acronyms in alphabetical order, to read as follows:

§ 86.1804–01 Acronyms and abbreviations.

* * * * *

A/F—Air/Fuel

* * * * *

BAT—Bench Aging Time

* * * * *

SBC—Standard Bench Cycle

* * * * *

SRC—Standard Road Cycle

* * * * *

5. Amend § 86.1817–05 by revising paragraph (i)(3)(i) to read as follows:

§ 86.1817–05 Complete heavy-duty vehicle averaging, trading, and banking program.

* * * * *

(i) * * *

(3) * * *

(i) These reports shall be submitted within 90 days of the end of the model year to: Director, Certification and Compliance Division, U.S. Environmental Protection Agency, Mail Code 6405J, 1200 Pennsylvania Ave. NW 20460.

* * * * *

6. Add a new § 86.1823–06 subpart S to read as follows:

§ 86.1823–06 Durability demonstration procedures for exhaust emissions.

This section applies to all vehicles which meet the applicability provisions of § 86.1801. Eligible small volume manufacturers or small volume test groups may optionally meet the requirements of §§ 86.1838–01 and 86.1826–01 in lieu of the requirements of this section. A separate durability demonstration is required for each durability group.

(a) Durability program objective. The durability program must predict an expected in-use emission deterioration rate and emission level that effectively represents a significant majority (approximately 90 percent) of the distribution of emission levels and deterioration in actual use over the full and intermediate useful life of candidate in-use vehicles of each vehicle design which uses the durability program.

(b) Required durability demonstration. Manufacturers must conduct a durability demonstration for each durability group using a procedure specified in either paragraph (c), (d), or (e) of this section.

(c) *Standard whole-vehicle durability procedure.* This procedure consists of conducting mileage accumulation and periodic testing on the durability data vehicle, selected under the provisions of § 86.1822 described as follows:

(1) Mileage accumulation must be conducted using the standard road cycle (SRC). The SRC is described in appendix V of this part.

(i) Mileage accumulation on the SRC may be conducted on a track or on a mileage accumulation dynamometer.

(ii) The fuel used for mileage accumulation must comply with the mileage accumulation fuel provisions of § 86.113 for the applicable fuel type (*e.g.*, gasoline or diesel fuel).

(iii) The DDV must be ballasted to a minimum of the loaded vehicle weight for light-duty vehicles and a minimum of the ALVW for all other vehicles.

(iv) The mileage accumulation dynamometer must be setup as follows:

(A) The simulated test weight will be the equivalent test weight specified in § 86.129 using a weight basis of the loaded vehicle weight for light-duty vehicles and ALVW for all other vehicles.

(B) The road force simulation will be determined according to the provisions of § 86.129.

(C) The manufacturer will control the vehicle, engine, and/or dynamometer as appropriate to follow the SRC using good engineering judgement.

(2) Mileage accumulation must be conducted for at least 75% of the applicable full useful life mileage period specified in § 86.1805. If the mileage accumulation is less than 100% of the full useful life mileage, then the DF calculated according to the procedures of paragraph (f)(1)(ii) of this section must be based upon a line projected to the full-useful life mileage using the upper 80 percent statistical confidence limit calculated from the emission data.

(3) If a manufacturer elects to calculate a DF pursuant to paragraph (f)(1) of this section, then it must conduct at least one FTP emission test at each of five different mileage points selected using good engineering judgement. Additional testing may be conducted by the manufacturer using good engineering judgement. The required testing must include testing at 5,000 miles and at the highest mileage point run during mileage accumulation (*e.g.* the full useful life mileage).

(d) *Standard bench-aging durability procedure.* This procedure is not applicable to diesel fueled vehicles or vehicles which do not use a catalyst as the principle after-treatment emission control device. This procedure requires installation of the catalyst-plus-oxygen-sensor system on a catalyst aging bench. Aging on the bench is conducted by following the standard bench cycle (SBC) for the period of time calculated from the bench aging time (BAT) equation. The BAT equation requires, as

input, catalyst time-at-temperature data measured on the SRC.

(1) *Standard bench cycle (SBC).* Standard catalyst bench aging is conducted following the SBC.

(i) The SBC must be run for the period of time calculated from the BAT equation.

(ii) The SBC is described in appendix VII to part 86.

(2) *Catalyst time-at-temperature data.*

(i) Catalyst temperature must be measured during at least two full cycles of the SRC.

(ii) Catalyst temperature must be measured at the highest temperature location in the hottest catalyst on the DDV.

(iii) Catalyst temperature must be measured at the rate of one hertz (one measurement per second).

(iv) The measured catalyst temperature results must be tabulated into a histogram with temperature bins of no larger than 25° C.

(3) *Bench aging time.* Bench aging time is calculated using the bench aging time (BAT) equation as follows:

t_e for a temperature bin = $t_h\, e^{((R/Tr)-(R/Tv))}$

Total t_e = Sum of t_e over all the temperature bins

Bench Aging Time = A (Total t_e)

Where:

A = 1.1 This value adjusts the catalyst aging time to account for deterioration from sources other than thermal aging of the catalyst.

R = Catalyst thermal reactivity coefficient. For the SBC, R=17500 for Tier 2 vehicles and R=18500 for all other vehicles.

t_h = The time (in hours) measured within the prescribed temperature bin of the vehicle's catalyst temperature histogram adjusted to a full useful life basis *e.g.*, if the histogram represented 400 miles, and full useful life was 100,000 miles; all histogram time entries would be multiplied by 250 (100000/400).

Total t_e = The equivalent time (in hours) to age the catalyst at the temperature of T_r on the catalyst aging bench using the catalyst aging cycle to produce the same amount of deterioration experienced by the catalyst due to thermal deactivation over the vehicle's full useful life.

t_e for a bin = The equivalent time (in hours) to age the catalyst at the temperature of T_r on the catalyst aging bench using the catalyst aging cycle to produce the same amount of deterioration experienced by the catalyst due to thermal deactivation at the temperature bin of T_v over the vehicle's full useful life.

T_r = The effective reference temperature (in °K) of the catalyst on the catalyst bench.

T_v = The mid-point temperature (in °K) of the temperature bin of the vehicle on-road catalyst temperature histogram.

(4) *Effective reference temperature on the SBC.* The effective reference temperature of the standard bench cycle (SBC) is determined for the actual catalyst system design and actual aging bench which will be used using the following procedures:

(i) Measure time-at-temperature data in the catalyst system on the catalyst aging bench following the SBC.

(A) Catalyst temperature must be measured at the highest temperature location of the hottest catalyst in the system.

(B) Catalyst temperature must be measured at the rate of one hertz (one measurement per second) during at least 20 minutes of bench aging.

(C) The measured catalyst temperature results must be tabulated into a histogram with temperature bins of no larger than 10° C.

(ii) The BAT equation must be used to calculate the effective reference temperature by iterative changes to the reference temperature (T_r) until the calculated aging time equals the actual time represented in the catalyst temperature histogram. The resulting temperature is the effective reference temperature on the SBC for that catalyst system and aging bench.

(5) *Catalyst aging bench.* The manufacturer must design, using good engineering judgement, a catalyst aging bench that follows the SBC and delivers the appropriate exhaust flow, exhaust constituents, and exhaust temperature to the face of the catalyst.

(i) A manufacturer may use the criteria and equipment discussed in Appendix VIII to part 86 to develop its catalyst aging bench without prior Agency approval. The manufacturer may use another design that results in equivalent or superior results with advance Agency approval.

(ii) All bench aging equipment and procedures must record appropriate information (such as measured A/F ratios and time-at-temperature in the catalyst) to assure that sufficient aging has actually occurred.

(6) *Required testing.* If a manufacturer is electing to calculate a DF (as discussed in paragraph (f)(1) of this section), then it must conduct at least two FTP emissions tests on the DDV before bench aging of emission control hardware and at least two FTP emission tests on the DDV after the bench-aged emission hardware is re-installed. Additional testing may be conducted by the manufacturer using good engineering judgment.

(e) *Additional durability procedures.*

(1) *Whole vehicle durability procedures.* A manufacturer may use either a customized SRC or an alternative road cycle for the required durability demonstration, with prior EPA approval.

(i) *Customized SRC.* A customized SRC is the SRC run for a different number of miles and/or using a different mileage accumulation fuel with higher levels of certain compounds that may lead to catalyst poisoning, such as phosphorus, sulfur and lead, than specified in paragraph (c)(1)(ii) of this section.

(ii) *Alternative road cycle.* An alternative cycle is a whole vehicle mileage accumulation cycle that uses a different speed-versus-time trace than the SRC, conducted for either the full useful life mileage or for less than full useful life mileage. An alternative road cycle may also include the use of fuel with higher levels of certain compounds that may lead to catalyst poisoning, such as phosphorus, sulfur and lead, than specified in paragraph (c)(1)(ii) of this section.

(iii) *Approval criteria.* The manufacturer must obtain approval from EPA prior to using a customized/alternative road cycle. EPA may approve a customized/alternative cycle when the manufacturer demonstrates that the cycle is expected to achieve the durability program objective of paragraph (a) of this section for the breadth of vehicles using the customized/alternative cycle. To obtain approval the manufacturer must submit all the following information and perform all the following analyses:

(A) The manufacturer must supply in-use FTP emission data on past model year vehicles which are applicable to the vehicle designs it intends to cover with the customized/alternative cycle.

(*1*) The amount of in-use emission data required to demonstrate the effectiveness of a customized/alternative cycle in meeting the durability objective is based on whether the customized/alternative cycle is more or less severe than the SRC. In most cases, EPA will accept a minimum of 20 candidate in-use vehicles tested as-received on the FTP cycle. If the customized/alternative cycle is significantly more severe than the SRC, EPA may accept less data. Conversely, if the customized/alternative cycle is significantly less severe than the SRC, EPA may require more data, up to a maximum of 30 vehicles.

(2) This data set must consist of randomly procured vehicles from actual customer use. The vehicles selected for procurement will cover the breadth of the vehicles that the manufacturer intends to certify using the customized/alternative cycle. Vehicles should be procured and FTP tested in as-received condition under the guidelines of the high mileage IUVP program (ref: 40 CFR 86.1845–04).

(3) Manufacturers may use previously generated in-use data from the CAP 2000 IUVP or the RDP "reality check" in-use program as well as other sources of in-use emissions data for approval under this section.

(4) Manufacturers must remove unrepresentative data from the data set using good engineering judgement. The manufacturer must provide EPA with the data removed from the analysis and a justification for the removal of that data.

(5) Manufacturers may supply additional in-use data.

(B) The manufacturer must submit an analysis which includes a comparison of the relative stringency of the customized/alternative cycle to the SRC and a calculated equivalency factor for the cycle.

(1) The equivalency factor may be determined by an evaluation of the SRC and the customized/alternative cycle using catalyst time-at-temperature data from both cycles and the BAT equation to calculate the required bench aging time of each cycle. The equivalency factor is the ratio of the aging time on the SRC divided by the aging time on the alternative cycle.

(2) If emissions data is available from the SRC, as well as time-at-temperature data, then that emissions information may be included in the evaluation of the relative stringency of the two cycles and the development of the equivalency factor.

(3) A separate equivalency factor may be determined for each test group, or test groups may be combined together (using good engineering judgement) to calculate a single equivalency factor.

(C) The manufacturer must submit an analysis which evaluates whether the durability objective will be achieved for the vehicle designs which will be certified using the customized/alternative cycle. The analysis must address of the following elements:

(1) How the durability objective has been achieved using the data submitted in paragraph (e)(1)(iii)(A) of this section.

(2) How the durability objective will be achieved for the vehicle designs which will be covered by the customized/alternative cycle. This analysis should consider the emissions deterioration impact of the design differences between the vehicles included in the data set required in (e)(1)(iii)(A) of this section and the vehicle designs that the manufacturer intends to certify using the customized/alternative cycle.

(2) *Bench-aging durability procedures.* A manufacturer may use a customized or alternative bench aging durability procedure for a required durability demonstration, if approved as described in paragraphs (e)(2)(i) through (vii) of this sectiion. A customized/alternative bench aging procedure must use vehicle performance data (such as catalyst temperature) measured on an approved road cycle as part of the algorithm to calculate bench aging time. The manufacturer must obtain approval from the Agency prior to using a customized bench durability procedure.

(i) The lower control temperature on the SBC may be modified without prior EPA approval provided that the high control temperature is set 90° C above the lower control temperature and an approved BAT equation is used to calculate bench aging time. .

(ii) The R-factor used in EPA's BAT equation may be determined experimentally using EPA's standard procedures (specified in Appendix IX of this part) without prior EPA approval. Other experimental techniques to calculate the R-factor require advance EPA approval. To obtain approval, the manufacturer must demonstrate that the calculated bench aging time results in the same (or larger) amount of emission deterioration as the associated approved road cycle.

(iii) The A-factor used in EPA's BAT equation may be modified, using good engineering judgement without prior EPA approval, to ensure that the modified durability process will achieve the durability objective of paragraph (a) of this section.

(iv) Bench aging may be conducted using fuel with additional compounds that may lead to catalyst poisoning, such as phosphorus, sulfur or lead, without prior EPA approval. A manufacturer using fuel with these additional compounds may either calculate a new R-factor or A-factor to assure that the durability objective of paragraph (a) of this section is properly achieved regardless of the use of worst-case fuel usage, in which case the approval criteria for those changes would apply.

(v) An approved customized/alternative road cycle may be used to develop catalyst temperature histograms for use in the BAT equation without additional EPA approval beyond the original approval necessary to use that cycle for mileage accumulation.

(vi) A different bench cycle than the SBC may be used during bench aging with prior EPA approval. To obtain approval the manufacturer must demonstrate that bench aging with the new bench cycle provides the same or larger amount of emission deterioration as the associated approved road cycle.

(vii) A different method to calculate bench aging time may be used with prior EPA approval. To obtain approval the manufacturer must demonstrate that bench aging for the time calculated by the alternative m hod results in the same or larger amount of emission deterioration as the associated approved road cycle.

(f) *Use of deterioration program to determine compliance with the standard.* A manufacturer may select from two methods for using the results of the deterioration program to determine compliance with the applicable emission standards. Either a deterioration factor (DF) is calculated and applied to the emission data vehicle (EDV) emission results or aged components are installed on the EDV prior to emission testing.

(1) *Deterioration factors.* (i) Deterioration factors are calculated using all FTP emission test data generated during the durability testing program except as noted:

(A) Multiple tests at a given mileage point are averaged together unless the same number of tests are conducted at each mileage point.

(B) Before and after maintenance test results are averaged together.

(C) Zero-mile test results are excluded from the calculation.

(D) Total hydrocarbon (THC) test points beyond the 50,000-mile (useful life) test point are excluded from the intermediate useful life deterioration factor calculation.

(E) A procedure may be employed to identify and remove from the DF calculation those test results determined to be statistical outliers providing that the outlier procedure is consistently applied to all vehicles and data points and is approved in advance by the Administrator.

(ii) The deterioration factor must be based on a linear regression, or another regression technique approved in advance by the Administrator. The deterioration must be a multiplicative or additive factor. Separate factors will be calculated for each regulated emission constituent and for the full and intermediate useful life periods as applicable. Separate DF's are calculated for each durability group except as provided in § 86.1839.

(A) A multiplicative DF will be calculated by taking the ratio of the full or intermediate useful life mileage level, as appropriate (rounded to four decimal places), divided by the stabilized mileage (reference § 86.1831–01(c), *e.g.*, 4000-mile) level (rounded to four decimal places) from the regression analysis. The result must be rounded to three-decimal places of accuracy. The rounding required in this paragraph must be conducted in accordance with § 86.1837. Calculated DF values of less than one must be changed to one for the purposes of this paragraph.

(B) An additive DF will be calculated to be the difference between the full or intermediate useful life mileage level (as appropriate) minus the stabilized mileage (reference § 86.1831–01(c), *e.g.* 4000-mile) level from the regression analysis. The full useful life regressed emission value, the stabilized mileage regressed emission value, and the DF result must be rounded to the same precision and using the same procedures as the raw emission results according to the provisions of § 86.1837–01. Calculated DF values of less than zero must be changed to zero for the purposes of this paragraph.

(iii) The DF calculated by these procedures will be used for determining full and intermediate useful life compliance with FTP exhaust emission standards, SFTP exhaust emission standards, and cold CO emission standards. At the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using cold CO test data to determine compliance with cold CO emission standards. Also at the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using US06 and/or air conditioning (SC03) test data to determine compliance with the SFTP emission standards.

(2) *Installation of aged components on emission data vehicles.* For full and intermediate useful life compliance determination, the manufacturer may elect to install aged components on an EDV prior to emission testing rather than applying a deterioration factor. Different sets of components may be aged for full and intermediate useful life periods. Components must be aged using an approved durability procedure that complies with paragraph (b) of this section. The list of components to be aged and subsequently installed on the EDV must selected using good engineering judgement.

(g) *Emission component durability.* The manufacturer must use good engineering judgment to determine that all exhaust emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

(h) *Application of the durability procedure to future durability groups.* The manufacturer may apply a durability procedure to a durability group, including durability groups in future model years, if the durability process approved under paragraph (c) of this section will achieve the objective of paragraph (a) of this section for that durability group. The manufacturer must use good engineering judgment in determining the applicability of an approved durability procedure to a durability group.

(1) The manufacturer may modify an approved durability procedure by increasing or decreasing the number of miles run on an approved road cycle to represent full or intermediate useful life emissions deterioration or by changing the A–Factor in the BAT equation for a bench aging, using good engineering judgment, to ensure that the modified procedure will achieve the objective of paragraph (a) of this section for that durability group.

(2) The manufacturer must notify the Administrator of its determination to use an approved (or modified) durability procedure on particular test groups and durability groups prior to emission data vehicle testing for the affected test groups (notification at an annual preview meeting scheduled before the manufacturer begins certification activities for the model year is preferred).

(3) Prior to certification, the Administrator may reject the manufacturer's determination in paragraph (h) of this section to apply an approved or modified durability procedure for a durability group or test group if:

(i) It is not made using good engineering judgment,

(ii) It fails to properly consider data collected under the provisions of §§ 86.1845–04, 86.1846–01, and 86.1847–01 or other information; or

(iii) The Administrator determines that the durability procedure has not been shown to achieve the objective of paragraph (a) of this section for particular test groups which the manufacturer plans to cover with the durability procedure.

(i) *Evaluation of the certification durability procedures based on in-use emissions data.*

(1) Manufacturers must use the information gathered from the IUVP, as well as other sources of in-use emissions data, to periodically review whether the durability procedure it employs achieves the objective specified in paragraph (a) of this section.

(2) Required analysis of a manufacturer's approved durability procedures.

(i) In addition to any periodic reviews under paragraph (i)(1) of this section, a manufacturer must conduct a review of whether the durability procedure it employs achieves the durability objective specified in paragraph (a) of this section when the criteria for additional testing specified in § 86.1846 (b) are activated.

(ii) These criteria are evaluated independently for all applicable FTP emission constituents.

(iii) This analysis must be performed for each test group certified by the manufacturer.

(iv) These procedures apply to the EPA standard durability procedures discussed in paragraphs (c) and (d) of this section as well as durability procedures approved under paragraph (e) of this section, including modifications under paragraph (h) of this section.

(v) The analysis must be submitted to EPA no later than 60 days after the submission of the IUVP data report specified in § 86.1847(f).

(3) EPA may require a manufacturer to perform an analysis as described in paragraph (i)(2) of this section if EPA is concerned that the manufacturer's durability procedure may not achieve the durability objective of paragraph (a) of this section.

(j) If, based on the analysis required in paragraph (i) of this section and/or any other information, EPA determines that the durability procedure does not achieve the durability objective of paragraph (a) of this section, EPA may withdraw approval to use the durability procedure or condition approval on modifications to the durability procedure. Such withdrawal or conditional approval will apply to future applications for certification and to the portion of the manufacturer's product line (or the entire product line) that the Administrator determines to be affected. Prior to such a withdrawal the Administrator will give the manufacturer a preliminary notice at least 60 days prior to the final decision. During this period, the manufacturer may submit technical discussion, statistical analyses, additional data, or other information which is relevant to the decision. The Administrator will consider all information submitted by the deadline before reaching a final decision.

(k) If EPA withdraws approval, under the provisions of paragraph (j) of this section, for a durability procedure

approved under the provisions of paragraphs (c) and/or (d) of this section, the following procedures apply:

(1) The manufacturer must select one of the following options for future applications for certification for the applicable portion of the manufacturers product-line affect by the Agency's decision:

(i) Increase future DFs calculated using the applicable durability process by the average percent-difference between certification levels and IUVP data; or

(ii) Increase the miles driven on the SRC or the aging time calculated by the BAT equation by the average percent-difference between certification levels and IUVP data, or

(iii) The manufacturer may obtain approval for a new customized durability process, as allowed in paragraph (e) of this section, that has been demonstrated to meet the durability objective.

(2) If EPA's decision to withdraw approval under the provisions of paragraph (j) of this section is based on fewer than 20 tests, the Administrator may require a smaller adjustment than specified in paragraph (k)(1) (i) or (ii) of this section.

(l) Any manufacturer may request a hearing on the Administrator's withdrawal of approval in paragraphs (j) or (k) of this section. The request must be in writing and must include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objection. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, she/he must provide the manufacturer a hearing in accordance with § 86.1853–01 with respect to such issue.

7. A new § 86.1824–06 is added to subpart S to read as follows:

§ 86.1824–06 Durability demonstration procedures for evaporative emissions.

This section applies to gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled vehicles which meet the applicability provisions of § 86.1801. Eligible small volume manufacturers or small volume test groups may optionally meet the requirements of §§ 86.1838–01 and 86.1826–01 in lieu of the requirements of this section. A separate durability demonstration is required for each evaporative/refueling family.

(a) *Durability program objective.* The durability program must predict an expected in-use emission deterioration rate and emission level that effectively represents a significant majority (approximately 90 percent) of the distribution of emission levels and deterioration in actual use over the full and intermediate useful life of candidate in-use vehicles of each vehicle design which uses the durability program.

(b) *Required durability demonstration.* Manufacturers must conduct a durability demonstration which satisfies the provisions of either paragraph (c), (d), or (e) of this section.

(c) *Whole vehicle evaporative durability demonstration.*

(1) Mileage accumulation must be conducted using the SRC or any road cycle approved under the provisions of § 86.1823(e)(1).

(2) Mileage accumulation must be conducted for either:

(i) The applicable full useful life mileage period specified in § 86.1805, or

(ii) At least 75 percent of the full useful life mileage. In which case, the manufacturer must calculate a df calculated according to the procedures of paragraph (f)(1)(ii) of this section, except that the DF must be based upon a line projected to the full-useful life mileage using the upper 80 percent statistical confidence limit calculated from the emission data.

(3) The manufacturer must conduct at least one evaporative emission test at each of the five different mileage points selected using good engineering judgement. The required testing must include testing at 5,000 miles and at the highest mileage point run during mileage accumulation (*e.g.* the full useful life mileage). Additional testing may be conducted by the manufacturer using good engineering judgement. The manufacturer may select to run either the 2-day and/or 3-day evaporative test at each test point using good engineering judgement.

(d) *Bench aging evaporative durability procedures.* Manufacturers may use bench procedures designed, using good engineering judgement, to evaluate the emission deterioration of evaporative control systems. Manufacturers may base the bench procedure on an evaluation the following potential causes of evaporative emission deterioration:

(1) Cycling of canister loading due to diurnal and refueling events,

(2) Use of various commercially available fuels, including the Tier 2 requirement to include alcohol fuel;

(3) Vibration of components;

(4) Deterioration of hoses, etc. due to environmental conditions; and

(5) Deterioration of fuel cap due to wear.

(e) *Combined whole-vehicle and bench-aging programs.* Manufacturers may combine the results of whole vehicle aging and bench aging procedures using good engineering judgement.

(f) *Fuel requirements.* (1) For gasoline fueled vehicles certified to meet the evaporative emission standards set forth in § 86.1811–04(e)(1), any mileage accumulation method for evaporative emissions must employ gasoline fuel for the entire mileage accumulation period which contains ethanol in, at least, the highest concentration permissible in gasoline under federal law and that is commercially available in any state in the United States. Unless otherwise approved by the Administrator, the manufacturer must determine the appropriate ethanol concentration by selecting the highest legal concentration commercially available during the calendar year before the one in which the manufacturer begins its mileage accumulation. The manufacturer must also provide information acceptable to the Administrator to indicate that the mileage accumulation method is of sufficient design, duration and severity to stabilize the permeability of all non-metallic fuel and evaporative system components to the mileage accumulation fuel constituents.

(2) For flexible-fueled, dual-fueled, multi-fueled, ethanol-fueled and methanol-fueled vehicles certified to meet the evaporative emission standards set forth in § 86.1811–04(e)(1), any mileage accumulation method must employ fuel for the entire mileage accumulation period which the vehicle is designed to use and which the Administrator determines will have the greatest impact upon the permeability of evaporative and fuel system components. The manufacturer must also provide information acceptable to the Administrator to indicate that the mileage accumulation method is of sufficient design, duration and severity to stabilize the permeability of all non-metallic fuel and evaporative system components to mileage accumulation fuel constituents.

(3) A manufacturer may use other methods, based upon good engineering judgment, to meet the requirements of paragraphs (f) (1) and (2) of this section, as applicable. These methods must be approved in advance by the Administrator and meet the objectives of paragraphs (f) (1) and (2) of this section, as applicable: to provide assurance that the permeability of all non-metallic fuel and evaporative system components will not lead to evaporative emission standard exceedance under sustained exposure to commercially available alcohol-containing fuels for the useful life of the vehicle.

(g) *Calculation of a deterioration factor.* The manufacturer must calculate a deterioration factor which is applied to the evaporative emission results of the emission data vehicles. The deterioration factor must be based on a linear regression, or an other regression technique approved in advance by the Administrator. The DF will be calculated to be the difference between the full life mileage evaporative level minus the stabilized mileage (*e.g.*, 4000-mile) evaporative level from the regression analysis.

The full useful life regressed emission value, the stabilized mileage regressed emission value, and the DF result must be rounded to the same precision and using the same procedures as the raw emission results according to the provisions of § 86.1837–01. Calculated DF values of less than zero must be changed to zero for the purposes of this paragraph.

(h) *Emission component durability.* The manufacturer must use good engineering judgment to determine that all evaporative emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

(i) If EPA determines based on IUVP data or other information that the durability procedure does not achieve the durability objective of paragraph (a) of this section, EPA may withdraw approval to use the durability procedure or condition approval on modifications to the durability procedure. Such withdrawal or conditional approval will apply to future applications for certification and to the portion of the manufacturer's product line (or the entire product line) that the Administrator determines to be affected. Prior to such a withdrawal the Administrator will give the manufacturer a preliminary notice at least 60 days prior to the final decision. During this period, the manufacturer may submit technical discussion, statistical analyses, additional data, or other information which is relevant to the decision. The Administrator will consider all information submitted by the deadline before reaching a final decision.

(j) Any manufacturer may request a hearing on the Administrator's withdrawal of approval in paragraph (i) of this section. The request must be in writing and must include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objection. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, she/he must provide the manufacturer a hearing in accordance with § 86.1853–01 with respect to such issue.

8. Remove § 86.1824–07.

§ 86.1824–07 [Removed]

9. Add a new § 86.1825–06 to Subpart S to read as follows:

§ 86.1825–06 Durability demonstration procedures for refueling emissions.

This section applies to light-duty vehicles, light-duty trucks, and heavy-duty vehicles which are certified under light-duty rules as allowed under the provisions of § 86.1801–01(c)(1) which are subject to refueling loss emission compliance. Refer to the provisions of §§ 86.1811, 86.1812, 86.1813, 86.1814, and 86.1815 to determine applicability of the refueling standards to different classes of vehicles for various model years. Diesel fuel vehicles may qualify for an exemption to the requirements of this section under the provisions of § 86.1810.

(a) *Durability program objective.* The durability program must predict an expected in-use emission deterioration rate and emission level that effectively represents a significant majority (approximately 90 percent) of the distribution of emission levels and deterioration in actual use over the full and intermediate useful life of candidate in-use vehicles of each vehicle design which uses the durability program.

(b) *Required durability demonstration.* Manufacturers must conduct a durability demonstration which satisfies the provisions of either paragraph (c), (d), or (e) of this section.

(c) *Whole vehicle refueling durability demonstration.* The following procedures must be used when conducting a whole vehicle durability demonstration:

(1) Mileage accumulation must be conducted using the SRC or a road cycle approved under the provisions of § 86.1823(e)(1).

(2) Mileage accumulation must be conducted for either:

(i) The applicable full useful life mileage period specified in § 86.1805, or

(ii) At least 75 percent of the full useful life mileage. In which case, the manufacturer must calculate a df calculated according to the procedures of paragraph (f) (1) (ii) of this section, except that the DF must be based upon a line projected to the full-useful life mileage using the upper 80 percent statistical confidence limit calculated from the emission data.

(3) The manufacturer must conduct at least one refueling emission test at each of the five different mileage points selected using good engineering judgement. The required testing must include testing at 5,000 miles and at the highest mileage point run during mileage accumulation (*e.g.* the full useful life mileage). Additional testing may be conducted by the manufacturer using good engineering judgement.

(d) *Bench aging refueling durability procedures.* Manufacturers may use bench procedures designed, using good engineering judgement, to evaluate the emission deterioration of evaporative/refueling control systems. Manufacturers may base the bench procedure on an evaluation of the following potential causes of evaporative/refueling emission deterioration:

(1) Cycling of canister loading due to diurnal and refueling events;

(2) Use of various commercially available fuels, including the Tier 2 requirement to include alcohol fuel;

(3) Vibration of components;

(4) Deterioration of hoses, etc. due to environmental conditions; and

(5) Deterioration of fuel cap due to wear.

(e) *Combined whole-vehicle and bench-aging programs.* Manufacturers may combine the results of whole vehicle aging and bench aging procedures using good engineering judgment.

(f) [Reserved]

(g) *Calculation of a deterioration factor.* The manufacturer must calculate a deterioration factor which is applied to the evaporative emission results of the emission data vehicles. The deterioration factor must be based on a linear regression, or another regression technique approved in advance by the Administrator. The DF will be calculated to be the difference between the full life mileage evaporative level minus the stabilized mileage (*e.g.*, 4000-mile) evaporative level from the regression analysis. The full useful life regressed emission value, the stabilized mileage regressed emission value, and the DF result must be rounded to the same precision and using the same procedures as the raw emission results according to the provisions of § 86.1837–01. Calculated DF values of less than zero must be changed to zero for the purposes of this paragraph.

(h) *Emission component durability.* The manufacturer must use good engineering judgment to determine that all refueling emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

(i) If EPA determines based on IUVP data or other information that the durability procedure does not achieve the durability objective of paragraph (a)

of this section, EPA may withdraw approval to use the durability procedure or condition approval on modifications to the durability procedure. Such withdrawal or conditional approval will apply to future applications for certification and to the portion of the manufacturer's product line (or the entire product line) that the Administrator determines to be affected. Prior to such a withdrawal the Administrator will give the manufacturer a preliminary notice at least 60 days prior to the final decision. During this period, the manufacturer may submit technical discussion, statistical analyses, additional data, or other information which is relevant to the decision. The Administrator will consider all information submitted by the deadline before reaching a final decision.

(j) Any manufacturer may request a hearing on the Administrator's withdrawal of approval in paragraph (i) of this section. The request must be in writing and must include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objection. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, she/he must provide the manufacturer a hearing in accordance with § 86.1853–01 with respect to such issue.

10. Amend § 86.1826–01 by revising paragraphs (a) and (b)(3)(iv) to read as follows:

§ 86.1826–01 Assigned deterioration factors for small volume manufacturers and small volume test groups.

(a) Applicability. This program is an option available to small volume manufacturers certified under the small volume manufacturer provisions of § 86.1838–01(b)(1) and small volume test groups certified under the small volume test group provisions of § 86.1838–01(b)(2). Manufacturers may elect to use these procedures in lieu of the requirements of §§ 86.1823, 86.1824, and 86.1825 of this subpart.

(b) * * *

(3) * * *

(iv) The manufacturer must develop either deterioration factors or aged components to use on EDV testing by generating durability data in accordance with §§ 86.1823, 86.1824, and/or 86.1825 on a minimum of 25 percent of the manufacturer's projected sales (based on durability groups) that is equipped with unproven emission control systems.

* * * * *

11. Amend § 86.1829–01 by revising paragraphs (a)(3) and (d)(1) to read as follows:

§ 86.1829–01 Durability and emission testing requirements; waivers.

(a) * * *

(3) The DDV shall be tested and accumulate service mileage according to the provisions of §§ 86.1831–01, 86.1823, 86.1824 and 86.1825. Small volume manufacturers and small volume test groups may optionally meet the requirements of § 86.1838–01.

* * * * *

(d)(1) Beginning in the 2004 model year, the exhaust emissions must be measured from all LDV/T exhaust emission data vehicles tested in accordance with the federal Highway Fuel Economy Test (HWFET; 40 CFR part 600, subpart B). The oxides of nitrogen emissions measured during such tests must represent the full useful life emissions in accordance with § 86.1823–06(f) and subsequent model year provisions. Those results are then rounded and compared with the applicable emission standard in § 86.1811–04. All data obtained from the testing required under this paragraph (d) must be reported in accordance with the procedures for reporting other exhaust emission data required under this subpart.

* * * * *

12. Amend § 86.1830–01 by revising paragraph (b)(1), (b)(2), (c)(1), (c)(2), (c)(3) and (c)(4) to read as follows:

§ 86.1830–01 Acceptance of vehicles for emission testing.

* * * * *

(b) Special provisions for durability data vehicles. (1) For DDV's, the mileage at all test points shall be within 250 miles of the scheduled mileage point as required under § 86.1823–06(c)(3). Manufacturers may exceed the 250 mile upper limit if there are logistical reasons for the deviation and the manufacturer determines that the deviation will not affect the representativeness of the durability demonstration.

(2) For DDV's aged using the standard or a customized/alternative whole-vehicle cycle, all emission-related hardware and software must be installed and operational during all mileage accumulation after the 5000-mile test point.

* * * * *

(c) Special provisions for emission data vehicles. (1) All EDV's shall have at least the minimum number of miles accumulated to achieve stabilized emission results according to the provisions of § 86.1831–01(c).

(2) Within a durability group, the manufacturer may alter any emission data vehicle (or other vehicles such as current or previous model year emission data vehicles, running change vehicles, fuel economy data vehicles, and development vehicles) in lieu of building a new test vehicle providing that the modification will not impact the representativeness of the vehicle's test results. Manufacturers shall use good engineering judgment in making such determinations. Development vehicles which were used to develop the calibration selected for emission data testing may not be used as the EDV for that configuration. Vehicles from outside the durability group may be altered with advance approval of the Administrator.

(3) Components used to reconfigure EDV's under the provisions of paragraph (c)(2) of this section must be appropriately aged if necessary to achieve representative emission results. Manufacturers must determine the need for component aging and the type and amount of aging required using good engineering judgment.

(4) Bench-aged hardware may be installed on an EDV for emission testing as a method of determining certification levels (projected emission levels at full or intermediate useful life) using bench aging procedures under the provisions of § 86.1823.

13. Amend § 86.1831–01 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 86.1831–01 Mileage accumulation requirements for test vehicles.

(a) Durability Data Vehicles. (1) The manufacturer must accumulate mileage on DDV's using the procedures in § 86.1823.

* * * * *

(b) * * *

(1) The standard method of mileage accumulation for emission data vehicles and running change vehicles is mileage accumulation using either the Standard Road Cycle specified in Appendix V to this part or the Durability Driving Schedule specified in Appendix IV to this part.

* * * * *

14. Amend § 86.1838–01 by revising paragraph (c)(1) to read as follows:

§ 86.1838–01 Small volume manufacturers certification procedures.

* * * * *

(c) * * * (1) Durability demonstration. Use the provisions of § 86.1826–01 rather than the requirements of §§ 86.1823, 86.1824, and/or 86.1825.

* * * * *

15. Amend § 86.1839–01 by revising paragraph (b) to read as follows:

§ 86.1839–01 Carryover of certification data.

* * * * *

(b) In lieu of using newly aged hardware on an EDV as allowed under the provisions of § 86.1823–06(f)(2), a manufacturer may use similar hardware aged for an EDV previously submitted, provided that the manufacturer determines that the previously aged hardware represents a worst case or equivalent rate of deterioration for all applicable emission constituents for durability demonstration.

16. Amend § 86.1841–01 by revising paragraphs (a)(1) introductory text and (a)(2) and removing and reserving paragraph (a)(3) to read as follows:

§ 86.1841–01 Compliance with emission standards for the purpose of certification.

(a) * * *

(1) If the durability demonstration procedure used by the manufacturer under the provisions of §§ 86.1823, 86.1824, or 86.1825 requires a DF to be calculated, the DF shall be applied to the official test results determined in § 86.1835–01(c) for each regulated emission constituent and for full and intermediate useful life, as appropriate, using the following procedures:

* * * * *

(2) If the durability demonstration procedure used by the manufacturer under the provisions of §§ 86.1823, 86.1824, or 86.1825, as applicable, requires testing of the EDV with aged emission components, the official results of that testing determined under the provisions of § 86.1835–01(c) shall be rounded to the same level of precision as the standard for each regulated constituent at full and intermediate useful life, as appropriate. This rounded emission value is the certification level for that emission constituent at that useful life mileage.

(3) [Reserved]

* * * * *

17. Amend § 86.1844–01 by revising paragraph (d)(4) to read as follows:

§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.

* * * * *

(d) * * *

(4) Durability information.

(i) A description of the durability method used to establish useful life durability, including exhaust and evaporative/refueling emission deterioration factors as required in §§ 86.1823, 86.1824 and 86.1825 when applicable.

(ii) The equivalency factor required to be calculated in § 1823–06(e)(iii)(B), when applicable.

* * * * *

18. Remove and reserve § 86.1863–07.

§ 86.1863–07 [Reserved]

19. Add appendices V, VII, VIII, and IX to part 86 to read as follows:

Appendix V to Part 86—The Standard Road Cycle (SRC)

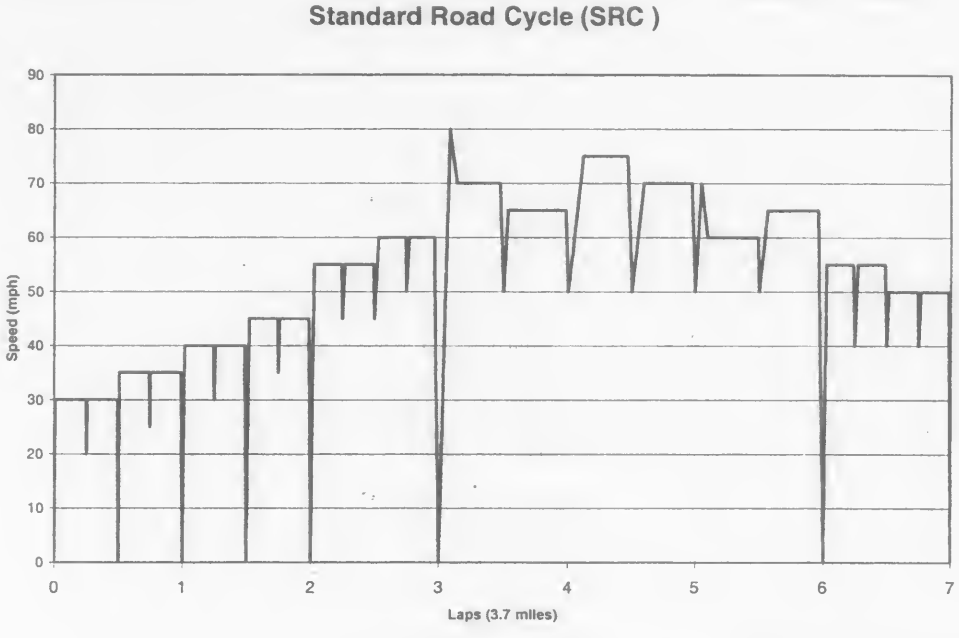
1. The standard road cycle (SRC) is a mileage accumulation cycle that may be used for any vehicle which is covered by the applicability provisions of § 86.1801. The vehicle may be run on a track or on a mileage accumulation dynamometer.

2. The cycle consists of 7 laps of a 3.7 mile course. The length of the lap may be changed to accommodate the length of the service-accumulation track.

DESCRIPTION OF THE SRC

Lap	Description	Typical accel rate (MPH/s)
1	(start engine) Idle 10 sec	0
1	Mod accel to 30 MPH	4
1	Cruise at 30 MPH for ¼ lap.	0
1	Mod. decel to 20 MPH	−5
1	Mod accel to 30 MPH	4
1	Cruise at 30 MPH for ¼ lap.	0
1	Mod. decel to stop	−5
1	Idle 5 sec	0
1	Mod accel to 35 MPH	4
1	Cruise at 35 MPH for ¼ lap.	0
1	Mod. decel to 25 MPH	−5
1	Mod accel to 35 MPH	4
1	Cruise at 35 MPH for ¼ lap.	0
1	Mod. decel to stop	−5
2	Idle 10 sec	0
2	Mod accel to 40 MPH	3
2	Cruise at 40 MPH for ¼ lap.	0
2	Mod. decel to 30 MPH	−5
2	Mod accel to 40 MPH	3
2	Cruise at 40 MPH for ¼ lap.	0
2	Mod. decel to stop	−5
2	Idle 5 sec	0
2	Mod accel to 45 MPH	3
2	Cruise at 45 MPH for ¼ lap.	0
2	Mod. decel to 35 MPH	−5
2	Mod accel to 45 MPH	3
2	Cruise at 45 MPH for ¼ lap.	0
2	Mod. decel to stop	−5
3	Idle 10 sec	0
3	Hard accel to 55 MPH	4
3	Cruise at 55 MPH for ¼ lap.	0
3	Mod. decel to 45 MPH	−5
3	Mod accel to 55 MPH	2
3	Cruise at 55 MPH for ¼ lap.	0
3	Mod. decel to 45 MPH	−5
3	Mod accel to 60 MPH	2
3	Cruise at 60 MPH for ¼ lap.	0
3	Mod. decel to 50 MPH	−5
3	Mod. accel to 60 MPH	2
3	Cruise at 60 MPH for ¼ lap.	0
3	Mod. decel to stop	−4
4	Idle 10 sec	0
4	Hard accel to 80 MPH	3
4	Coastdown to 70 MPH	−1
4	Cruise at 70 MPH for ½ Lap.	0
4	Mod. decel to 50 MPH	−3
4	Mod accel to 65 MPH	2
4	Cruise at 65 MPH for ½ lap.	0
4	Mod. decel to 50 MPH	−3
5	Mod accel to 75 MPH	1
5	Cruise at 75 MPH for ½ lap.	0
5	Mod. decel to 50 MPH	−3
5	Lt. accel to 70 MPH	1
5	Cruise at 70 MPH for ½ lap.	0
5	Mod. decel 50 MPH	−3
6	Mod accel to 70 MPH	2
6	Coastdown to 60 MPH	−1
6	Cruise at 60 MPH for ½ lap.	0
6	Mod. decel to 50 MPH	−4
6	Mod. accel to 65 MPH	1
6	Cruise at 65 MPH for ½ lap.	0
6	Mod. decel to stop	−4
7	Idle 45 sec	0
7	Hard accel to 55 MPH	4
7	Cruise at 55 MPH for ¼ lap.	0
7	Mod. decel to 40 MPH	−5
7	Mod accel to 55 MPH	2
7	Cruise at 55 MPH for ¼ lap.	0
7	Mod. decel to 40 MPH	−5
7	Mod accel to 50 MPH	2
7	Cruise at 50 MPH for ¼ lap.	0
7	Mod. decel to 40 MPH	−5
7	Mod. accel to 50 MPH	2
7	Cruise at 50 MPH for ¼ lap.	0
7	Mod. decel to stop	−5

The standard road cycle is represented graphically in the following figure:



* * * * *

Appendix VII to Part 86—Standard Bench Cycle (SBC)

1. The standard bench aging durability procedures [Ref. § 86.1823–06 (d)] consist of aging a catalyst-oxygen-sensor system on an aging bench which follows the standard bench cycle (SBC) described in this appendix.

2. The SBC requires use of an aging bench with an engine as the source of feed gas for the catalyst.

3. The SBC is a 60-second cycle which is repeated as necessary on the aging bench to conduct aging for the required period of time. The SBC is defined based on the catalyst temperature, engine air/fuel (A/F) ratio, and the amount of secondary air injection which is added in front of the first catalyst.

Catalyst Temperature Control

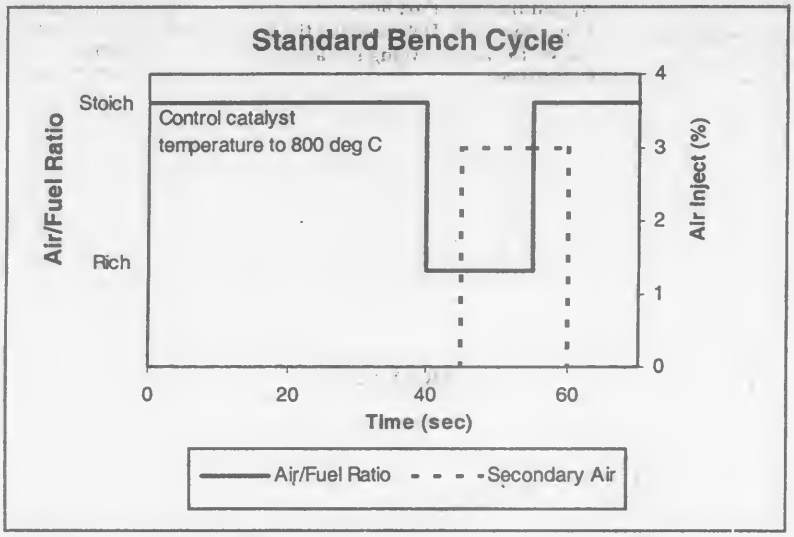
1. Catalyst temperature shall be measured in the catalyst bed at the location where the highest temperature occurs in the hottest catalyst. Alternatively, the feed gas temperature may be measured and converted to catalyst bed temperature using a linear transform calculated from correlation data collected on the catalyst design and aging bench to be used in the aging process.

2. Control the catalyst temperature at stoichiometric operation (01 to 40 seconds on the cycle) to a minimum of 800° C (± 10° C) by selecting the appropriate Engine speed, load, and spark timing for the engine. Control the maximum catalyst temperature that occurs during the cycle to 890° C (± 10° C) by selecting the appropriate A/F ratio of the engine during the "rich" phase described in the table below.

3.If a low control temperature other than 800° C is utilized, the high control temperature shall be 90° C higher than the low control temperature.

STANDARD BENCH CYCLE (SBC)

Time (seconds)	Engine air/fuel ratio	Secondary air injection
01–40	14.7 (stoichiometric, with load, spark timing, and engine speed controlled to achieve a minimum catalyst temperature of 800° C).	None.
41–45	"Rich" (A/F ratio selected to achieve a maximum catalyst temperature over the entire cycle of 890° C, or 90° higher than low control temperature).	None.
46–55	"Rich" (A/F ratio selected to achieve a maximum catalyst temperature over the entire cycle of 890° C, or 90° higher than low control temperature).	3% (± 0.1%).
56–60	14.7 (stoichiometric, same load, spark timing, and engine speed as used in the 01–40 sec period of the cycle).	3% (± 0.1%).



Appendix VIII to Part 86—Aging Bench Equipment and Procedures

This appendix provides specifications for standard aging bench equipment and aging procedures which may be used to conduct bench aging durability under the provisions of § 86.1823–06.

1. Aging Bench Configuration

The aging bench must provide the appropriate exhaust flow rate, temperature, air-fuel ratio, exhaust constituents and secondary air injection at the inlet face of the catalyst.

a. The EPA standard aging bench consists of an engine, engine controller, and engine dynamometer. Other configurations may be acceptable (*e.g.* whole vehicle on a dynamometer, or a burner that provides the correct exhaust conditions), as long as the catalyst inlet conditions and control features specified in this appendix are met.

b. A single aging bench may have the exhaust flow split into several streams providing that each exhaust stream meets the requirements of this appendix. If the bench has more than one exhaust stream, multiple catalyst systems may be aged simultaneously.

2. Fuel and Oil

The fuel used by the engine shall comply with the mileage accumulation fuel provisions of § 86.113 for the applicable fuel type (*e.g.*, gasoline or diesel fuel). The oil used in the engine shall be representative of commercial oils and selected using good engineering judgement.

3. Exhaust System Installation

a. The entire catalyst(s)-plus-oxygen-sensor(s) system, together with all exhaust piping which connects these components, [the "catalyst system"] will be installed on the bench. For engines with multiple exhaust streams (such as some V6 and V8 engines), each bank of the exhaust system will be installed separately on the bench.

b. For exhaust systems that contain multiple in-line catalysts, the entire catalyst system including all catalysts, all oxygen sensors and the associated exhaust piping will be installed as a unit for aging. Alternatively, each individual catalyst may be separately aged for the appropriate period of time.

4. Temperature Measurement

Catalyst temperature shall be measured using a thermocouple placed in the catalyst bed at the location where the highest temperature occurs in the hottest catalyst (typically this occurs approximately one-inch behind the front face of the first catalyst at its longitudinal axis). Alternatively, the feed gas temperature just before the catalyst inlet face may be measured and converted to catalyst bed temperature using a linear transform calculated from correlation data collected on the catalyst design and aging bench to be used in the aging process. The catalyst temperature must be stored digitally at the speed of 1 hertz (one measurement per second).

5. Air/Fuel Measurement

Provisions must be made for the measurement of the air/fuel (A/F) ratio (such as a wide-range oxygen sensor) as close as possible to the catalyst inlet and outlet flanges. The information from these sensors must be stored digitally at the speed of 1 hertz (one measurement per second).

6. Exhaust Flow Balance

Provisions must be made to assure that the proper amount of exhaust (measured in grams/second at stoichiometry, with a tolerance of ±5 grams/second) flows through each catalyst system that is being aged on the bench. The proper flow rate is determined based upon the exhaust flow that would occur in the original vehicle's engine at the steady state engine speed and load selected for the bench aging in paragraph (7).

7. Setup

a. The engine speed, load, and spark timing are selected to achieve a catalyst bed temperature of 800° C (± 10° C) at steady-state stoichiometric operation.

b. The air injection system is set to provide the necessary air flow to produce 3.0% oxygen (±0.1%) in the steady-state stoichiometric exhaust stream just in front of the first catalyst. A typical reading at the upstream A/F measurement point (required in paragraph 5) is lambda 1.16 (which is approximately 3% oxygen).

c. With the air injection on, set the "Rich" A/F ratio to produce a catalyst bed temperature of 890° C (±10°C). A typical A/F value for this step is lambda 0.94 (approximately 2% CO).

8. Aging Cycle

The standard bench aging procedures use the standard bench cycle (SBC) which is described in Attachment VII to Part 86. The SBC is repeated until the amount of aging calculated from the bench aging time (BAT) equation [ref. § 86.1823–06 (d)(3)].

9. Quality Assurance

a. The temperatures and A/F ratio information that is required to be measured in paragraphs (4) and (5) shall be reviewed periodically (at least every 50 hours) during aging. Necessary adjustments shall be made to assure that the SBC is being appropriately followed throughout the aging process.

b. After the aging has been completed, the catalyst time-at-temperature collected during the aging process shall be tabulated into a histogram with temperature bins of no larger than 10 C. The BAT equation and the calculated effective reference temperature for the aging cycle [ref. § 86.1823–06(d)] will be used to determine if the appropriate amount of thermal aging of the catalyst has in fact occurred. Bench aging will be extended if the thermal effect of the calculated aging time is not at least 95% of the target thermal aging.

10. Startup and Shutdown

Care should be taken to assure that the maximum catalyst temperature for rapid deterioration (*e.g.*, 1050° C) does not occur during startup or shutdown. Special low temperature startup and shutdown procedures may be used to alleviate this concern.

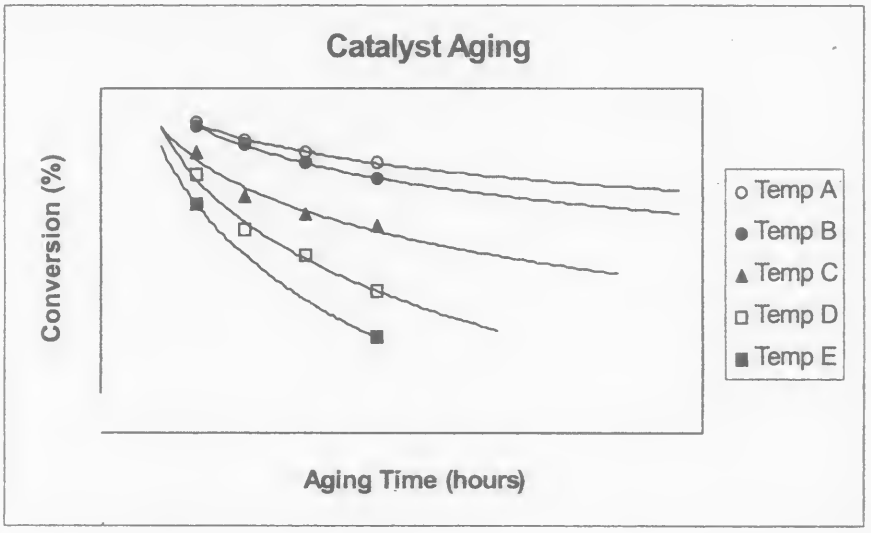
Appendix IX to Part 86—Experimentally Determining the R-Factor for Bench Aging Durability Procedures

The R–Factor is the catalyst thermal reactivity coefficient used in the bench aging time (BAT) equation [Ref. § 86.1826–06(d)(3)]. Manufacturers may determine the value of R experimentally using the following procedures.

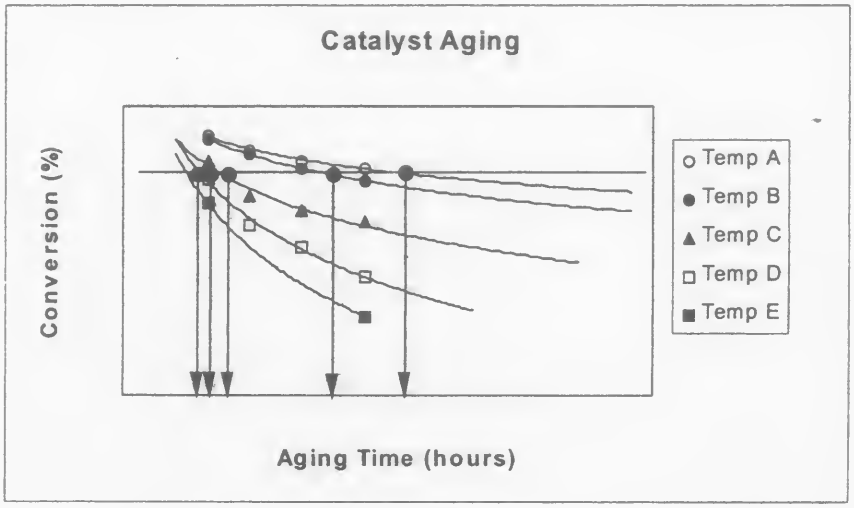
1. Using the applicable bench cycle and aging bench hardware, age several catalysts (of the same catalyst design) at different control temperatures and measure catalyst efficiency periodically for each constituent.

2. Estimate the value of R and calculate the effective reference temperature (Tr) for the bench aging cycle for each control temperature according to the procedure described in § 86.1826–06(d)(4).

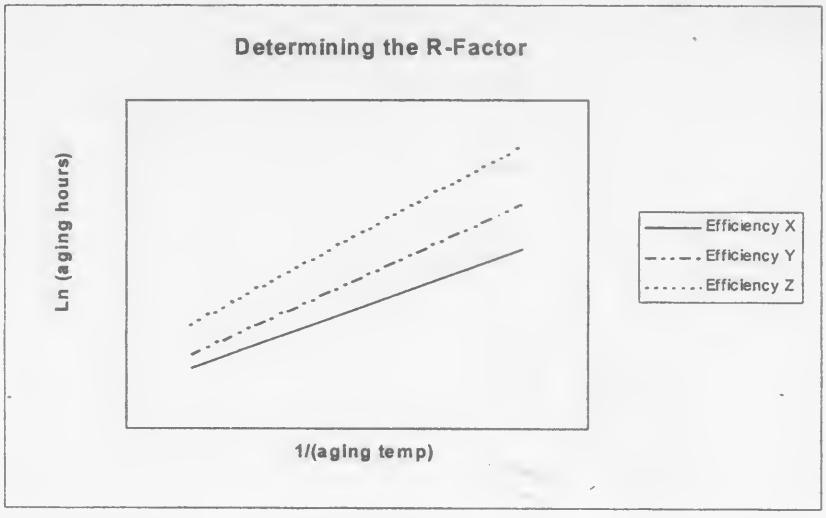
3. On the same set of axes, plot the percent of catalyst conversion efficiency along the vertical axis, versus hours of aging time on the horizontal axis for each of the catalysts. Draw a logarithmic best-fit line through the data for each aging temperature, as shown in the following graph.



4. On the plot of aging time versus conversion efficiency, draw horizontal lines at several different values of constant conversion efficiency. Where the horizontal line intercepts each of the constant temperature aging curves, read the corresponding aging time on the horizontal axis. The following graph shows an example of a horizontal line drawn for one value of constant conversion efficiency.



5. Plot the natural log (ln) of the aging time in hours along the vertical axis, versus the inverse of aging temperature (1/(aging temperature, deg K)) along the horizontal axis, for several constant-catalyst-efficiencies for each constituent. Fit least-squared best-fit lines through the constant-efficiency data. The slope of the line is the R-factor. Use the smallest R-factor (worst case). See the following graph for an example.



6. Compare the R-factor to the initial value that was used in Step 2. If the calculated R-factor differs from the initial value by more than 5%, choose a new R-factor that is between the initial and calculated values, then repeat Steps 2–6 to derive a new R-factor. Repeat this process until the calculated R-factor is within 5% of the initially assumed R-factor.

[FR Doc. 04–6297 Filed 4–1–04; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Friday,
April 2, 2004

Part IV

Department of Labor

Office of the Secretary

29 CFR Part 35

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 35

RIN 1291–AA21

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From the Department of Labor

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: In this final rule, the U.S. Department of Labor ("DOL" or "the Department") implements the Age Discrimination Act of 1975, as amended ("Age Act" or "the Act"). The Age Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions, or factors other than age that might have a disproportionate effect on the basis of age. The Age Act applies to persons of all ages.

EFFECTIVE DATE: May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Annabelle T. Lockhart, Director, Civil Rights Center (CRC), Frances Perkins Building, 200 Constitution Ave., NW., Room N–4123, Washington, DC 20210, *CivilRightsCenter@dol.gov,* (202) 693–6500 (VOICE) or (202) 693–6515, (800) 326–2577 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background Information

The Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*, prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Age Act applies to discrimination at all age levels. The Act also contains specific exceptions that permit the use of certain age distinctions and factors other than age that meet the Act's requirements.

The Age Act required the former Department of Health, Education, and Welfare (HEW) to issue general, government-wide regulations setting standards to be followed by all Federal agencies in implementing the Act. These government-wide regulations, which were issued on June 12, 1979 (45 CFR part 90; 44 FR 33768), and became effective on July 1, 1979, require each Federal agency providing financial assistance to any program or activity to publish final regulations implementing the Age Act, and to submit final agency regulations to HEW (now the Department of Health and Human Services (HHS)), before publication in the **Federal Register**. (See 45 CFR 90.31.)

II. Rulemaking History

On December 29, 1998, DOL published its first NPRM to implement the Age Act. *See* 63 FR 71714 (1998). No comments were received by DOL regarding the proposal. A second NPRM (NPRM II) was published on June 10, 2002, to address changes in statutory and case law that occurred after the first NPRM was published. See 67 FR 39830 (2002). No comments were received by DOL regarding the second proposal.

As part of the clearance process required by the government-wide Age Act regulations, DOL submitted its draft final rule to the Department of Health and Human Services (HHS) for review prior to publication, as required by 45 CFR 90.31(c). HHS raised concerns about consistency between the draft DOL final Age Act rule and the government-wide Age Act regulations, as well as a few additional minor matters. DOL published a third NPRM (NPRM III) on July 11, 2003, that addressed the HHS concerns and proposed minor technical corrections to the rule. *See* 68 FR 41511 (2003). Again, DOL received no comments in response to the proposed rule.

III. Overview of the Final Rule

The final rule published today is nearly identical to the rule as proposed in the July 11, 2003, NPRM. We have made a few non-substantive changes to improve readability of the final rule. We also have amended paragraph 35.32(a)(1) from reading "an exemption under section 35.2(c)" to read "an exception." This change was made because the NPRM did not contain a section 35.2(c), and to make the rule's language consistent with HHS's government-wide Age Act regulations.

In addition, HHS's government-wide Age Act regulations require that "each agency shall publish an appendix to its final age discrimination regulations containing a list of each age distinction provided in a Federal statute or in regulations affecting financial assistance administered by the agency." 45 CFR 90.31(f). The Department of Labor has complied with this requirement by including Appendix A with this final rule. The material in Appendix A is self-explanatory.

We have made one substantive change to the rule, in paragraph 35.2(b). That paragraph lists circumstances in which the rule does not apply. Subparagraph 35.2(b)(2) of the NPRM stated that the rule would not apply to the employment practices of certain listed entities, except those of "any program or activity receiving Federal financial assistance under the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*)." The exception for WIA-financially assisted programs and activities was derived from the Age Act. However, in the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, Congress eliminated this exception. Therefore, we are deleting the exception from this final rule. Applicants to, participants in, and employees of programs and activities receiving Federal financial assistance under WIA remain protected from age-based discrimination by WIA Section 188, 29 U.S.C. 2938, and DOL's regulations implementing that section, found at 29 CFR part 37.

Because the change described above is the only substantive difference between the regulatory text of this final rule and the corresponding text in NPRM III, we have not included a Section-by-Section Analysis in this preamble. Anyone interested in learning more about the differences between this final rule and NPRM II (published in 2002) should read the preamble to NPRM III at 68 FR 41511.

IV. Regulatory Procedures

Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this final rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, yet is not economically significant as defined in section 3(f)(1), and, therefore, the information enumerated in section 6(a)(3)(C) of the Order is not required. Pursuant to the Order, this final rule has been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform

Executive Order 12875—This final rule does not create an unfunded Federal mandate on any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This final rule does not include any Federal mandate that might result in increased expenditures by State, local and tribal governments, in the aggregate, of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Regulatory Flexibility Act

This final rule clarifies existing requirements for entities receiving financial assistance from DOL. The

requirements prohibiting age discrimination by recipients of Federal financial assistance that are in the Age Act and the government-wide regulations have been in effect since 1979. In addition, entities receiving financial assistance from DOL under WIA have been expressly informed of their obligations to comply with the Age Act by both WIA statutory language and by the DOL regulations implementing the civil rights provisions of WIA. Because this final rule does not substantively change existing obligations on recipients, but merely clarifies such duties, the Department certifies that the final rule does not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Section 35.31(c)(1) of the final rule allows a complainant to file a complaint by submitting a written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant. Section 35.40(b)(3)(iii) of the final rule requires a complainant to give 30 days notice to the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient, before commencing a civil action in the event that CRC issues a finding in favor of the recipient or fails to make a finding within 180 days. Based on the history of the program, the Department projects that fewer than 9 persons per year will either file a complaint with CRC or give notice that a civil action is being pursued. Accordingly, the Department believes the Paperwork Reduction Act is inapplicable to this rule.

Executive Order 13132

This final rule has been reviewed in accordance with Executive Order 13132 regarding Federalism. This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

List of Subjects in 29 CFR Part 35

Administrative practice and procedure, Age discrimination, Children, Civil rights, Elderly, Grant programs—Labor.

Signed at Washington, DC this 22nd day of March, 2004.

Elaine L. Chao,

Secretary of Labor.

■ For the reasons set out in the preamble, 29 CFR subtitle A is amended by adding a new Part 35 to read as follows:

PART 35—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF LABOR

Subpart A—General

Sec.

Subpart B–Standards for Determining Age Discrimination

Subpart C—Duties of DOL Recipients

Subpart D—Investigation, Conciliation, and Enforcement Procedures

Authority: 42 U.S.C. 6101 *et seq.*; 45 CFR Part 90.

Subpart A—General

§ 35.1 What is the purpose of the Department of Labor (DOL) age discrimination regulations?

The purpose of this part is to set out the DOL rules for implementing the Age Discrimination Act of 1975, as amended. The Act prohibits discrimination on the basis of age by recipients of Federal financial assistance and in federally assisted programs or activities, but permits the use of certain age distinctions and factors other than age that meet the requirements of the Act and this part.

§ 35.2 To what programs or activities do these regulations apply?

(a) *Application.* This part applies to any program or activity that receives Federal financial assistance, directly or indirectly, from DOL.

(b) *Limitation of application.* This part does not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body that:

(i) Provides persons with any benefits or assistance based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprentice training program.

§ 35.3 What definitions apply to these regulations?

As used in this part:

Act means the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*).

Action means any act, activity, policy, rule, standard, or method of administration, or the use of any policy, rule, standard, or method of administration.

Age means how old a person is, or the number of years from the date of a person's birth.

Age distinction means any action using age or an age-related term.

Age-related term means a word or words that necessarily imply a particular age or range of ages (*e.g.*, "child," "adults," "older persons," but not "student").

Applicant for Federal financial assistance means the individual or entity submitting an application, request, or plan required to be approved by a DOL official or recipient as a

condition to becoming a recipient or subrecipient.

Beneficiary means the person(s) intended by Congress to receive benefits or services from a recipient of Federal financial assistance from DOL.

CRC means the Civil Rights Center, Office of the Assistant Secretary for Administration and Management, United States Department of Labor.

Director means the Director of CRC.

Department means the United States Department of Labor.

DOL means the United States Department of Labor.

Federal financial assistance means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which DOL provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

Program or activity means all of the operations of any entity described in paragraphs (1) through

(4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance from DOL is extended, directly or through another recipient, but excludes the ultimate beneficiary of the assistance. Recipient includes any subrecipient to which a recipient extends or passes on Federal financial assistance, and any successor, assignee, or transferee of a recipient.

Secretary means the Secretary of Labor, or his or her designee.

State means the individual States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island and the Commonwealth of the Northern Mariana Islands.

Subpart B—Standards for Determining Age Discrimination

§ 35.10 Rules against age discrimination.

The rules stated in this section are subject to the exceptions contained in §§ 35.12 and 35.13.

(a) *General rule.* No person in the United States shall be, on the basis of age, excluded from participation in, denied the benefits of or subjected to discrimination under, any program or activity receiving Federal financial assistance from DOL.

(b) *Specific rules.* A recipient may not, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions that have the effect of, on the basis of age:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance from DOL; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance from DOL.

(c) *Other forms of age discrimination.* The listing of specific forms of age discrimination in paragraph (b) of this section is not exhaustive and does not imply that any other form of age discrimination is permitted.

§ 35.11 Definitions of the terms "normal operation" and "statutory objective."

As used in this part, the term:

(a) *Normal operation* means the operation of a program or activity without significant changes that would impair the ability of the program or activity to meet its objectives.

(b) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 35.12 Exceptions to the rules against age discrimination: normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action otherwise prohibited by § 35.10 if the action reasonably takes age into account as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes age into account as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity if:

(a) Age is used as a measure or approximation of one or more other characteristics;

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can reasonably be measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 35.13 Exceptions to the rules against age discrimination: reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 35.10, if that action is based on a factor other than age, even though the action may have a disproportionate effect on persons of different ages. An action is based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 35.14 Burden of proof.

The recipient has the burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 35.12 and 35.13.

§ 35.15 Remedial action.

Even in the absence of a finding of discrimination, a recipient, in administering a program, may take steps to overcome the effects of conditions that resulted in a limited participation on the basis of age. Nothing in this section will permit any otherwise prohibited use of age distinctions that have the effect of excluding individuals from, denying them benefits of, subjecting them to discrimination under, or limiting them in their opportunity to participate in any program or activity receiving Federal financial assistance from DOL.

§ 35.16 Special benefits for children and the elderly.

If a recipient is operating a program or activity that provides special benefits to the elderly or to children, the use of such age distinctions is presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of § 35.12.

§ 35.17 Age distinctions in DOL regulations.

Any age distinction in regulations issued by DOL is presumed to be necessary to the achievement of a statutory objective of the program or activity to which the regulations apply, notwithstanding the provisions of § 35.12.

Subpart C—Duties of DOL Recipients

§ 35.20 General responsibilities.

Each DOL recipient has primary responsibility for ensuring that its programs or activities are in compliance with the Act and this part and for taking appropriate steps to correct any violations of the Act or this part.

§ 35.21 Recipient responsibility to provide notice.

(a) *Notice to other recipients.* Where a recipient of Federal financial assistance from DOL passes on funds to other recipients, that recipient shall notify such other recipients of their obligations under the Act and this part.

(b) *Notice to beneficiaries.* A recipient shall notify its beneficiaries about the provisions of the Act and this part and their applicability to specific programs or activities. The notification must also identify the responsible employee designated under § 35.24 by name or title, address, and telephone number.

§ 35.22 Information requirements.

Each recipient shall:

(a) Keep such records as CRC determines are necessary to ascertain whether the recipient is complying with the Act and this part;

(b) Upon request, provide CRC with such information and reports as the Director determines are necessary to ascertain whether the recipient is complying with the Act and this part; and

(c) Permit reasonable access by CRC to books, records, accounts, reports, other recipient facilities and other sources of information to the extent CRC determines is necessary to ascertain whether the recipient is complying with the Act and this part.

§ 35.23 Assurances required.

A recipient or applicant for Federal financial assistance from DOL shall sign a written assurance, in a form specified by DOL, that the program or activity will be operated in compliance with the Act and this part. In subsequent applications to DOL, an applicant may incorporate this assurance by reference.

§ 35.24 Designation of responsible employee.

Each recipient shall designate at least one employee to coordinate its compliance activities under the Act and this part, including investigation of any complaints that the recipient receives alleging any actions that are prohibited by the Act or this part.

§ 35.25 Complaint procedures.

Each recipient shall adopt and publish complaint procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Act or this part.

§ 35.26 Recipient assessment of age distinctions.

(a) In order to assess a recipient's compliance with the Act and this part, as part of a compliance or monitoring review, or a complaint investigation, CRC may require a recipient employing the equivalent of 15 or more full-time employees to complete a written self-evaluation, in a manner specified by CRC, of any age distinction imposed in its program or activity receiving Federal financial assistance from DOL.

(b) Whenever such an assessment indicates a violation of the Act or this part, the recipient shall take prompt and appropriate corrective action.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 35.30 Compliance reviews.

(a) CRC may conduct such compliance reviews, pre-award reviews, and other similar procedures as permit CRC to investigate and correct violations of the Act and this part, irrespective of whether a complaint has been filed against a recipient. Such reviews may be as comprehensive as necessary to determine whether a violation of the Act or this part has occurred.

(b) Where a review conducted pursuant to paragraph (a) of this section indicates a violation of the Act or this part, CRC will attempt to achieve voluntary compliance. If voluntary compliance cannot be achieved, CRC will begin enforcement proceedings, as described in § 35.36.

§ 35.31 Complaints.

(a) *Who may file.* Any person, whether individually, as a member of a class, or on behalf of others, may file a complaint with CRC alleging discrimination in violation of the Act or these regulations, based on an action occurring on or after July 1, 1979.

(b) *When to file.* A complainant must file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. The Director may extend this time limit for good cause shown.

(c) *Complaint procedure.* A complaint is considered to be complete on the date CRC receives all the information necessary to process it, as provided in paragraph (c)(1) of this section. CRC will:

(1) Accept as a complete complaint any written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant;

(2) Freely permit a complainant to add information to the complaint to meet the requirements of a complete complaint;

(3) Notify the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure; and

(4) Notify the complainant and the recipient (or their representatives) of their right to contact CRC for information and assistance regarding the complaint resolution process.

(d) *No jurisdiction.* CRC will return to the complainant any complaint outside the jurisdiction of this part, with a statement indicating why there is no jurisdiction.

§ 35.32 Mediation.

(a) *Referral to mediation.* CRC will promptly refer to the Federal Mediation and Conciliation Service or the mediation agency designated by the Secretary of Health and Human Services

under 45 CFR part 90, all complaints that:

(1) Fall within the jurisdiction of the Act or this part, unless the age distinction complained of is clearly within an exception; and

(2) Contain all information necessary for further processing, as provided in § 35.31(c)(1).

(b) *Participation in mediation process.* Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or to make an informed judgment that an agreement is not possible. The recipient and the complainant do not need to meet with the mediator at the same time, and a meeting may be conducted by telephone or other means of effective dialogue if a personal meeting between the party and the mediator is impractical.

(c) *When agreement is reached.* If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement, have the complainant and recipient sign it, and send a copy of the agreement to CRC.

(d) *Confidentiality.* The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator may testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process, unless the mediator has obtained prior approval of the head of the mediation agency.

(e) *Maximum time period for mediation.* The mediation shall proceed for a maximum of 60 days after a complaint is filed with CRC. This 60-day period may be extended by the mediator, with the concurrence of the Director, for not more than 30 days, if the mediator determines that agreement is likely to be reached during the extended period. In the absence of such an extension, mediation ends if:

(1) Sixty days elapse from the time the complaint is filed; or

(2) Prior to the end of the 60-day period, either

(i) An agreement is reached; or

(ii) The mediator determines that agreement cannot be reached.

(f) *Unresolved complaints.* The mediator shall return unresolved complaints to CRC.

§ 35.33 Investigations.

(a) *Initial investigation.* CRC will investigate complaints that are unresolved after mediation or reopened because the mediation agreement has been violated.

(1) As part of the initial investigation, CRC will use informal fact-finding methods, including joint or separate discussions with the complainant and recipient to establish the facts and, if possible, resolve the complaint to the mutual satisfaction of the parties. CRC may seek the assistance of any involved State, local, or other Federal agency.

(2) Where agreement between the parties has been reached pursuant to paragraph (a)(1) of this section, the agreement shall be put in writing by DOL, and signed by the parties and an authorized official of DOL.

(b) *Formal findings, conciliation, and hearing.* If CRC cannot resolve the complaint during the early stages of the investigation, CRC will complete the investigation of the complaint and make formal findings. If the investigation indicates a violation of the Act or this part, CRC will attempt to achieve voluntary compliance. If CRC cannot obtain voluntary compliance, CRC will begin appropriate enforcement action, as provided in § 35.36.

§ 35.34 Effect of agreements on enforcement effort.

An agreement reached pursuant to either § 35.32(c) or § 35.33(a) shall have no effect on the operation of any other enforcement effort of DOL, such as compliance reviews and investigations of other complaints, including those against the recipient.

§ 35.35 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or this part; or

(b) Cooperates in any mediation, investigation, hearing or other part of CRC's investigation, conciliation, and enforcement process.

§ 35.36 Enforcement.

(a) DOL may enforce the Act and this part through:

(1) Termination of, or refusal to grant or continue, a recipient's Federal financial assistance from DOL under the program or activity in which the recipient has violated the Act or this part. Such enforcement action may be taken only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law, including, but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligation of the recipient created by the Act or this part; or

(ii) Use of any requirement of, or referral to, any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or this part.

(b) Any termination or refusal under paragraph (a)(1) of this section will be limited to the particular recipient and to the particular program or activity found to be in violation of the Act or this part. A finding with respect to a program or activity that does not receive Federal financial assistance from DOL will not form any part of the basis for termination or refusal.

(c) No action may be taken under paragraph (a) of this section until:

(1) DOL has advised the recipient of its failure to comply with the Act or with this part and has determined that voluntary compliance cannot be obtained; and

(2) Thirty days have elapsed since DOL sent a written report of the circumstances and grounds of the action to the committees of Congress having jurisdiction over the program or activity involved.

(d) *Deferral.* DOL may defer granting new Federal financial assistance to a recipient when termination proceedings under paragraph (a)(1) of this section are initiated.

(1) New Federal financial assistance from DOL includes all assistance for which DOL requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from DOL does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the initiation of a hearing under paragraph (a)(1) of this section.

(2) DOL may not defer a grant until the recipient has received notice of an opportunity for a hearing under paragraph (a)(1) of this section. A deferral may not continue for more than 60 days unless a hearing has begun within the 60-day period or the recipient and DOL have mutually agreed to extend the time for beginning the hearing. If the hearing does not result in a finding against the recipient, the deferral may not continue for more than 30 days after the close of the hearing.

§ 35.37 Hearings, decisions, and post-termination proceedings.

Certain DOL procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to DOL enforcement of these regulations. They are found at 29 CFR 31.9 through 31.11.

§ 35.38 Procedure for disbursal of funds to an alternate recipient.

(a) If funds are withheld from a recipient under this part, the Secretary

may disburse the funds withheld directly to an alternate recipient.

(b) The Secretary will require any alternate recipient to demonstrate:

(1) The ability to comply with the Act and this part; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

§ 35.39 Remedial action by recipient.

Where CRC finds discrimination on the basis of age in violation of this Act or this part, the recipient shall take any remedial action that CRC deems necessary to overcome the effects of the discrimination. In addition, if a recipient funds or otherwise exercises control over another recipient that has discriminated, both recipients may be required to take remedial action.

§ 35.40 Exhaustion of administrative remedies.

(a) A complainant may file a civil action under the Act following the exhaustion of administrative remedies. Administrative remedies are exhausted if:

(1) One hundred eighty days have elapsed since the complainant filed the complaint with CRC, and CRC has made no finding with regard to the complaint; or

(2) CRC issues any finding in favor of the recipient.

(b) If CRC fails to make a finding within 180 days, or issues a finding in favor of the recipient, CRC will promptly:

(1) Notify the complainant;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant that:

(i) The complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) A complainant who prevails in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint filed with the court;

(iii) Before commencing the action, the complainant must give 30 days notice by registered mail to the Secretary, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) The notice required by paragraph (b)(3)(iii) of this section must state the alleged violation of the Act, the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event that the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

APPENDIX A TO PART 35—AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY DOL

Program	Statute	Section and age distinction	Regulation
Employment and Training Administration			
1. Senior Community Service Employment Program (SCSEP).	Title V, Older Americans Act Amendments of 2000, Pub. L. 106–501, 42 U.S.C.3056, 3056N.	Sec. 516(2) defines the term "eligible individuals" to mean "an individual who is 55 years old or older, who has a low income * * *, except that, * * *, any such individual who is 60 years of older shall have priority * * *.	20 CFR part 641.
2. Job Corps	Title I, Subtitle C, Workforce Investment Act of 1998 (WIA), Pub. L. 105–220, 29 U.S.C. 2881–2901.	Sec. 144 of WIA (29 U.S.C. 2884) establishes eligibility criteria for the Job Corps program. These criteria require an enrollee to "be—(1) not less than age 16 and not more than age 21 on the date of enrollment, except that—(A) not more than 20 percent of the individuals enrolled in the Job Corps may be not less than age 22 and not more than age 24 on the date of enrollment; and (B) either such maximum age limitation may be waived by the Secretary, * * * in the case of an individual with a disability."	20 CFR 670.400.
3. Indian and Native American Supplemental Youth Services.	Title I, Workforce Investment Act of 1998 (WIA), Pub. L. 105–220, 29 U.S.C. 2911.	Sec. 166(d)(2)(A)(ii) of WIA (29 U.S.C. 2911(d)(2)(A)(ii)) states that funds made available under the program shall be used for "supplemental services for Indian or Native Hawaiian youth on or near Indian reservations and in Oklahoma, Alaska, or Hawaii." Sec. 101(13) of WIA (29 U.S.C. 2801(13)) defines an eligible youth as an individual who "is not less than age 14 and not more than age 21 * * *".	20 CFR 668.430.
4. Migrant and Seasonal Farmworker (MSFW) Youth Program.	Title I, Workforce Investment Act of 1998 (WIA), Pub. L. 105–220, 29 U.S.C. 2912.	Sec. 167 of WIA (29 U.S.C. 2912) outlines the MSFW program. WIA Sec. 127(b)(1)(A)(iii) authorizes the MSFW Youth Program. That provision states that, "the Secretary shall make available 4 percent of such portion to provide youth activities under sec. 167." Sec. 101(13) of WIA (29 U.S.C. 2801(13)) defines an eligible youth as an individual who "is not less than age 14 and not more than age 21; * * *".	20 CFR 669.670.

APPENDIX A TO PART 35—AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY DOL—Continued

Program	Statute	Section and age distinction	Regulation
5. Responsible Reintegration of Young Offenders (Youth Offender Demonstration Project).	Title I, Workforce Investment Act of 1998 (WIA), Pub. L. 105–220, 29 U.S.C. 2916; Departments Of Labor, Health And Human Services, And Education, And Related Agencies Appropriation Bill, 2003.	(a) Sec. 171(b)(1) of WIA (29 U.S.C. 2916(b)(1)) states that the "Secretary shall, through grants or contracts, carry out demonstration and pilot projects for the purpose of developing and implementing techniques and approaches, and demonstrating the effectiveness of specialized methods, in addressing employment and training needs. Such projects shall include the provision of direct services to individuals to enhance employment opportunities and an evaluation component * * *." The Responsible Reintegration of Young Offenders program was established in FY 2001 by DOL, in collaboration with the Departments of Health and Human Services and Justice, pursuant to this authority. (b) Senate Report 107–84 on bill S. 1536 (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation for FY 2002) noted that the Responsible Reintegration of Young Offenders initiative would "link offenders under age 35 with essential services that can help make the difference in their choices in the future * * *" (p. 25). DOL has determined, based upon the reentry needs of states and local communities, to provide services to a 14–24 year-old subset within this age limit. *See* 66 FR 30754, 30755 (June 7, 2001).	20 CFR 667.220.
6. WIA Youth Activities	Title I, Workforce Investment Act of 1998 (WIA), Pub. L. 105–220, 29 U.S.C. §2854.	WIA Sec. 129 (29 U.S.C. 2854) provides the standards for WIA financially assisted services to eligible youth. Eligible youth is defined in Sec. 101(13) as an individual who "is not less than age 14 and not more than age 21; * * *".	20 CFR 664.200.
7. Work Opportunity Tax Credits (WOTCs).	Small Business Job Protection Act of 1996, Pub. L. 104–188, 26 U.S.C. 51.	WOTC is intended to assist individuals from groups with consistently high unemployment rates by providing tax credits to their employers. Sec. 1201(b) of the Act (26 U.S.C. 51(d)) defines the targeted groups, including high-risk youth (26 U.S.C. 51(d)(1)(D)), qualified summer youth employee (26 U.S.C. 51(d)(1)(F)), and qualified food stamp recipient (26 U.S.C. 51(d)(1)(G)). The definitions of "high-risk youth" and "qualified food stamp recipient" include a requirement that the individual have "attained age 18 but not age 25 on the hiring date." 26 U.S.C. 51(d)(5)(A)(i), 51(d)(8)(A)(i). The definition of "qualified summer youth employee" includes a requirement that the individual have "attained age 16 but not 18 on the hiring date (or if later, on May 1 of the calendar year involved)." 26 U.S.C. 51(d)(2)(7)(A)(ii).	None.
8. Youth Opportunity Grants	Title I, Workforce Investment Act of 1998 (WIA), Pub. L. 105–220, 29 U.S.C. 2914.	Sec. 169 provides that "the Secretary shall make grants to eligible local boards and eligible entities * * * to provide activities * * * for youth to increase the long-term employment of youth who live in empowerment zones, enterprise communities, and high poverty areas and who seek assistance." It defines "youth" as "an individual who is not less than age 14 and not more than age 21."	20 CFR 664.820.

APPENDIX A TO PART 35—AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY DOL—Continued

Program	Statute	Section and age distinction	Regulation
9. Youth Apprenticeship Program.	29 U.S.C. 50	Sec. 1 of the National Apprenticeship Act of 1937 authorizes and directs the Secretary of Labor to promote the labor standards necessary to safeguard the welfare of apprentices, encourage contracts of apprenticeship, and bring employers and labor together to form apprenticeships. An apprentice is defined in 29 CFR 29.2 of the Act's implementing regulations as "a worker at least 16 years of age, * * *, who is employed to learn a skilled trade * * * under standards of apprenticeship * * *". The regulations also require that the "eligible starting age" of an apprenticeship program be "not less than 16 years."	29 CFR 29.2, 29.5(b)(10).
10. Trade Adjustment Assistance.	Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107–210), 19 U.S.C. 2318.	Sec. 246 of the Act requires the Secretary of Labor to establish a demonstration project for alternative trade adjustment assistance (ATAA) for workers age 50 or older. Under this demonstration project, workers petitioning for certification under the Trade Adjustment Assistance (TAA) program may request certification under the ATAA program as well. Certification will be granted if a number of conditions are met, including that a significant number of workers in the affected firm are 50 or over. Once the worker group is certified, individual workers may choose the program they prefer. Additional qualifications for individual workers include an age at least 50.	20 CFR part 617; see also TAA Training and Employment Guidance Letter, 67 FR 69029 (Nov. 14, 2002).
Employment Standards Administration			
11. Defense Base	Defense Base Act, Pub. L. 77–208, Act of Aug. 16, 1941, ch. 357, 55 Stat. 623, 42 U.S.C. 1651–1654.	The Defense Base Act (DBA) extends the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901–950, "except as modified" in the DBA to certain persons employed at military bases outside the continental United States. DBA sec. 2(b), 42 U.S.C. 1652(b), provides that compensation for disability or death to aliens and non-nationals of the United States who are not residents of the United States or Canada under the Defense Base Act is in the same amount as residents, "except that dependents in any foreign country shall be limited to surviving wife and child or children." The DBA does not modify the LHWCA's definition of a child and the latter is defined as a person who is under 18 years of age, or who though 18 years of age or over, is wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or is a student.	20 CFR part 702.

APPENDIX A TO PART 35—AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY DOL—Continued

Program	Statute	Section and age distinction	Regulation
12. Energy Employees Occupational Illness Compensation Program.	Energy Employees Occupational Illness Compensation Program Act, Pub. L. 106–398, Title XXXVI, October 30, 2000, 114 Stat. 1654 42 U.S.C. 7384 *et seq.*	(a) The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) provides compensation and medical benefits to nuclear weapons industry employees or their eligible survivors who have covered illnesses related to exposure to beryllium, cancers related to exposure to radiation, and chronic silicosis. Some uranium employees or their eligible survivors are also eligible for compensation under the Act. Sec. 3628(e) of EEOICPA, 42 U.S.C. 7384s(e)(1)(F)(ii), as amended by Sec. 3151 of Pub. L. 107–107, the National Defense Authorization Act for Fiscal Year 2002, relating to claims for radiogenic cancer, beryllium illnesses, or silicosis, provides that notwithstanding other provisions pertaining to payments in the case of deceased persons, if there is a surviving spouse and "at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment." (b) Sec. 3630(e) of EEOICPA, 42 U.S.C. 7384u(e)(1)(F)(ii), as amended by Sec. 3151 of Pub. L. 107–107, the National Defense Authorization Act for Fiscal Year 2002, relating to claims by uranium employees contains a provision identical to that described above in Sec. 3628(e).	20 CFR 30.5(ee).
13. Federal Employees' Compensation.	Federal Employees' Compensation Act, Act of Sept. 7, 1916, ch. 458, 39 Stat. 742 5 U.S.C. 8101–8151.	(a) Sec. 8101(8), 5 U.S.C. 8108(8), defines "brother" and "sister" as meaning "one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support." (b) Sec. 8101(9), 5 U.S.C. 8108(9), defines "child" as "one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children, and posthumous children, but does not include married children." (c) Sec. 8101(10), 5 U.S.C. 8108(10), defines "grandchild" as "one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support." (d) Sec. 8101(17), 5 U.S.C. 8108(17), defines "student" as "an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training".	20 CFR 10.405, 10.410, 10.413–.417, 10.535–.537, 25.101 and 25.202.

APPENDIX A TO PART 35—AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY DOL—Continued

Program	Statute	Section and age distinction	Regulation
		(e) Sec. 8109, 5 U.S.C. 8109, sets forth the order of precedence for payments of scheduled awards unpaid at the time of the employee's death from a cause other than the employment-related injury. It establishes the order as, "if no child, to the widow or widower, if there are both a widow or widower and a child or children, one-half to the widow or widower and one-half to the child or children, [and] if there is no widow or widower, to the child or children." (f) Sec. 8110(a), 5 U.S.C. 8110(a)(3), defines "dependent" for purposes of determining eligibility for augmented compensation for dependents as including "an unmarried child, while living with the employee or receiving regular contributions from the employee toward his support, and who is (A) under 18 years of age; or (B) over 18 years of age and incapable of self-support because of physical or mental disability." Notwithstanding paragraph (3), compensation payable for a child that would otherwise end because the child has reached 18 years of age shall continue if he is a student as defined by section 8101 * * * at the time he reaches 18 years of age for so long as he continues to be a student or until he marries." (g) Sec. 8113(a), 5 U.S.C. 8113(a), permits the Secretary, after the time the wage-earning capacity of the individual would probably have increased but for the injury, to recompute prospectively the monetary compensation payable for disability on the basis of an assumed monthly pay corresponding to the probable increased wage-earning capacity, "if an individual (a) was a minor or employed in a learner's capacity at the time of injury and (b) was not physically or mentally handicapped before the injury." (h) Sec. 8115(a)(4), 5 U.S.C. 8115(a)(4), states that the age of an employee is one factor that shall be used in determining his wage-earning capacity for purposes of eligibility for partial disability compensation when the actual earnings of the employee do not fairly and reasonably represent his wage-earning capacity or the employee has no actual earnings. (i) Sec. 8122(d)(1), 5 U.S.C. 8122(d)(1), provides that the time limitations for making a claim under FECA do not begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed. (j) Sec. 8133(a), 5 U.S.C. 8133(a), provides for compensation if death results from an injury sustained in the performance of duty and makes such compensation payable in accordance with a schedule that makes numerous references to children and grandchildren. (k) Sec. 8133(b)(1), 5 U.S.C. 8133(b)(1), provides that the compensation payable for death under subsection (a) terminates for a widow or widower if they die or remarry before reaching age 55.	

APPENDIX A TO PART 35—AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY DOL—Continued

Program	Statute	Section and age distinction	Regulation
		(l) Sec. 8133(b)(2), 5 U.S.C. 8133(b)(2), provides that the compensation payable for death under subsection (a) terminates for a child, a brother, a sister, or a grandchild when they die, marry, or become 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support but such compensation that would otherwise end because they reached 18 years of age shall continue if they are a student at the time they reach 18 years of age for as long as they continue to be a student or until they marry. (m) Sec. 8135(b), 5 U.S.C. 8135(b), provides that if a widow or widower entitled to death benefits remarries before reaching age 55, they shall be paid a lump sum equal to twenty-four times the monthly compensation to which they were entitled immediately before the remarriage. (n) Sec. 8141(a), 5 U.S.C. 8141(a), Civil Air Patrol Cadets under 18 years of age are not covered by FECA. (o) Sec. 8141(b)(2), 5 U.S.C. 8141(b)(2), volunteer civilian members of the Civil Air Patrol, other than Civil Air Patrol Cadets under 18 years of age, are entitled to death benefits under sec. 8133 but only receive certain specified percentages of those benefits with no additional payments for a child or children in certain circumstances.	
14. Longshore and Harbor Workers' Compensation.	Longshore and Harbor Workers' Compensation Act, Act of March 4, 1927, ch. 509, 44 Stat. 1424 33 U.S.C. 901–950.	(a) The Longshore and Harbor Workers' Compensation Act (LHWCA) provides workers' compensation for maritime employees. Sec. 2(14), 33 U.S.C. 902(14), defines a child and provides that a child, grandchild, brother or sister to include only a person who is under 18 years of age, or who though 18 years of age or over, is wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or is a student. (b) Sec. 2(18), 33 U.S.C. 902(18), defines a student as a person regularly pursuing a full-time course of study or training at certain specified institutions but not after he reaches the age of 23 or has completed 4 years of education beyond the high school level, except that, where his 23rd birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child is deemed not a student during a period of service in the Armed Forces of the United States. A child is not deemed to have ceased to be a student during any interim between school years if certain conditions are met. (c) Sec. 8(d)(1), 33 U.S.C. 908(d)(1), provides a scheme of distribution for payment of unpaid scheduled permanent partial disability benefits when an employee who is receiving such benefits dies from causes other than the injury. The distribution contains numerous references to child or children.	20 CFR 702.142(a) and 702.222(a).

APPENDIX A TO PART 35—AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY DOL—Continued

Program	Statute	Section and age distinction	Regulation
		(d) Sec. 9(b)–(d), 33 U.S.C. 909(b)–(d), provide for the payment of death benefits and the amount of such payments varies in part according to whether the deceased employee has a child or children. (e) Sec. 9(g), 33 U.S.C. 909(g), provides that compensation for aliens who are not residents (or about to become residents) of the United States or Canada is the same as for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported. (f) Sec. 10(e), 33 U.S.C. 910(e), provides that in determining the average weekly wages of an employee who is injured when a minor, the fact can be considered that under normal conditions his wages should be expected to increase during the period of disability. (g) Sec. 11, 33 U.S.C. 911, permits the district director to require the appointment of a guardian or other representative for a minor or any person who is mentally incompetent to receive compensation payable to the minor or incompetent and to exercise the powers granted to or to perform the duties required of them under the LHWCA. (h) Sec. 13(c), 33 U.S.C. 913(c), establishes the time requirement for filing a claim. The usual one year time limit is not applicable if the person entitled to compensation is mentally incompetent or a minor and such person has no guardian or other authorized representative. This freeze ends for a minor when a guardian is appointed or when he becomes of age.	
15. War Hazards Compensation.	War Hazards Compensation Act, Act of Dec. 2, 1942, ch. 668, Title I, 56 Stat. 1028 42 U.S.C. 1701–1717.	The War Hazards Compensation Act provides that certain provisions of the FECA and the LHWCA apply to certain persons employed by government contractors outside the continental United States who sustain an injury proximately caused by a war risk hazard. Sec. 101(c), 42 U.S.C. 1701(c), provides that compensation for disability or death to aliens and non-nationals of the United States who are not residents of the United States or Canada under the Act is in the same amount as residents, "except that dependents in any foreign country shall be limited to surviving wife or husband and child or children."	20 CFR 61.203.
16. Child Labor Restrictions	Walsh-Healey Public Contracts Act, 41 U.S.C. 35 *et seq.*,	The Act contains child labor restrictions for government manufacturing and supply contracts.	41 CFR part 50–201.
17. Child Labor Restrictions	Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*,	The Act contains child labor restrictions applicable to almost all employers receiving Federal financial assistance.	29 CFR part 570.

APPENDIX A TO PART 35—AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY DOL—Continued

Program	Statute	Section and age distinction	Regulation
18. Black Lung Benefits	Black Lung Benefits Act, 30 U.S.C. 901–945.	(a) 30 U.S.C. 902(a), BLBA definition of "dependent": refers to sec. 902(g), definition of "child". (b) 30 U.S.C. 902(g), BLBA definition of "child": defines a child or step-child as an individual who is under 18 years of age; defines a child who is a "student" by cross-reference to 42 U.S.C. 402(d)(7) (age 19) and 5 U.S.C. 8101(17) (age 23); and defines a disabled child as one whose disability began before the age specified in 42 U.S.C. 402(d) (age 22). 30 U.S.C. 922(a)(5)(1)(A), BLBA criteria for entitlement for a minor's "brother" using same criteria applicable to "child".	20 CFR part 725, subpart B.
19. Black Lung Benefits	Black Lung Benefits Act, 30 U.S.C. 901–945.	This sec. defines who may file a benefits claim. Persons aged 18 or older may file claims on their own behalf, while persons under age 18 generally must rely on an authorized individual to file the claim (with a limited exception for certain persons between 16 and 18 years of age).	20 CFR 725.301.

[FR Doc. 04–7006 Filed 4–1–04; 8:45 am]
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Federal Register

Friday,
April 2, 2004

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 45 and 52
Federal Acquisition Regulation;
Government Property; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

Federal Acquisition Regulation; Government Property

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting.

SUMMARY: DoD, GSA, and NASA are sponsoring a public meeting to discuss potential changes to the Federal Acquisition Regulation (FAR) regarding Government property in the possession of contractors (FAR Parts 45 and 52). To facilitate an open dialogue between the Government and interested parties, a public meeting is being held.

DATES: The meeting will be held on April 13, 2004, from 9 a.m. to 4 p.m., local time.

ADDRESSES: The meeting will be held at the Logistics Management Institute, 2000 Corporate Ridge, Room 2056 (DAU 1/2), Second Floor, McLean, VA 22102–7805. General Phone: 703–917–9800. To adequately accommodate for space, please RSVP to Tom Ruckdaschel at e-mail address *tom.ruckdaschel@osd.mil.* Any comments intended to be considered as a public comment must be submitted separately as a public comment as instructed in any future proposed rule.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Ruckdaschel, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), at (703) 604–6350 x101, or *tom.ruckdaschel@osd.mil.* A copy of the draft document to be discussed at the meeting can be obtained from *Michael.Canales@osd.mil* or can be downloaded at the following Web site: *http://www.acq.osd.mil/uid/.*

Special Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Tom Ruckdaschel (703–604–6350 x101) at least 5 days prior to the meeting date.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA have drafted a new approach to Government Property (FAR Parts 45 and 52) and will be discussing the potential changes at a public meeting. The draft revisions take a more commercial approach to property stewardship and recordkeeping responsibilities and significantly reduce the number of property clauses in FAR Part 52.

Dated: March 25, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 04–7343 Filed 4–1–04; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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West Coast States and Western Pacific fisheries—

Western Pacific pelagic; sea turtle take mitigation measures; published 4-2-04

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

6-Benzyladenine; published 4-2-04

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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Secondary direct food additives—

Cetylpyridinium chloride; published 4-2-04

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Delegations of authority removed and other conforming changes; published 4-2-04

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

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Maximum mortgage limits for multifamily housing; published 3-3-04

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Agricultural Marketing Service

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S. 2231/P.L. 108–210

Welfare Reform Extension Act of 2004 (Mar. 31, 2004; 118 Stat. 564)

S. 2241/P.L. 108–211

To reauthorize certain school lunch and child nutrition programs through June 30, 2004. (Mar. 31, 2004; 118 Stat. 566)

Last List March 23, 2004

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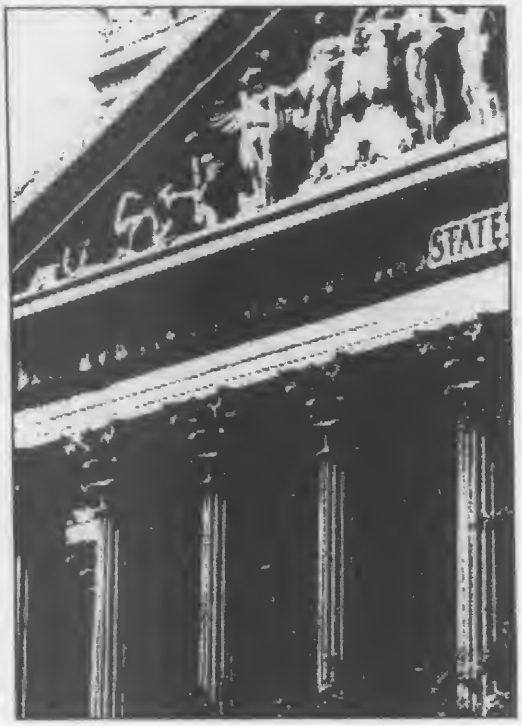

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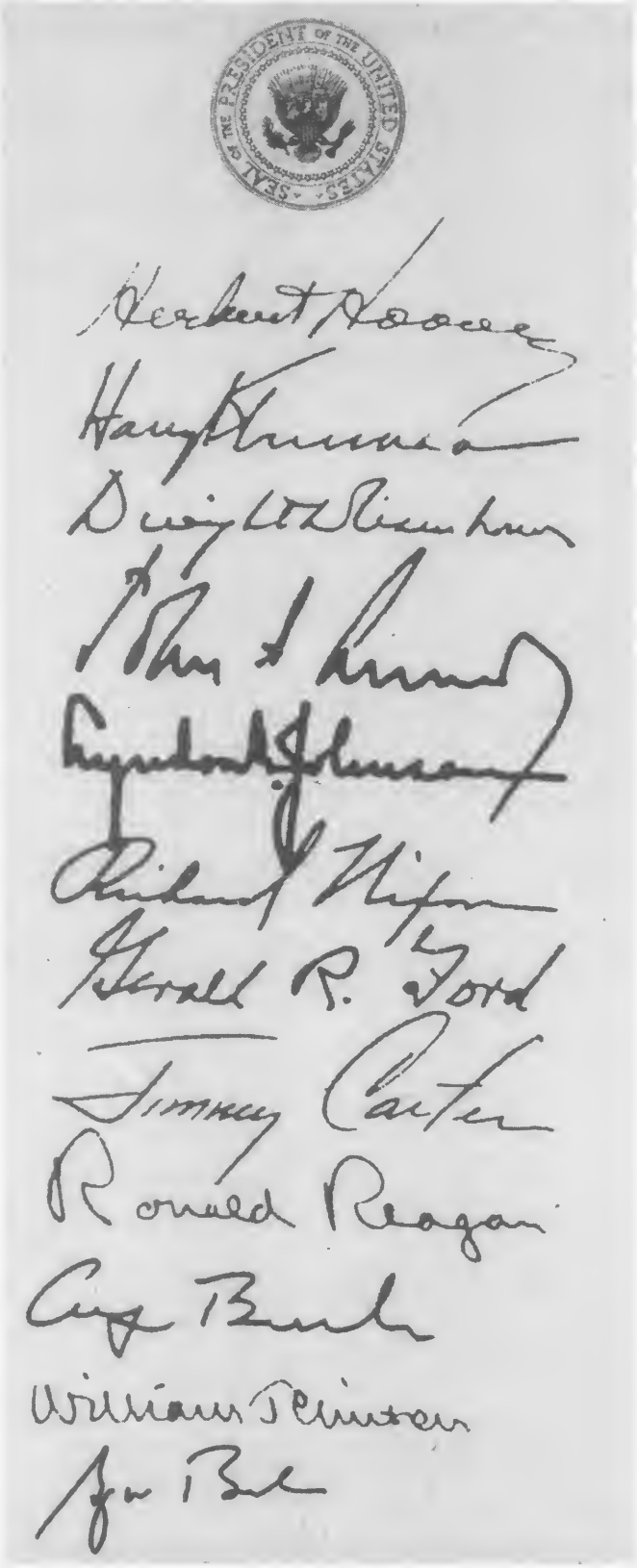

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